
(1994) 06 GAU CK 0034

In the Gauhati High Court

Case No : Civil Rule No's. 378 of 1993 (Agartala) and 1650 of 1994 (Gauhati)

Dr. Yudhisthir Das

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 26-06-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 14, 21, 226

Citation : (1995) 2 GLR 158

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : B. Das and B. Choudhury, for the Appellant; B.P. Kataky, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—This Civil Rule which was earlier filed before the Agartala Bench has been transferred to the principal scat and here it has been re-numbered as Civil Rule No. 1650/94, this Civil Rule was filed on 13.10.93 praying the following reliefs:

i), To quash the selection, of the Respondent No. 5 for being admitted in Regional Medical College, Imphal in the MD course of obstetrics and Gynaecology and direct the authority to select and admit the Petitioner in place of Respondent No. 5.

ii) To declare and hold that the sponsorship and admission of Respondent No. 5 to the Regional Medical College are illegal, void and nullity.

2. Earlier there was a Civil Rule being Civil Rule No. 207/93 before this Court (Agartala Bench.) and Single Judge of this Court by Judgment and order dated 5.7.93 on an application filed by Dr. Priya Ranjan Bhattacharjee, the present Respondent No. 5 inter-alia directed as follows:

i) I direct the Director of Health Services to immediately sponsor the name of the

Petitioner also whose case will be considered by the authority of the Regional Medical College, Imphal for selection.

ii) The Regional Medical College, Imphal shall consider/examine the merit of Dr. Y. Das and the present Petitioner and should decided as to who should be admitted for the aforesaid course in the aforesaid college.

iii) The Regional Medical College, Imphal shall not consider the case of Dr. Y. Das unless his merit is compared alongwith of the present Petitioner and on that basis selection is to be made.

3. On the basis of this order passed by this Court, the Regional Medical College made the selection and admitted the Respondent No. 5 to the course and accordingly, the Respondent No. 5 is pursuing his study in that College.

4. In the present writ application, the prayer is for cancellation of selection and admission of Respondent No. 5 and for direction to select and admit the present Petitioner in place of Respondent No. 5

5. The brief facts are as follows;

That the Petitioner joined the Tripura Health Services as Grade -V Medical Officer on 20.10.81 and he served in different rural areas as detailed in paragraph 3 of the writ application. The Petitioner was promoted to Grade - IV of the Tripura Health Services w.e.f. 7.5.90. The Petitioner is a Member of the Scheduled Caste. The Petitioner look his MBBS Degree from the Regional Medical College, Imphal in the year 1979. The Respondent No. 5 passed MBBS after the Petitioner. There is a guideline formulated by the State of Tripura for sponsorship for the post of Graduate Degree/ Diploma courses intended for the in-service Medical Officers of the Tripura Health and Family Welfare Department. One of the features of that guideline is that for being sponsored as a departmental candidate, the person concerned should complete at least 5 years continuous service as regular basis and minimum 3 years of service should be in the rural area at the rime of submission of application for sponsorship. This was subsequently relaxed and the period of 5 years was reduced to 3 years and the period of service in rural area was reduced to 2 years. The disciplines for which sponsorship is made are given in paragraph 6 of the writ application. It is also stated in the guidelines that for sponsorship due/weightage will be given to seniority in service. On 25.5.90 an advertisement was published for inviting application for sponsoring the names in different disciplines in the Regional Medical College at Imphal for the session 1990-91. The Petitioner was sponsoted for Obstetrics and Gynaecology but alongwith the Petitioner one Shakti Das Gupta was also sponsored and Smti. Das Gupta was selected and the Petitioner was not selected and admitted. The Petitioner filed a Civil Rule being Civil Rule No. 293/90 before the Imphal Bench of this Court. This Civil Rule came for order on 20.8.90 and the Division Bench of this Court interalia passed the following order:

Learned counsel for the Respondents has produced before us the minutes of the

Selection Committee, where criteria has been laid down. Learned counsel has further submitted that the Respondent No. 7 has already joined the Course. It has been assured that the Petitioner will be given a chance in the next year.

"Learned counsel for the Petitioner has drawn our attention to Annexure-A/2, more particularly para 5 & 6 and has urged that these are the criteria for selection. We are unable to accept the contention of the learned Counsel, inasmuch as, these are qualifications for applying for the course.

The petition was dismissed.

6. So, the contention that Smti. Das Gupta was not eligible to be selected was turned down by the Division Bench of this Court.

7. Subsequently, another Civil Rule was filed being Civil Rule No. 282/91 and the same was also disposed of by the Division Bench of this Court on 18.7.91 with the following observation:

The Principal-cum-Secretary, Regional Medical College, Imphal is to dispose of the representation made by the Petitioner on 14.2.91 within 10 days.

8. That vide Annexure- VIII on 7.8.91, The Principal, Regional Medical College disposed of the representation as follows:

The members did not agree to create extra seat and decided to refer his case to State Government for his nomination in a particular year when Obst. and Gynaec. subject as per norm of rotation is given to that State.

Subsequently on 2.7.93 vide Annexure XI, the following order was passed by the Director of Health Services Govt. of Tripura, Agartala:

The Principal,

Regional Medical College, Imphal, Manipur.

Sub : Sponsorship of in-service Medical Officer of Tripura for post-graduate study.

Sir,

With reference to your letter regarding allotment of post-graduate seats, in Regional Medical College, Imphal, Manipur for Tripura nominee for the session 1993-94, I am to state that the following doctor is sponsored for appearing before the selection committee on 7.7.93 at 11.00 A.M.

Name and address of the

name of discipline

sponsored candidate

1. Dr. Yudhisthir Das

Gr-IV of T.H.S.

Mohanpur P.H.C.

Obst. & Gynes.

Application in proscribed forms in respect of the sponsored candidate is being sent by a special messenger (Shri Ratan Kr. Saha. U.D.C.). Due to recent flood in the State processing of the matter regarding; sponsorship was delayed and the application form could not be sent within the stipulated date.

Yours faithfully, Sd/- 2/7 Director of Health Services Government of Tripura, Agartala.

Copy to:

Dr. Yudhisthir Das, Gr-IV of T.H.S., Mohanpur. P.H.C. Tripura West for information and necessary action. He is requested to appear before the selection committee on 7.7.93 at 10.00 A.M. along with all documents/certificates in original."

9. By another letter of the same date, the Respondent No. 5 was sponsored as a candidate for Orthopadies in the same Medical College. Thereafter, the Civil Rule No. 207/93 as stated earlier was filed by the Respondent No. 5 before the Agartala Bench of this Court and the order passed in that Civil Rule is already quoted. The present Petitioner was not a party to this Writ application. In the present Writ application, the legality and validity of this order is challenged on the following grounds:

- i) That this order has been passed behind the back and Petitioner has been prejudicially affected.
- ii) The earlier order in Civil Rule No. 293/90 was not properly considered in passing the order on 5.7.93.
- iii) That the direction of sponsorship of the Respondent No, 5 by an order of the Hon"ble High Court dated 5.7.93 in Civil Rule No. 207/93 was not legal and valid and was passed on irrelevant considerations.
- iv) The basis of selection and admission of Respondent No, 5 vide order dated 5.7.93 is void ab-initio and as such nullity.
- v) The order dated 5.7.93 treated unequal as equal and imparted the principle of discrimination and/or arbitrary action.
- vi) Order dated 5.7.93 did consider something which was not within its jurisdiction to consider.

10. It may be stated herein that earlier to the Civil Rule on the same ground another Civil Rule being Civil Rule No. 713/93 was filed by the Petitioner before the Imphal Bench of this Court and ultimately the same was withdrawn on 24.8.93 but the withdrawal order has not been annexed by the Petitioner. During the pendency of that Civil Rule itself, another Civil Rule was filed being Civil Rule No. 291/93 before the Agartala Bench of this Court suppressing the filing of the

earlier Civil Rule before the Imphal Bench and by Order dated 23.9.93 this Court dismissed that Civil Rule, The order dated 29.9.93 which at Annexure 21 to the writ application is quote below:

It is revealed that from the affidavit showing cause filed by the Respondent No. 4 Principal R.M.C, Imphal, in Civil Original petition (Contempt) No. 47/93 that for the same cause of action, the Petitioner had already filed a writ petition before Imphal Bench of this Court on 8.7.93 and said petition has been registered as C.R. No. 713/93 in Imphal Bench. The Respondents No. 4 has already received notice of the said Civil Rule No. 713/93.

The Petitioner in the rejoinder to the said Affidavit has not delivered the fact of filing the writ petition before the Imphal Bench of this Court. The Petitioner has contended that he engaged an Advocate at Imphal and instructed him to file the Writ petition and did not know what had happened thereafter, the Petitioner has not denied the fact that he sworn affidavit in that writ petition filed before the Imphal Bench of this Court.

This petition was moved on 26.7.93 after filing of the Civil Rule No. 713/93 before Imphal Bench of this Court. The Petitioner however, suppressed the fact of filing the Civil Rule No. 713/93 before the Imphal Bench of this Court in this petition. I am constrained to hold that this petition is liable to be dismissed for suppression of material fact of filing Civil Rule No. 713/93 before the Imphal Bench of this Court.

The petition is therefore, dismissed.

11. So, it appears that for the same relief earlier two Civil Rules were filed, one before the Imphal Bench which was dismissed on withdrawal and another before the Agartala Bench which was dismissed holding that the petition is liable to be dismissed for suppression of material facts in Civil Rule No. 713/93 before the Imphal Bench of this Court and this is the 3rd Civil Rule.

12. I have heard Shri G. Chakraborty, Learned Advocate for the Petitioner and Shri B.P. Katakya, Learned Advocate for the Respondents.

Shri Chakraborty urges the following points:

- i. The present application is not barred by the principle of Res judicata/estoppel as the earlier two petitions were dismissed on technical ground, one on withdrawal and the other on the ground of suppression of material facts.
- ii. Justice and equity has been denied to the Petitioner by order dated 5.7.93 and it is settled law that a person cannot suffer because of the wrong decision of a court and the court is always-competent to set aside that decision to do justice to a person.
- iii. The action of the State of Tripura and Regional Medical College, Imphal has violated the fundamental right of the Petitioner under Article 21 of the Constitution of India. The Petitioner wanted to proceed with higher study and

specialised education in medical science but he was deprived of it because of the biased, unfair and illegal action on the part of the authority.

iv. The Principle of Promissory Estoppel shall apply in this case inasmuch, as the State of Tripura made a promise to sponsor the Petitioner for the post and later on resiled/turned back from this promise. The Petitioner already changed his position relying on the promise.

v. The Order dated 5.7.93 passed by this Court in the earlier Civil Rule is nullity and void.

13. It may be made clear that no specific prayer has been made, in the present Writ application to set aside the earlier order dated 5.7.93 passed by this Court in the earlier Civil Rule mentioned above, Only tangentially the legality and validity of the order has been challenged on the grounds indicated above. The Regional Medical College, Imphal, has not been made a party only the Principal has been made a party.

An affidavit-in-opposition has been filed on behalf of the Respondents.

14. The Doctrine of res-judicata rests on the principle that one should not be allowed to agitate the same cause and there should be finality of litigation. The Rule also rests on public policy. The basic principle of the Rule of res-judicata is that the cause of action for the second suit having merged in the Judgment of the first, it does not any more survive. iRes-judicata is sometime treated as estoppel by Judgment. The distinction between the two is that the res-judicata OUSTS the jurisdiction of Court while estoppel is not a rule of substantive law in the sense that it does not debar any immediate relief or claim. It is a rule of evidence. The test of res-judicata is the identity of title in the two litigations and run the identity of the actual properly involved. The Doctrine of res-judicata belongs to the-domain of procedure.

15. In AIR 7977 SC 2355 Mathura Prasad Sarjoo Jaiswal and Ors. v. Dossibai N.B Jeejeebhoy, the Supreme Court was considering Section 11 of the CPC and the Supreme Court pointed out in paragraph 5, 9, and 10 as follows:

Paragraph : 5

But the doctrine of re judicata belongs to the domain of procedure, it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact relating to the right in dispute between the parties has been determined thereby, A decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties : the" matter in issue" may be an issue of mixed law and fact decided by a competent court is finally determined between the panics and cannot be reopened between them in another proceeding. The previous decision on a matter in issue alone is res judicata : the reasons for decision are not res

judicata. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue, When it is said that a previous decision is *res judicata*, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is *res judicata*. A previous decision on a matter in issue is a composite decision : the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on a issue of law will be as *res judicata* in a subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.

Paragraph : 9

"A question of jurisdiction of the Court, or of procedure, or a pure question of law unrelated to the right of the parties to a previous suit, is not *res judicata* in the subsequent suit. Rankin, C.J., observed in *Tarini Charan Bhattacharjee and Others Vs. Kedar Nath Halder*,

"The object of the doctrine of *res judicata* is not to fasten upon parties special Principles of law as applicable to them inter se, but to ascertain their rights and the facts upon which these rights directly and substantially depend : and to prevent this ascertainment from becoming nugatory by precluding the parties from reopening or recontesting that which has been finally decided."

A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not, in our Judgment, operate as *res judicata*. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute the question cannot operate as *res judicata* between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise."

Paragraph: 10

"It is true that in determining the application of the rule of *res judicata* the Court is not concerned with the correctness or otherwise of the earlier Judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for

the same reason be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law, i.e. the interpretation of a status, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in Section 11, Code of Civil Procedure, means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is not purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning some thing which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of the order under the rule, of res-judicata, for a rule of procedure cannot supersede the law of the land."

16. It is also settled law that where a petition under Article 226 of the Constitution of India is dismissed on the merit it operates as res-judicata and bars a fresh petition under Article 226 even when it is passed without hearing the other party. See *Daryao and Others Vs. The State of U.P. and Others*, *Josep Pothan Vs. State of Kerala*, *Joseph v. State of Kerala* But second petition under Article 226 would be entertained if the petition is dismissed as withdrawn because in such a case there has been no decision on the merits. When, the petition is dismissed in limine without passing a speaking order that is to say without giving any reason whatsoever or without making any pronouncement on the merits a second application shall lie. A second application shall lie where the cause of action is different or the statute upon which the previous decision was passed has been changed on the material point. In proceeding under Article 226 the bar of res judicata applies only when there has been an actual decision on the merit. The Doctrine of constructive res judicata is not an essential part of Doctrine of res judicata but a technical extension of Section 11 of the CPC which cannot in terms extend to a proceeding under Article 226 of the Constitution of India. Though subsequently this broad statement seems to have been limited in the case reported in *Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others*,

17. Be that as it may, in the instant case the earlier two Civil Rules filed by the Petitioner i.e. Civil Rule No. 743/93 before the Imphal Bench which was withdrawn on 24.8.93 and the subsequent Civil Rule No. 229/93 before the Agartala Bench was dismissed, on the ground that the pendency of the earlier Civil Rule at Imphal was not disclosed, so there was no decision on merit. Accordingly, I hold that the present application is not barred by the principle of Res judicata and estoppel.

Point No. 2

18. Whether the Judgment dated 5.7.93 passed by this Court in Civil Rule No. 207/93 can be judicially reviewed on the ground urged by the Petitioner.

19. In 1993 SCJ 452 *Ramchandra Ganpat Shinde v. State of Maharashtra and*

Ors. the Supreme Court was considering that aspect of the matter. The question which arose before the Supreme Court in that case was whether the court while exercising power under Article 226 of the Constitution of India could give direction contrary to the statutory mandate, if so whether such an order is liable to judicial review by an independent proceeding under Art. 226 and if so under what circumstances and to what extent. The Supreme Court in paragraph 10 pointed out as follows:

Undoubtedly, the order passed by the High Court under Article 226 is by exercise of plenary constituent power and jurisdiction. It is neither a void nor voidable order.

The Supreme Court further pointed out as follows:

Undoubtedly, the order passed by the High Court under Article 226 is a judicial order exercising its constituent power but when its process is abused and an order of minutes obtained by consent hedged with collusion and fraud on the court....when the facts were brought to the notice of the High Court, it is the High Court alone or on appeal this Court which is to correct such an order.

20. The Supreme Court in paragraph 17 pointed out as follows:

An order obtained by abuse of the process of the court or by playing fraud or collusion, this Court should not countenance such an argument and should not allow such an order to remain operative for a moment....In our view, acceding to it would amount to putting a premium on fraud, collusion or abuse of the process of the court creating disbelief and disillusionment of the efficacy of the judicial process and rule of law and a feeling would be generated that persons capable to maneuver and abuse the judicial process would reap the benefit thereof and get away with the orders. Every endeavour would be made to inculcate respect for fair judicial process and faith of the people in the efficacy of law.

21. So, what appears from this decision is that an order passed by this Court in exercise of its power under Article 226 is neither void nor voidable. There is no allegation of fraud and collusion in the instant case. The only thing which is alleged is that the present Petitioner whose right was affected was not made a party.

22. Now let us examine whether on this ground this order passed by this Court can be judicially reviewed in a subsequent petition filed by the Petitioner. The learned Counsel for the Petitioner wanted to urge that the earlier order dated 5.7.93. passed by this Court is void and nullity and he can avoid it directly and/or collaterally by challenging it in a legal proceeding. For this purpose, the Learned Counsel relies on *Nawabkhan Abbaskhan Vs. The State of Gujarat*, *Nawabkhan Abbas v. state of Gujarat* that was a case, under the Bombay Police Act and Exemption order was issued u/s 56 of the Act. Opportunity to render explanation u/s 59 was not given. There was disobedience of the order by the accused and he was prosecuted u/s 142. The order was quashed in a writ

proceeding during the trial and the Supreme Court in the facts and circumstances of the case held that externment order was void ab-initio. The Supreme Court in that case further pointed out that it was not only violation of natural justice but the order was nullity. The Supreme Court pointed out that an order which is void may be directly and collaterally challenged in a legal proceeding and when such an order is declared to be invalid, it will be deemed that the impugned Act or order was never valid.

23. The next case relied on by the Learned Counsel is Jabbalpore Electric Supply Co. Ltd. Vs. The Madhya Pradesh Electricity Board and Others, Jabbalpore Electric Supply Co. Ltd. v. the Madhya Pradesh Electricity Board and Ors. where the Calcutta High Court pointed out as follows:

In other words, the order, according to the Appellant is void and not merely voidable. The distinction between the two has been repeatedly drawn. If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court to declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. But if an act is only voidable, then it is not automatically void. It is only an irregularity which may be waived, It is not to be avoided unless something is done to avoid it. There must be an order of the Court setting it aside : and the Court has a discretion whether to set it aside or not. It will do so if justice demands it but not otherwise. Meanwhile it remains good and a support for all that has been done under it: vide observations of Lord Denning, in *Macfoy v. United Africa Co. Ltd.* (1961) 3 ALL ER 1169 at pp. 1172 to 1173.

24. From the perusal of this case, it appears that the order dated 5.7.93 passed by this Court is not a nullity and it is neither void nor voidable and there is no need of judicial review of this order and the same is not capable also of judicial review as it does not come within the narrow scope of judicial review. This being the position there is no need to go to the other arguments put forward by the Learned Counsel in this matter but yet I shall deal in brief with the arguments made by the Learned Counsel.

25. It was contended that it was the policy of the State of Tripura to send only one name for one discipline and the court was not competent to direct the State of Tripura to sponsor more than one name; Sponsoring of the name of a person was the prerogative of the State of Tripura and the court was not competent to change that policy. This Learned Counsel pointed out that in the guideline the word sponsor has not been defined and as such we must go by the dictionary meaning of the word sponsor, The Learned Counsel submitted that the Court cannot interlure with the policy decision of the Government when it is based on the sound principle and not mala, fide and for this purpose he relied on *Union of India and others Vs. S.L. Dutta* and another, *Union of India v. S.L. Dutta*. That case does not help the Petitioner. He further argued that the court did not direct the Government to send the names of all the Applicants who satisfied the

requisite qualification for being sponsored for the discipline of MD in Obstetric and Gynaecology and it, is argued that in that sense also this order was discriminatory. The selection of Respondent No. 5 by the Regional Medical College is stated to be against the law declared by the Supreme Court as well as by the Division Bench of this Court. The merit has not been defined in the guidelines nor this Court clarified how the merit of the two candidates will have to be decided. The Petitioner and the Respondent No. 5 passed MBBS Examination from different University in different years and as such it was not possible to compare their merits and as such it is submitted that the direction given by this Court was in ignorance of the law declared by the Supreme Court and the Division Bench of High Court. It was argued that as the candidates who were coming from different Universities having different syllabus; and different standards and different years of examination, comparison of their results for decision of merit infringes equality clauses in Article 14 of the Constitution of India and for this purpose reliance was placed on two decisions:

i. Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, and

ii. Heramba Kumar Sarma and Vs. State of Assam and Others,

26. In Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, the Supreme Court was dealing with the question of filling the minimum 30% open seats not reserved on basis of residence requirement or institutional preference and the Supreme Court pointed out that in such a case the admissions must be based on evaluation of relative merits through an entrance examination which would be open to all qualified candidates throughout the country.

27. Relying on this Judgment in 1991, Gauhati Page 1, a Division Bench of this Court reiterated the similar view. These two cases do not help the Petitioner to challenge the legality and validity of the order dated 5.7.93 passed by this Court earlier.

28. The next case relied on by the Learned Advocate is 1990 (Supp. 1) SSC 164 Commissioner, H.R.E. v. C.E. Lakshmi Nurasimhaiah. This Civil Rule was filed against a decision of the High Court and the Supreme Court pointed out that the case decided by the Supreme Court earlier was not placed before the High Court and as such the decision of the case by the High Court in ignorance of the Supreme Court's decision would be bad in law and accordingly, the appeal was allowed to that extent by the Supreme Court. That case does not help the Petitioner in the present case.

29. The next case relied on is Shri M.L. Sethi Vs. Shri R.P. Kapur, and reliance has been placed in paragraph 10 of the Judgment where the Supreme Court considered what is meant by jurisdiction and the Supreme Court pointed out what would amount to nullity in such a case and the Supreme Court relied on in two English Cases one is Judgment of Lord Denman in R.V. Bolton and the other

case is Anisminde Ltd. As pointed out earlier the Judgment dated 5.7.93 passed by this Court is not nullity so this case also does not help the Petitioner.

30. The reliance is also placed in State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, where the Supreme Court pointed out that judicial review is directed, not against decisions, but is confined to the examination of the decision making process. The Supreme Court in that case quoted a portion from the judgment of the Chief Constable of the North Wales Police to the following effect:

The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority, after according fair treatment reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the Courts.

31. I do not consider that as because the Petitioner was not made a party in the earlier case, the rights of the Petitioner were prejudicially affected. The question of malice and other things which have been argued in this case are not relevant for the purpose of the decision of this case. Accordingly, I hold that the Petitioner has not been able to make out a case for review of the earlier Judgment passed by this Court and if the earlier Judgment passed by this Court holds the field, the Petitioner cannot succeed.

CONCLUSION

32. I conclude that the Petitioner has not been able to make out a case by which the earlier order passed by this Court is liable to be judicially reviewed by an independent proceeding under Article 226 of the Constitution of India inasmuch as the Petitioner has not been able to establish that the earlier order is collusive and fraudulent order and that it was an abuse of the process of the court.

33. Accordingly, this Writ application is dismissed, I leave the parties to bear their own costs.