
(2011) 09 CAL CK 0136

In the Calcutta High Court

Case No : A.S.T.A. No. 338 of 2011 in M.A.T. No. 1269 of 2011

Ferdowsi Ara Begum

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Citation : (2012) 2 CHN 194

Hon'ble Judges : Raghunath Bhattacharyya, J; Amit Talukdar, J

Bench : Division Bench

Advocate : Ekramul Bari and Biswarup Biswas, for the Appellant; A.K. Das for the Respondent No. 6 and Mainak Bose for the State, for the Respondent

Judgement

Amit Talukdar, J.—Spate of reverses did not make her reconcile with her fate but on the contrary gave her the grit to venture at the end of the tunnel. Alleging illegal action of the respondents in engaging the respondent No. 6 in supersession of her claim for additional Para Teacher in the school of the respondent No. 5, initially, she had moved writ application being W.P. No. 12657 (W) of 2009. It was disposed of by the Hon'ble Trial Court by directing the respondent No. 3 (The District Project Officer) to consider the complaint of the appellant and pass reasoned order on the basis of the same. Pursuant thereto, the respondent No. 3 conducted the said exercise on 15/09/2009 and at the end concluded in respect of his findings (See: Page 45 of the Stay Petition). We need not reproduce the same as it already finds place at paragraph 3 of page 2 of the judgment & order under appeal.

2. Since there was no cheers, she made a second trip invoking the high prerogative writ of this Court in W.P. 363(W) of 2010. The said writ application was dismissed. The Hon'ble Trial Court found that in terms of the order passed on the previous occasion in W.P. 12657(W) of 2009, the respondent No. 3 had conducted an exercise, results of which have been quoted by His Lordship at paragraph 3 of Page 2 of the judgment & order under appeal, which could not be brought as a subject matter for consideration of the writ jurisdiction unless the

same ".....is palpably wrong or is arbitrary or perverse or smacks off mala fide motive or has been rendered without adhering to the specific directions given by the Court. "His Lordship has referred to the decision of this Court in Amarendranath Mandal Vs. State of West Bengal and Others,

3. Coincidentally, a Division Bench of this Court in Sourindra Nath Hazra vs. Subhendu Kundu & Ors. (FMA, 1044 of 2010+ CAN 403 of 2010 with W.P. 619(W) of 2008) on 24/08/2011 had approved the ratio of the decision in Amarendra nath Mondal vs. State of West Bengal & Ors. (supra).

4. On the ambit of the same, the appellant practically faces a road, block. But would it be the end of her journey, which she has relentlessly been pursued for so long ?

5. At the Bar, we have been addressed by Shri Ban for the appellant, who has invited our attention to the order under appeal. According to Shri Bari, the writ petition was dismissed without insisting on any affidavit or perusal of the Records.

6. According to Shri Bari, the conclusion arrived at by the respondent No. 3 was not properly assessed by the Hon"ble Trial Court and he was of the opinion that there was no Judicial Review of the finding arrived, at by respondent No. 3 in terms of the direction" passed by the earlier Writ Court.

7. Shri Bari submitted that there was proof in support of his case that the Appellant was a resident of the local area and he had in his possession Epic Card and other documents. As a part of his submission Shri Bari referred to the decisions of the Supreme Court in 1)Union of India & Anr. vs. B.C. Chaturvedi, 1995(6) SCC 750, 2) Prakash Ratan Sinha Vs. State of Bihar and Others, and 3) Binny Ltd. and Another Vs. V. Sadasivan and Others, to illustrate the scope of Judicial Review.

8. Shri Bose for the State submitted that in Appeal against the order of the Hon"ble Trial Court, which had already approved the finding, of the respondent No. 3 (The District. Project Officer)--there is very little scope for this Court to interfere as he was of the view that essentially the grounds taken in the Appeal were questions of fact, which could not be considered by the learned Court below; far less this Court that too in appeal.

9. Shri Bose took us to the order of the respondent No. 3 and submitted that there was no wrong in the same and the findings arrived at by him were on the basis of his subjective satisfaction and once it was approved by the Hon"ble Trial Court, the Appeal requires to be dismissed.

10. Shri A.K. Das on behalf of the respondent No. 6 submitted that the appellant did not stay in the same Gram Panchayat area. As such, she could not have any claim in respect of service before the Sarva Siksha Mission.

11. Shri Das also submitted that presently respondent No. 6 is working as a Para Teacher. Shri Bari in reply submitted that the respondent No. 6 was a member of

the Selection Committee and also the Gram Panchayat. As such, her entire appointment was vitiated by mala fide.

12. Shri Bari submitted that various allegations against respondent No. 6 remain uncontroverted in the absence of any Affidavit.

* * *

13. Question here is quite crisp and curt. Whether the Hon'ble Trial Court could have looked into the finding of respondent No. 3 or simply left it at that, would, at once bring us to the concept of Judicial Review, which. His Lordship was of the view that the Writ Court cannot place itself as an appellate authority over a finding of a functionary. We reverentially bow down to the views of His Lordship in the judgment & order under appeal but we find there were two glaring situations. Firstly, respondent No. 6 is stated to be a member of the Gram Panchayat and was very much in the Selection Committee. At once, the situation becomes translucent. This issue was not addressed at any level.

14. Secondly, the domicile status of the appellant post marriage, was not decided by the respondent No. 3 in an objective manner in view of the points shown by Shri Bari. In our amplified power of Judicial Review, which is of course, on a larger and broader canvass--we feel the order passed by the respondent No. 3 (The District Project Officer), is required to be revisited.

15. In the Stay Petition at paragraph 3, Shri. Bari has formulated several points, amongst them Point No. D, E, F, G, H, I & L requires a clinical examination. Objection of Shri Bari in respect of the conclusion arrived at by the respondent No. 3 (The District Project Officer), which has been quoted by His Lordship at paragraph 3 Page 2 of the judgment & order under appeal based on her domicile consequent to her marriage vis-a-vis allegation against respondent No. 6 did not receive its proper appreciation at the earlier forum.

16. We have carefully looked into the decisions cited by Shri Bari in Union of India & Anr. vs. B. C. Chaturvedi (supra), Prakash Ratan Sinha vs. State of Bihar (supra) and Binny Ltd. & Anr. vs. V. Sadasiuan & Ors. (supra). We are quite agree with him that the scope of Judicial Review is wide enough. We would refer to the decision of the Supreme Court in Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain, where the Supreme Court in paragraph 14 had held:

.....The scope of judicial review is limited to the deficiency in decision making process and not the decision.

17. Once we have found that two very important sphere of the appointment process has not received its proper appreciation in the earlier for a below and there is deficiency in the decision making process; obviously, the order under appeal become vulnerable.

18. This would necessitate the order under Appeal to be rendered nugatory. We would remit the Matter for fresh consideration in the light of the points canvassed

by Shri Bari. But to whom? The District Project Officer (respondent No. 3) has already taken a decision, which we find, is quite opaque being devoid of several factual aspects. We do not feel much inspired to delegate him the exercise; of course, without meaning any disrespect whatsoever to his Post.

19. This is an instance where the appellant has been pursuing her remedy since long and certain conspectus of the Matter has been brought to light, which are required to be decisively thrashed. As such, we would kindly request the District Magistrate, Howrah to take stock of the entire situation by way of audience to both, the appellant, the respondent No. 6 as well as the District Project Officer and such other functionaries he may deem fit and proper.

20. Without being guided by any previous order or for that purpose the instant order, he will arrive at a decision in accordance with the steps as known to Law and in the event he finds that appellant has a case, he will, at once, issue necessary directions for her appointment as Para Teacher.

21. The District Magistrate, Howrah, would conclude the entire process within seven days from the date of communication of this order without fail, He will also do the exercise personally and not by way of delegating it to any of his associate functionaries. Office to send down the order by a Special Messenger to the Office of the District Magistrate, Howrah, forthwith.

R. Bhattacharyya, J.

I agree.