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**(2014) 12 CAL CK 0045**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 15515 (W) of 2014**

Kunal Saha

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision :** 22-12-2014

**Acts Referred:**

Constitution of India, 1950 — Article 144, 166(1), 226

**Citation :** (2015) 1 CALLT 407

**Hon'ble Judges :** Tapabrata Chakraborty, J

**Bench :** Single Bench

**Advocate :** Indranil Roy and Lalratan Mondal, Advocate for the Appellant; Pratap Chatterjee, Ranjan Bachawat, Debojyoti Datta, Makhan Ray, Samrat Sen and Moloy Roy, Advocate for the Respondent

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## Judgement

Tapabrata Chakraborty, J.—In this writ application the petitioner has, inter alia, prayed for the following reliefs :

"b) A writ in the nature of Mandamus do issue declaring that Respondent no. 1 has no authority to bestow the "Bangabibhushan" award to Respondent no. 2 at the ceremony on 20th May, 2014 at Science City, Kolkata because it undermines the sanctity and authority of the Hon"ble Supreme Court in violation of Article 144 of Indian Constitution.

c) A writ in the nature of prohibition do issue restraining the Respondent no. 1 and/or his/her men, agents, associates to organize/participate/arrange to present the "Bangabibhushan" award to Respondent no. 2 at the ceremony to be held on 20th May, 2014 at Science City, Kolkata.

d) A writ in the nature of certiorari do issue commanding the respondents to transmit to this Hon"ble Court all records restraining to the instant case so that conscionable justice may be done."

2. By an order dated 20th May, 2014 this Court directed the parties to exchange their affidavits and observed that the grant of the "Bangabibhushan" award

(hereinafter referred to as the said award) shall be subject to the result of the writ application.

3. A brief review of the relevant facts would suffice. The petitioner is a doctor settled in USA and he lost his wife on 25th April, 1998, during a social visit to Calcutta due to medical negligence of the respondent no. 2 herein and some other doctors including the authorities of the AMRI Hospital. Aggrieved thereby the petitioner approached the learned State Consumer Disputes Redressal Commission and also the appropriate criminal forum. The said disputes ultimately went up to the Hon"ble Supreme Court and the criminal appeals were dismissed and as regards the civil appeal, the matter was remitted to the learned National Consumer Disputes Redressal Commission for determining the compensation by a common judgment dated 7th August, 2009 in the matter of Malay Kumar Ganguly-vs.-Dr. Sukumar Mukherjee and others with Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee and Others, . Subsequent thereto, the learned Commission delivered a judgment on 21st October, 2011 and the matter again went up to the Hon"ble Supreme Court and was ultimately disposed of by a judgment dated 24th October, 2013 delivered in the case of Dr. Balram Prasad Vs. Dr. Kunal Saha and Others, . Subsequent thereto, from a newspaper report dated 16th May, 2014, the petitioner came to learn for the first time that the respondent no. 2 has been selected to receive the prestigious "Bangabibhushan" award to be given in a public ceremony scheduled on 20th May, 2014. Shocked by such attempt of the respondent no. 1 to glorify the respondent no. 2 in sharp contrast to the observations made by the Hon"ble Supreme Court in the judgments delivered in the case of Malay Kumar Ganguly (Supra) and Balram Prasad (Supra), the petitioner affirmed the writ application before this Court on 20th May, 2014.

4. Mr. Indranil Roy, learned advocate appearing for the petitioner places reliance upon the observations made by the Hon"ble Supreme Court at paragraph 144 of the judgment delivered in the case of Balram Prasad (Supra), which runs as follows :

"Therefore, the negligence of Dr Sukumar Mukherjee in treating the claimant"s wife had been already established by this Court in Malay Kumar Ganguly case. Since he is a senior doctor who was in charge of the treatment of the deceased, we are inclined to mention here that Dr Mukherjee has shown utmost disrespect to his profession by being so casual in his approach in treating his patient. Moreover, on being charged with the liability, he attempted to shift the blame on other doctors. We, therefore, in the light of the facts and circumstances, direct him to pay a compensation of Rs. 10 lakhs to the claimant in lieu of his negligence and we sincerely hope that he upholds his integrity as a doctor in the future and not be casual about his patients" lives."

5. According to Mr. Roy, in the backdrop of the trenchant observations of the Hon"ble Supreme Court, it was not appropriate on the part of the respondent no. 1 to grant the said award to the respondent no. 2. He argues that it was

obligatory on the part of the State authorities to act in aid of the dictum of the Hon'ble Supreme Court, in terms of the provisions of Article 144 of the Constitution of India. Furthermore, the recalcitrance and negligence of the respondent no. 2 has been glorified by the State authorities through conferment of the said award and such action warrants interference of this Court.

6. He further submits that the resolution dated 17th May, 2014 and the addendum thereto do not contain the signatures of the members of the State Committee and that the authorities have acted in hot haste by taking a decision on 17th May, 2014 and implementing the same on 20th May, 2014 and that the said documents have been fabricated as an afterthought to mislead this Court.

7. Mr. Roy further submits that Clause 3 of the resolution dated 17th May, 2014 and the addendum thereto would reveal that a question was raised as to why the respondent no. 2 was being selected for grant of the said award and in reply thereto it has been observed that the respondent no. 2 has paid the compensation amount and that as such the denial to confer the State award would tantamount to double punishment. Such observation, according to Mr. Roy, is absolutely unfounded.

8. He further argues that the issue of locus standi and maintainability of the writ application already stands decided by the earlier order dated 20th May, 2014, while admitting the writ application and issuing notice to the respondents. Furthermore, a much wider canvass has been adopted in recent years regarding a person's entitlement to move the Hon'ble High Court in writ jurisdiction and that the writ petitioner comes within the fold of "person aggrieved".

9. He further submits that the State respondent has not been able to bring on record any document in aid of the submission of Mr. Sen, as recorded in the interim order passed by this Court on 20th May, 2014, that an informed decision was taken by the competent administrative body of the State Government, namely, the Information and Cultural Department prior to shortlisting of the names of the candidate for conferment of the prestigious award.

10. It has been further argued by Mr. Roy that as the writ applications, as referred in paragraphs 3 and 5 of the instant writ application are pending, the locus standi of the petitioner cannot be questioned.

11. In aid of his submission to the effect that the petitioner has the locus to prefer the instant writ application, Mr. Roy has placed reliance upon the following judgments :-

- a) Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, .
- b) Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, .
- c) Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, .
- d) Bangalore Medical Trust Vs. B.S. Muddappa and others, .

e) Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others, .

12. Mr. Sen, learned senior advocate appearing for the respondent no. 1 submits that the petitioner has no locus to challenge the grant of the said award to the respondent no. 2, since no legally enforceable right of the petitioner has been interfered with. To substantiate such contention, Mr. Sen has drawn the attention of this Court to the averments made and the grounds taken in the writ application. According to him, it has not been alleged that the grant of the award to the respondent no. 2 is discriminatory and that the same has unlawfully and arbitrarily deprived and/or has prejudicially affected any other person. No claim of any competing interest for the award has been pleaded or argued and that as such the petitioner has no locus to prefer the instant application.

13. In support of the contention to the effect that the petitioner does not have the locus to prefer the instant writ application, Mr. Sen has relied upon the following judgments :-

a) Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Others, .

b) State of U.P. and Another Vs. Johri Mal, .

c) Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, .

d) Vinoy Kumar Vs. State of U.P. and Others, .

e) B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others, .

14. Mr. Sen further submits that neither the competence of the State towards conferment of the said award nor the constitution of the Award Committee by the memorandum dated 28th March, 2013 has been challenged by the petitioner. It has also not been averred in the writ application that the award is ultra vires the constitutional provisions. No case has been made out by the petitioner for cancellation and quashing of the decision taken by the Award Committee. He argues that the constitution of the Award Committee stands fortified through the notifications issued in exercise of the powers conferred under Article 166(1) of the Constitution of India. It is also well settled that the Writ Court should not sit in appeal over the policy decision of the State and should not encroach upon the field earmarked for the executive. In support of such contention, reliance has been placed upon the judgment delivered in the case of Kachchh Jal Sankat Nivaran Samiti and Others Vs. State of Gujarat and Another, .

15. According to him, Dr. Mukherjee is a very respected person in the State and that the award conferred upon him, upon considering his achievement, activities and service, cannot, by the furthest of imagination, be construed to be an act of derogation to the provisions of the Article 144 of the Constitution of India.

16. In support of his contention to the effect that the provision of Article 144 is not applicable to the facts of the case, Mr. Sen relied upon the following

judgments :-

I) Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, .

II) Paramjit Kaur Vs. State of Punjab and Others, .

17. He further submits that the totality of the facts needs to be taken into consideration and only one instance of negligence cannot create any absolute bar towards grant of the award, in appreciation of the service rendered by the said respondent throughout his life. Moreso when, the petitioner has already suffered for the single act of negligence and has paid the amount of compensation.

18. Mr. Pratap Chatterjee, learned senior counsel appearing for the respondent no. 2 submits that neither the cause title nor the body of the writ application disclose the existence of any legal right in favour of the petitioner to have the award bestowed upon the respondent no. 2 to be taken away. In fact the averments only disclose a mental anguish and a psychological injury which does not give rise to any legal right. Furthermore, the petitioner has suffered no prejudice and has not suffered personally nor does he represent any group which has suffered due to such grant of the award upon the respondent no. 2. In order to have the locus standi, the petitioner should be an aggrieved person and a person aggrieved must be a man, who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused something or wrongfully affected his title to something. As such, the petitioner is liable to be told off at the inception through dismissal of the writ application on the ground of locus.

19. According to him, no case has been made out for issuance of any writ of mandamus and the writ application also does not stand preceded through issuance of any demand for justice and non-fulfillment of such mandatory requirement renders the writ application to be unsustainable in law. In support of such contention he relies upon the following judgments :

1. Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, .

2. Saraswati Industrial Syndicate Ltd. and Others Vs. Union of India (UOI), .

3. The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another, .

20. He further argues that question of issuance of a writ of certiorari does not occasion in the facts and circumstances of the case inasmuch as there is neither any pleading nor any instance to the effect that any quasi judicial authority is trying to act in excess of jurisdiction. Through conferment of the said award upon the respondent no. 2, no competing right has been interfered with and the petitioner has no adversarial claim pertaining to such grant of award and in the backdrop of such sequence, question of interference through issuance of writ of certiorari does not occasion.

21. He further argues that there has been no violation of Article 144 of the Constitution of India inasmuch as the said provision applies only when there is an order of the Hon''ble Supreme Court which requires some positive act of compliance by all civil and judicial bodies but in the instant case there is no such order in existence. In support of such contention he has placed reliance upon the following judgments :

1. M.L. Sachdev Vs. Union of India and another, .
2. Spencer and Company Ltd. and Another Vs. Vishwadarshan Distributors Pvt. Ltd. and Others, .

22. Mr. Chatterjee further argues that in the criminal case the respondent no. 2 has been exonerated and in the civil case for damages, the order has been complied with by the respondent no. 2 through payment of Rs. 10 lakhs and that as such the debt pertaining to the negligence stands discharged and the said single instance of negligence, restricted to a particular case, cannot be construed to be a bar towards conferment of the said award.

23. In reply to the submissions made by Mr. Sen and Mr. Chatterjee, it has been argued by Mr. Roy that for the purpose of conferment of such a prestigious award a person is required to be of an impeccable character and his career must be spotless. On the face of the records it is explicit that the State is conferring the award upon a person in respect of whom the Hon''ble Apex Court in the country has observed that he has shown utmost disrespect to his profession by being casual in his approach and by attempting to shift the blame to other doctors and such action being absolutely illegal, this Court can certainly issue a writ of certiorari calling for all records and for quashing the decision.

24. I have heard the learned advocates appearing for the respective parties and I have considered the materials on record.

25. Before dealing with the other allegations, it is to be decided first as to whether the petitioner has got the locus standi to prefer this writ application and as to whether the petitioner is a person aggrieved or as to whether the petitioner has been prejudiced.

26. Mr. Roy has argued that the point of locus was decided by the Court while admitting the writ application on 20th May, 2014, observing inter alia that "in the particular facts and circumstances of the case, the locus standi of the writ petitioner cannot be ignored" and that as such the said issue cannot be reagitated again at the stage of final hearing of the writ application. In my opinion, such prima facie view of the Court at the interim stage cannot have any binding effect and cannot be construed to be a bar towards consideration of the said issue at this stage of final hearing.

27. I have scrutinized the averments made in the writ application. In paragraphs 1 to 5 it has been averred, inter alia, that in the judgments delivered by the Hon''ble Supreme Court and reported in Malay Kumar Ganguly Vs. Dr. Sukumar

Mukherjee and Others, and Dr. Balram Prasad Vs. Dr. Kunal Saha and Others, , scathing observations were made against the respondent no. 2. Drawing reference to writ applications being W.P. No. 9758 (W) of 2011 and W.P. No. 16879 (W) of 2012 it has been stated that the legal battle fought by the writ petitioner has generated a great deal of public interest in West Bengal and across India over the past 15 years and that the petitioner has also established "People for Better Treatment", a registered humanitarian society to help the hapless victims of medical negligence and to fight healthcare corruption in India. Drawing reference to a newspaper report dated 16th May, 2014, it has been averred in paragraph 6 that the respondent no. 2 has been selected to receive the award to be given in a public ceremony on 20th May, 2014. In paragraph 7, the averments are that being deeply hurt and dissatisfied with the decision of the respondent no. 1 to glorify the respondent no. 2 by selecting him to receive the award for his illustrious medical service which is in sharp contrast to the observations made by the Hon"ble Supreme Court, the petitioner has approached this Court. The grounds A, B and C speak that the selection of the respondent no. 2 infringes Article 144 of the Constitution and that such selection is derogatory to the observations of the Hon"ble Supreme Court and that the grant of the award is nothing but an instance of public glorification of the respondent no. 2 and such glorification is a mockery of justice delivery system. The grounds D and E are reiteration of the earlier grounds to the effect that the glorification of the respondent no. 2 is likely to have a profound demoralization effect on all victims of medical negligence and public at large including the honest and hard working doctors and medical students who might feel that dirty politics, no honest and hard work, is the best way to bring prestige. In ground F the petitioner has stated that the act of rewarding the respondent no. 2 is politically motivated and that the respondent no. 1 made a similar sinister attempt to promote glorification of respondent no. 2 in 2012 when he was appointed as the Chief Advisor of the health department. In grounds G and H it has been stated that the respondent no. 2 was selected for the award with an oblique motive to influence the course of justice as several cases relating to negligent and unethical act of respondent no. 2 are currently pending and that the overt glorification is an instance of gross abomination of government power which has brought deep anguish and pain for the petitioner.

28. There is no averment in the writ application as to whether any personal or individual right of the petitioner has been infringed or as to whether the petitioner has been prejudiced in any manner due to the grant of the said award, which is necessary for the petitioner to establish his locus standi. No issue of fraud has also surfaced through the pleadings. There is also no pleading to the effect that the procedural impropriety is of such a magnitude that it has operated to the severe detriment and prejudice to the petitioner. From the said averments it is explicit that no legally protected right of the petitioner, which can be judicially enforced, has been infringed save and except a psychological or an imaginary injury.

29. The writ application being W.P. No. 9758 (W) of 2011 has been preferred by the respondent no. 2 herein challenging an order passed by the Medical Council of India and the other writ application being W.P. No. 16879 (W) of 2012 is a public interest litigation preferred by the petitioner. Mr. Roy contends that in view of pendency the said writ applications, the locus standi of the petitioner cannot be questioned. Such contention of Mr. Roy is not acceptable since it has not been shown to this Court that the issue of locus of the petitioner herein has been considered and decided, in the backdrop of an identical fact situation involved in the instant lis.

30. The judgment delivered in the case of Jasbhai (Supra) has been relied upon by the petitioner in support of the contention to the effect that in exceptional cases involving a grave miscarriage of justice, even a stranger to the proceedings can maintain a writ application. In the instant case no such exceptionality has occasioned and the said judgment is also distinguishable on facts inasmuch as in the same the appellant was a rival in the same trade being the proprietor of a Cinema Hall who challenged the grant of no objection certificate in favour of the private respondent. In the said judgment the Hon"ble Supreme Court also observed that the business competition, being a lawful activity, causing even pecuniary harm and loss of business is not wrongful in the eye of law because it does not result in injury to a legal right or a legally protected interest.

31. The judgment delivered in the case of Gadda (Supra), as relied upon by the petitioner, is not applicable in the instant matter since the appellant therein was a representative of a committee who has all throughout represented the committee in all its dealings and such fact coupled with the acquiescence on the part of all the members of the said committee was recognized to be sufficient to maintain the writ application.

32. The judgment delivered in the case of Bar Council of Maharashtra (Supra), as relied upon by the petitioner, is also distinguishable on facts inasmuch as in the backdrop of the facts to the effect that the Bar Council of a State is required to uphold the standards of professional conduct and etiquette in the profession and is the custodian of the high traditions of the noble profession, the State Bar Council was held to be an aggrieved person.

33. The other two judgments in the cases of Bangalore Medical Trust (Supra) and Adarsha Shiksha Mahavidyalaya (Supra) have no manner of application in the instant case since the same were public interest litigations.

34. The law relating to locus standi is now well-settled. The existence of a right and infringement thereto are the foundations of the exercise of jurisdiction under Article 226. Such right can either be a fundamental right or can be an ordinary legal right. When a person complaining of violation of a non-fundamental right, such legal right must either be a statutory one or other right or interest recognized by law. However, the rights that can be enforced under Article 226 must ordinarily be the rights of the petitioner himself except in the case of

habeas corpus, quo warranto or public interest litigation. The instant writ application does not fall under the aforesaid three categories.

35. Every right must involve a vinculum juris or bond of legal obligation. Amongst the petitioner and the respondents there is no such bond or co-relation. There is absolutely no scope for exercise of the writ powers only because the petitioner has brought to the notice the fact of grant of the award. The petitioner in the present case is aggrieved for glorification of the respondent no. 2 through conferment of the award against whom the Hon''ble Supreme Court has made trenchant remarks which would be having a profound demoralization effect on all victims of medical negligence and public at large and would be extremely painful to the petitioner. The injury and prejudice as alleged to have been suffered by the petitioner has its roots on psychological anguish.

36. Admittedly, the petitioner has no adversarial claim pertaining to such grant of award. The petitioner has endeavoured to establish that he has a personal cause of action when he has none. No legal right of the petitioner has been infringed, he has not suffered any legal wrong or injury and is not prejudiced.

37. In a private action, the litigation is bipolar; two opposed parties are locked in confrontational controversy which pertains to the determination of the legal consequences unlike in public action. The character of such litigation is essentially that of vindication of private rights, proceedings being brought by the persons in whom the right personally inheres. Such strict rule of locus standi is applicable to private litigation. The petitioner is not a competitor in the award giving process. The impugned conferment of the award does not operate as a decision against the petitioner, much less it does not wrongfully affect his title to something. The petitioner has not been subjected to any legal wrong and he has suffered no legal grievances.

38. For the reasons discussed above, I hold that the petitioner has no locus standi and is not entitled to maintain the present writ application and accordingly, I dismiss the writ application on the said ground.

39. There shall, however, be no order as to costs.

40. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.