

(2005) 11 DEL CK 0047

In the Delhi High Court

Case No : Writ Petition (C) 22549 of 2005

Soma Devi Jain

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-11-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2006) 3 BC 210 : (2006) 86 DRJ 285

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Prem Kumar, Nilesh Sawhney and Dheeraj, for the Appellant;
Dushyant Dave and Hemant Chaudhri, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.

1. This writ petition is a sheer abuse of the process of this Court.

2. It appears that the petitioner had taken a loan of Rs. 25 lacs from the respondent/Union Bank of India as far back as on 23.9.1989. In connection with the loan, recovery proceedings were instituted by the bank before the Debt Recovery Tribunal-I, Delhi which are still pending being OA No. 494/1996. This is the third writ petition in connection with the same matter. The first being Writ Petition (C) No. 9846/2003 was decided on 28.9.2004 and the second being Writ Petition (C) No. 1182/2005 which was decided on 22.3.2005.

3. The Writ Petition (C) No. 9846/2003 was filed in this Court claiming the benefit under the RBI guidelines dated 29.2.2003. This petition was disposed of by order dated 28.9.2004 directing the respondent bank to decide the petitioner's application, which was decided by the bank by its letter dated 14.10.2004 declaring the petitioner's account as non-performing asset from 1996 and informing him of the outstanding liability of Rs. 12.75 lakhs and odd.

4.The petitioner then filed WP(C) 1182/2005 in this Court challenging the aforesaid letter of the bank. This petition was disposed of with the liberty to the petitioner to make a representation to the Chief General Manager of the RBI stating her case, why and how his account was declared to be non-performing asset from 1990 and not 1996. The Court further directed the Chief General Manager to consider the said representation of the petitioner after putting the respondent Union bank under notice and seeking its version. Thereafter, the said representation was directed to be decided within one month.

5.This is thus the third writ petition by the petitioner, although the proceedings before the DRT are still pending before it. In our opinion, this writ petition is premature and its aim obviously is to obstruct the proceedings before the DRT.

6. It is well settled that a writ lies only when the right of some party has been affected. In other words, a writ lies only when a cause of action has arisen. In the present case no right of the petitioner has been affected at present nor has any cause of action arisen and only proceedings before the Debt Recovery Tribunal are going on. Even a recovery certificate has not been issued against the petitioner but she has rushed thrice to this Court by way of writ petitions. Thus, it is obvious that the whole aim of this petition and the previous two writ petitions was to block the proceedings before the Debt Recovery Tribunal so that no final order may be passed in the same.

7. In our opinion, this writ petition is pre-mature and has been filed mala fide. If and when any final order is passed by the Debt Recovery Tribunal, then it is open to the petitioner to file an appeal before the DRT and only thereafter should she approach this court. She cannot short circuit these alternative remedies.

8. In our opinion, this writ petition should not be entertained. The petitioner has abused the process of the Court and tried to block the proceedings before the Debt Recovery Tribunal repeatedly. We cannot allow these kinds of dilatory tactics. It is well settled that writ is a discretionary remedy vide Chandra Singh Vs. State of Rajasthan and Another, and this is not a fit case of exercise of our discretion under Article 226.

9. In The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, a Constitution Bench of the Supreme Court observed:

"The legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. We do not see any reason why an each principle should apply in the case of a petitioner under Article 226 of the Constitution."

10. Similarly in State of Punjab Vs. Suraj Parkash Kapur etc., another Constitution Bench of the Supreme Court observed :

"The existence of a right and the infringement thereof are the foundation of the exercise of the jurisdiction of the High Court under Article 226 of the Constitution."

11. The basis of entitlement of a writ under Article 226 of the Constitution is hence a legal injury from violation of a legal right of a person. The writ is maintainable by a person who is aggrieved by an order which is to his detriment, pecuniary or otherwise, or causes him some prejudice in one form or other. As observed by Lord Denning, M.R. In *Attorney General of the Gambia v. N' Jie*, (1961) AC 617 :

"A person can be said to be aggrieved who has a genuine grievance because an order has been made which prejudicially affects his interest."

12. In our opinion, if a writ petition is filed before any adverse order is passed against a party or before any adverse action is taken against a person, that writ petition should be dismissed as premature.

13. Thus in *Chanan Singh Vs. Registrar, Co-op. Societies, Punjab and Others*, , the Supreme Court observed that the writ petition against a show cause notice should be dismissed as premature as no punitive action has yet been taken and there is no present grievance which can be ventilated in Court. A similar view was taken in *The Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others*, and *The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another*,

14. Similarly in *Mrs. Kunda S. Kadam Vs. Dr. K.K. Soman and Others*, a writ petition had been filed against the recommendation of a certain candidate by the Public Service Commission. The Supreme Court held that the writ petition was premature as no final orders of appointment had been passed. Similarly in *G. Sarana Vs. University of Lucknow and Others*, the petitioner had approached the High Court by filing a writ petition under Article 226 of the Constitution against the recommendation made by the Selection Committee. It was held that the petition against such recommendation was premature.

15. Similar view has been taken by the Supreme Court in *Chander Sekhar Singh Bhoi Vs. State of Orissa*, *Balmadies Plantations Ltd. and Others Vs. State of Tamil Nadu*, *Bokaro and Ramgur Ltd. Vs. The State of Bihar and Another*, , *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*, , *Laxmi Khandsari and Others Vs. State of U.P. and Others*, , *State of Uttar Pradesh Vs. Brahm Datt Sharma and Another*, *State of Haryana and others Vs. Ch. Bhajan Lal and others*, and *Union of India and others Vs. A.N. Saxena*,

16. In the present case, we are of the opinion that the writ petition is clearly premature as no final orders have been as yet passed against the writ petitioner by the DRT. It is obvious that the whole game of the petitioner is not to allow any final orders to be passed by the DRT and she is repeatedly trying to stall such proceedings by filing writ petitions. In our opinion the whole object of the petitioner is malafide and mischievous.

17. Hence while we dismiss the writ petition, we impose exemplary costs of Rs. 25,000/- which the petitioner must pay to the bank within two months from

today failing which it would be recovered by the Collector as arrears of land revenue and paid to the bank.