
(2001) 09 RAJ CK 0019
In the Rajasthan High Court
Case No : C.W.P. No. 4248 of 2001

Ramswaroop Bagari

APPELLANT

Vs

State of Rajasthan and others

RESPONDENT

Date of Decision : 22-09-2001

Acts Referred:

Evidence Act, 1872 — Section 78(2), 81

Citation : AIR 2002 Raj 27

Hon'ble Judges : A.R. Lakshmanan, C.J.;A.K. Parihar, J

Bench : Division Bench

Advocate : Ashok Misra, for the Appellant;

Final Decision : Dismissed

Judgement

Dr. A.R. Lakshmanan, C.J.—Heard, Mr. Ashok Misra, learned counsel for the petitioner. This is a public interest litigation at the instance of the petitioner seeking certain prayers in the nature of mandamus to issue directions to the respondents State of Rajasthan, Collector, Jaipur, Municipal Corporation, Jaipur and Health Officer and Incharge of the Compost Plant of Municipal Corporation, Jaipur. The writ petition has been filed with the following prayers:

(i) to direct the respondents to perform their duties strictly in consonance with the provisions of the Act and Rules;

(ii) to direct the respondents to get ensure that the work given under the contracts to the private persons i.e. the contractors of transporting and lifting the garbage in the Jaipur City, be carried out in the strict sense of the terms and conditions of the contract keeping in view the public health and environment;

(iii) to direct the respondents to terminate the contract of the work of transporting and lifting the garbage in the Jaipur City of those contractors having no loader and well equipped instruments with qualified labor;

(iv) to probe an enquiry by an independent highly placed committee in respect of

illegality and irregularity, forgery, miss-appropriation of money and burglary done by the highly placed officers of the Municipal Corporation. Jaipur in awarding the said work to the contractors reluctantly causing loss to the Municipal Corporation to the tune of Rs. 12.00 crores;

(v) any other circumstances of the case.

2. It is clearly stated in the writ petition that the writ petition has been filed on the basis of the newspaper report. It is settled law that a writ petition on the basis of the newspaper report cannot be maintained. In *Laxmi Raj Shetty and Another Vs. State of Tamil Nadu*, the Supreme Court held that the facts stated in the newspaper are hearsay in the nature and the same are inadmissible unless maker of statement is examined and that judicial notice of the facts stated in the newspaper cannot also be taken. A newspaper is not one of the documents referred to in S. 78(2) of the Evidence Act by which the allegation of fact can be proved and that the presumption of genuineness attached under S. 81 of the Evidence Act to a newspaper report cannot be treated as proof of the facts reported therein. A statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported. The Supreme Court has also referred to the earlier decision reported in the case of *Samant N. Balkrishna and Another Vs. V. George Fernandez and Others*, .

3. As already noticed, the prayers made in the writ petition are in the nature of mandamus. It is settled law that before maintaining a writ petition in the nature of mandamus, the writ petition must be preceded by a notice of demand and refusal thereof. In the instant case, admittedly, no notice has been issued to any of the respondents demanding the prayers mentioned in the writ petition. Hence, the writ petition fails on this ground also and the same is dismissed.