

(1977) 01 CAL CK 0016
In the Calcutta High Court
Case No : Civil Rule No. 9918 (W) of 1976

Sri Gouri Sankar Mukherjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-01-1977

Acts Referred:

Calcutta High Court (Original Side) Rules, 1914 — Rule 13, 8(2)
Civil Procedure Code, 1908 (CPC) — Order 19 Rule 3, Order 6 Rule 15
Constitution of India, 1950 — Article 226

Citation : AIR 1977 Cal 125 : 81 CWN 903

Hon'ble Judges : M.N. Ray, J

Bench : Single Bench

Advocate : Diptikana Bose and G.S. Sarkar, for the Appellant; Bholanath Bhattacharjee, for the Respondent

Judgement

M.N. Ray, J.—On July 19, 1976, a Rule against notices in Annexures "B" and "C" to the petition was issued by this Court whereby suo moto proceedings were initiated under the provisions of the West Bengal Land Reforms Act, 1955. The said petition was signed and verified by one Ananda Bhairab Ghose claiming to be the Karmachari and Tadbirkar of the petitioner. All statements in the said petition excepting those made in paragraphs 6 and 11 to 19 were affirmed as true to his knowledge. There has of course been a certificate by the learned Advocate that the said deponent was the authorised Karmachari of the petitioner and was competent to affirm the affidavit and sign the petition on his behalf.

2. At the time of issuing the Rule, this Court was pleased to grant an order maintaining status quo as on July 19, 1976 for a period of six weeks, with liberty to the petitioner to apply for extension of the said order on the petition of motion with notice to the Respondents. The petitioner was further directed to file an affidavit of service after communication of the gist of the order as made along with the copy of the petition. Such affidavit of service appears to have been filed on September 16, 1976. The affidavit of service was of course affirmed by another Tadbirkar of the petitioner whose name is Bishnupada Chakrabartty. It

further appears that another Rule being Civil Rule No. 8865 (W) of 1976 was also obtained by the petitioner against certain orders made and passed under the provisions of the West Bengal Estates Acquisition Act, 1953 on June 24, 1976. The affidavit to that petition was affirmed by one Shri Puru-shottam Samanta, another Tadbirkar of the petitioner. There is also a certificate appended to that petition that the said Tadbirkar, Shri Purushottam Samanta was duly authorised by the petitioner to sign the petition and also to swear the affidavit. A petitioner may have any number of Tadbirkarg as there is no legal restriction on such numbers.

3. Since at different stages different Tadbirkars have affirmed affidavits on behalf of the petitioner, I wanted to satisfy myself whether the Tadbirkar of the present petition viz., Shri Ananda Bhairab Ghose was really authorised and whether the affirmations made by him were correct and whether in a writ proceedings, where a petitioner would be asking for high prerogative writs or orders, affidavit by such Tadbirkar should be made.

4. For the purposes as aforesaid, I directed the said Tadbirkar Shri Ananda Bhairab Ghose to appear before me, since the High Court has power to be satisfied when it is required to exercise its discretion in this jurisdiction on the affidavit as filed and on January 6, 1977, his deposition was recorded. From his deposition it appears that although the said deponent had affirmed the affidavit as Tadbirkar and was working under the petitioner for a long time yet he had very little or scanty knowledge about the happenings and the statements as contained in the petition, which he affirmed as true to his knowledge were without any real or little knowledge, about them. In fact he had to admit that the statements as made by him in the petition were really based on informations from his employer. Thus it is apparent that there is no proper affirmation of the petition and on the basis of such improper affidavit this Court cannot and should not direct the issue of such high prerogative writs or orders as have been prayed for.

5. Under Order 6, Rule 15 of the Code of Civil Procedure, a pleading may be verified by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. Under Rule 8 of Chapter VII of the Original Side Rules, where any person, other than, a party pleading, verifies a pleading: under Order 6, Rule 15 of the Code of Civil Procedure, his fitness or authority to so verify shall be proved by his affidavit. Under Rule 13 of the Rules relating to applications under Article 226 of the Constitution of India every petition must be signed and dated by the petitioner or his duly authorised agent and Rule 14 requires that all petitions shall be verified by the solemn affirmation, made by the petitioner or a person or persons having cognizance of the facts stated and shall state clearly with reference to paragraphs of the petition whether the statements are based on knowledge, information and belief or on records. Where a statement is based on information, the source of information-should be disclosed and where the statements are

based on records, sufficient particulars should be given to identify the records. Where the petitioner is a Company or a Corporation, under Rule 15 of the Rules there should be appended an affidavit of competency and where the petitioner or a respondent is a Corporation, the provisions of Order XXIX of the CPC in so far as they are applicable, shall apply.

6. The purpose of having an affirmation of a petition or application under the provisions as mentioned hereinbefore is to fix the responsibility about the validity of the statements as made on the maker of the same and affidavits shall be confined to such facts as the deponent would be able of his own knowledge to prove or may prove the source from which he derived such knowledge. If such purpose is not achieved in an affidavit then the very purpose of having the affidavit would be frustrated. Affidavits on all matters other than purely interlocutory one must be restricted to facts which are within the personal knowledge of the deponent. Affidavits should also clearly express, as has been held in the case of Durga Das Vs. Nalin Chandra Nandan and Others, , how much is a statement of the deponents' knowledge and how much is a statement or his information and belief and must also state the source and the grounds of information or belief with sufficient particulars without which an affidavit would be no affidavit at all. This Court in the case of Padmabati Dasi v. Rasik Lal Dhar AIR (1910) Cal 259 observed that the source of information should be clearly disclosed and that view was upheld by the Supreme Court in the case of The State of Bombay Vs. Purushottam Jog Naik, and observed that verification should invariably be modelled on the lines of Order 19, Rule 3 of the Civil Procedure Code, whether the same applies in terms or not. Thereafter, in the case of The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, "slipshod verifications" in an affidavit was deprecated. In the cases of A.K.K. Nambiar Vs. Union of India (UOI) and Another, it has further been observed by the Supreme Court that the importance of verification is to test the genuineness and authenticity of allegations or statements and also to make the deponent responsible for them. It has further been observed by the Supreme Court in the case of Virendra Kumar Saklecha Vs. Jagjiwan and Others, that the grounds of sources of information are to be set out in an affidavit whether the CPC applies or not. So relying on the tests as laid down in the cases as mentioned above it is an admitted position that there was or has been no proper affidavit in this case on the basis of which discretion in this jurisdiction can be exercised. The little evidence which was recorded practically disclosed that all the statements in the petition were at best true to the information of the deponent and not true to his knowledge i. e. the way in which he has affirmed the affidavit. Mrs. Bose, when requested to ask questions to the deponent, did not do so but submitted that since the deponent is not a professional Tadbirkar but an old employee of the petitioner, orders may be passed on the basis of his affidavit. She further and in the alternative submitted that the affidavit is at best an ill drafted one and for that the learned Advocate, who drafted the same, may be cautioned but no order should be passed which would prejudice the case of the client. It is very difficult

to visualise what is meant by the term "Professional Tadbirkar" as used by Mrs. Bose. In legal parlance such term is not or has not yet been recognised. But one thing is certain that such Tadbirkars are available, who for some small gain, affirm affidavits and perhaps that is the reason why in proceedings taken by the petitioner we find three different Tadbirkars and at least two of them do not reside anywhere near the addresses as given by the petitioner in the petitions in the two Rules as referred to hereinbefore. This is all the more reason that where affidavits are affirmed by such Tadbirkars, Courts should be slow in exercising their discretion without being satisfied about the affidavit or the affirmation thereof. The learned lawyers in my view have also a solemn duty and obligation not only to Courts but also to their clients to have proper affidavits filed as otherwise their clients' cause may suffer or be prejudiced and as such they should also be slow or think twice before filing affidavits through such Tadbirkars. While making this observation, I am also conscious of the fact that the Rules relevant for matters under Article 226 as framed by this Court do authorise petitions to be filed through persons duly authorised or verified by persons having cognizance of the facts, But in all such cases the Courts as stated hereinbefore, should be satisfied about the authority of the persons making the affidavit and the veracity of the statements made and affirmed by them, the more so when the term "Professional Tadbirkar" as used by Mrs. Bose presupposes that Tadbirkars for some small gain are available.

7. The petitioner, in the Rule has asked for the issue of writs of Mandamus and Certiorari. A writ of Mandamus is not a writ of right but purely a writ of discretion, whereas a writ of Certiorari is a writ of right. The right which can be enforced under Article 226, as held by the Supreme Court in the cases of *Kalyan Singh v. State of U. P.*, AIR 1962 SC 1183; *State of Punjab Vs. Suraj Parkash Kapur etc.*, ; *State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo*, and *Jonnala Narasimharao and Co. and Others, Vs. State of Andhra Pradesh and Others*, must ordinarily be the right of the petitioner himself. In other words, in terms of the determination of the Supreme Court in the cases of *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, and *S. Pratap Singh Vs. The State of Punjab*, , the right which is the foundation of an application, is a personal and individual right. In view of the above, the verification of such a petition or an affidavit as held in the case of *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, should be modelled on the lines prescribed in Order 19, Rule 3 of the CPC even though the Code does not in terms apply.

8. In view of the above, even in spite of the provisions in the Rules for applications under Article 226, it is desirable and expected that verifications should not be done by Tadbirkars or persons who are not in a position to testify the statements as verified.

9. Even though the verification in the instant case was improper and irregular, the petition on that ground in my view, following the determination in the case of

Mishri Debi Agarwal Vs. Asstt. Collector of Central Excise and Others, , should not be dismissed and the more so when Mrs. Basu has categorically stated that for such defective verification, if any one is to be blamed, is the draftsman of the affidavit and not the deponent and I feel further that for such defective drafting, over which the petitioner had no control, his case should not be prejudiced.

10. In that view of the matter, although I hold that this Court cannot and should not act on such defective verification by the Tadbirkar yet I am granting liberty to the petitioner and an opportunity to him to have the petition verified afresh by reaffirming the same or to file necessary supplementary affidavit for such purpose. I direct that steps in the light of the directions as mentioned above should be taken within 3 weeks, failing which the petition would be dismissed, as being not in form.