
(2015) 01 GAU CK 0047
In the Gauhati High Court
Case No : WA No. 437 of 2013

Bhaben Gogoi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 11

Citation : (2015) 2 GLT 788

Hon'ble Judges : Abhay Manohar Sapre, C.J.; Arup Kumar Goswami, J

Bench : Division Bench

Advocate : S. Borgohain, for the Appellant; M.K. Choudhury and N. Borah, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Abhay Manohar Sapre, C.J.—Heard Mr. S. Borgohain, learned counsel for the appellant and Mr. M.K. Choudhury, learned senior counsel assisted by Mr. N. Baruah, learned Standing Counsel, IOC. This is an intra-court appeal filed by the writ petitioner of WP(C) 5828/2013 under Rule 2(3) of Chapter V-A of the Gauhati High Court Rules against the order dated 03.10.2013 passed by the Single Judge in abovementioned writ petition.

2. By impugned order, the Single Judge dismissed the appellant's writ petition and declined to grant the relief claimed in the writ petition.

3. So the short question, which arises for consideration in this writ appeal, is whether learned Single judge was justified in dismissing the appellant's writ petition?

4. The dispute in the writ petition out of which this appeal arises relates to the allotment of retail outlet of sale of petrol/diesel by the IOC in State of Assam. It was not in dispute that the appellant had earlier filed similar writ petition being W.P(C) No. 775 of 2012 for grant of same relief which is claimed in the present writ petition but the same was dismissed by the writ court by its order dated

23.11.2012. It was also not disputed that the petitioner had then filed writ appeal being W.A. No. 17 of 2013 against the said dismissal order and the appeal too was dismissed by order dated 24.1.2013.

5. The writ petitioner (appellant) then filed the present writ petition out of which this appeal arises again praying for the same relief, which was earlier claimed in the writ petition. It is this writ petition, which was dismissed by the writ court by the impugned order, inter alia, on the ground of its maintainability. The impugned order reads as under:

"Heard Mr. S. Borgohain, learned counsel for the petitioner and Mr. M.K. Choudhury, learned Standing Counsel, Indian Oil Corporation Limited (Marketing Division).

By way of this writ petition, petitioner has challenged advertisement dated 26.1.2012 relating to award of Kisan Seva Kendra (KSK) (Retail Outlet). The said advertisement was published inviting applications for allotment of 93 Kisan Seva Kendra (KSK) (Retail Outlet) in the State of Assam. According to the petitioner, there is excess allotment for various categories.

It appears that petitioner had earlier moved this Court challenging the same advertisement in WP(C) No. 775/2012. This Court by judgment and order dated 23.11.2012 had dismissed the writ petition. Thereafter, petitioner had preferred Writ Appeal No. 17/2013, which was also dismissed by the Division Bench on 24.1.2013. 9 months thereafter, the present writ petition has been filed.

Though learned counsel for the petitioner contends that the issue raised in the present writ petition is somewhat different from the issue raised in the earlier writ petition, Court is of the view that petitioner cannot be permitted to challenge the same advertisement again and again. Accordingly, Court is not inclined to entertain the writ petition.

Writ petition is dismissed."

6. Having heard the learned counsel for the appellant and on perusal of the record of the case, we find no case to differ with the reasoning and the conclusion arrived at by the writ court.

7. Indeed, no fault can be found in the reasoning of the writ court. In the first place, once the earlier writ petition filed by the appellant was dismissed by the writ court, then his only remedy was to pursue his grievance in intra court appeal and which he did pursue, but to his misfortune "unsuccessfully" because as mentioned above, his appeal was also dismissed by the Division Bench. Consequent upon dismissal of his appeal, his further remedy was to file special leave to appeal to the Supreme Court. This he did not do and on the other hand, he accepted the order of the Division Bench, which due to not filing of any Special Leave Petition against the said order, attained finality.

8. In a situation like in the one, the appellant had no right to file a writ petition

again raising the same grievance. In our view, the public policy bars filing of second writ petition again on the same cause of action. It is equally barred by the principles enunciated in Section 11 explanation (IV) read with Order 2 Rule 2 of C.P. Code. The appellant was under obligation to raise all such grounds, which were available to him in law in his first writ petition itself and if he did not raise all, but raised only few, then, remaining were barred by the principles of public policy as also by Section 11 read with Order 2 Rule 2 of Code in raising subsequently by filing another writ petition for the same relief. Indeed, this has been the law laid down by the Supreme Court time and again and we need not quote it being well settled one. We may, however, hasten to add that the appellant did not reserve any liberty to file second writ petition on the same cause of action from the writ court or/and appellate court, else the situation would have been different.

9. In the light of these undisputed facts emerging from the record, the cause of action to prosecute the grievance raised in the writ petition out of which this appeal arises got extinguished in the first round of litigation itself and hence, it could not have been revived. In view of the foregoing discussion, we find no case to interfere in the impugned order which is just and proper and thus finding no merit in the appeal dismiss the same in limine. No cost.