

(2010) 12 DEL CK 0317

In the Delhi High Court

Case No : Writ Petition (C) 1035 of 2010

Latha Venkataraman

APPELLANT

Vs

Indian Renewable Energy Development Agency Ltd. and
Another

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Citation : (2010) 12 DEL CK 0317

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : H.K. Chaturvedi, for the Appellant; Sarabjit Sharma, Deepti Dogra, Arvind Kumar for R 1 and Pankaj Batra, for UOI, for the Respondent

Final Decision : Dismissed

Judgement

Sudershan Kumar Misra, J.—The Respondent has raised a preliminary objection with regard to the maintainability of this petition on the principles of constructive res judicata. Admittedly, WP(C) No. 9385/2007, seeking a similar relief, was filed before this Court which was dismissed by an order dated 4th March, 2009 to the following effect:

After some arguments counsel for the Petitioner seeks to withdraw the petition with liberty to challenge the final report of the Inquiry Officer if the same turns against the Petitioner.

Reserving that liberty, the petition is dismissed as withdrawn.

2. Counsel for the Petitioner seeks to urge that the aforesaid order does not amount to either res judicata or to constructive res judicata and it is open to him to file the instant petition seeking the same relief. Of course, there is no dispute that relief identical to the one sought in WP(C) No. 9385/2007 has been sought in this petition also. It is the contention of counsel for the Petitioner that since there was no finding given on any of the reliefs sought by the Petitioner in WP(C) No. 9385/2007, therefore, the dismissal of that petition was not on merits, the

principle of constructive res judicata could not be invoked.

3. I do not agree. The aforesaid order dated 4th March, 2009 states very clearly that it has been passed after the Petitioner had availed the opportunity of addressing arguments on merits in support of the reliefs sought by him. Not only that, counsel for the Petitioner specifically sought permission to withdraw the petition, with liberty to challenge only the final report of the Enquiry Officer. Were it merely the case of a simple withdrawal without addressing the Court on merits at all, there would have been no question of counsel for the Petitioner seeking any liberty whatsoever to raise either the whole or part of the challenge in a fresh petition. The fact that the counsel himself sought the liberty to raise only a limited portion of the challenge afresh, shows clearly that he himself was of the mind that any further challenge to the remaining reliefs would not be open to him. It is obvious that counsel for the Petitioner decided to withdraw the petition once he felt that he was making no headway. As regards the challenge to the final report of the Enquiry Officer with regard to the Enquiry, which was still going on when the order dated 4th March, 2009 was passed in WP(C) No. 9385/2007, and for which liberty was granted to the Petitioner, the Petitioner has already moved WP(C) No. 13195/2009, which has been admitted for hearing.

4. Furthermore, I also notice that after the order of 4th March, 2009 came to be passed in WP(C) No. 9385/2007, the Petitioner moved a CM No. 16124/2009 praying for revival of the petition, particularly with regard to his challenge to the finding of the Complaint Committee for prevention of sexual harassment dated 26th July, 2006 which is also, admittedly, the scope of the instant challenge. That application was also withdrawn by the Petitioner after some arguments on 6th January, 2010 with liberty to file another application, "with comprehensive facts". Admittedly, no such application was filed thereafter. The very fact of filing the said CM No. 16124/2009 in WP(C) No. 9385/2007 also demonstrates that the Petitioner was of the mind that his challenge, in terms of the prayer sought in this petition, stands closed and it could not be revived or re-agitated except with the leave of the Court. That leave was never granted to the Petitioner.

5. It would, therefore, not be appropriate for this Court to entertain the same challenge once again in a fresh writ petition.

6. Consequently, this writ petition is dismissed.