

(2019) 08 CAL CK 0125

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 24437 (W) Of 2018

Tandra Das

APPELLANT

Vs

Indian Oil Corporation Ltd. & Ors

RESPONDENT

Date of Decision : 06-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 08 CAL CK 0125

Hon'ble Judges : Protik Prakash Banerjee, J

Bench : Single Bench

Advocate : Ashoke Banerjee, Shubradip Roy, Shakti Nath Mukherjee, Ayan Banerjee, Debasree Dhamali, M.S.Yadav

Final Decision : Dismissed

Judgement

Protik Prakash Banerjee, J

Today's hearing was fixed for considering the reply of Mr. Ashoke Banerjee, learned senior advocate for the petitioner, on the question of locus which was raised by Mr. Shakti Nath Mukherjee, learned senior advocate for the respondent no.4. The only fact which is required to be noted very briefly to answer the question of locus are that in an earlier ground of litigation between the same parties the present private respondent had impeached a letter of intent issued to the present writ petitioner, inter alia, on the question of the present writ petitioner being ineligible under the essential conditions of the advertisement. The present private respondents had succeeded in his writ petition. From the said decision the present writ petitioner had carried an appeal to the Hon'ble Division Bench. Before the Hon'ble Division Bench all the points raised by the petitioner except one was negated.. The one point which was not negated was the allegation that the present private respondent was also ineligible in terms of the eligibility criteria, as advertised, though the Hon'ble Division Bench had not agreed with the contention of the present writ petitioner that this should have been considered by the learned Single Bench.

The Hon'ble Division Bench has recorded as follows on this point:?

"50. We also cannot accept the contention of the appellant that the learned Judge ought to have considered whether the writ petitioner satisfied the eligibility criteria regarding residential status, that is, whether he was a resident of Singhee Gram Panchayet or not. As per the usual procedure, verification of the truthfulness of the disclosures made by the applicants are done after the lottery/draw and if the writ petitioner succeeds in the re?draw, the oil company would be bound to verify his documents thereafter."

Mr. Mukherjee, learned senior advocate, had submitted that when the present writ petitioner was a party to a proceeding where all his contentions had been raised and decided not merely upto the Hon'ble Division Bench but upto the Hon'ble Supreme Court of India and he had lost and the finding that he was disqualified in terms of the essential conditions of eligibility had achieved finality he cannot be heard to impeach the eligibility of the present private respondents or re?draw by the authorities to issue a letter of intent in his favour or even give effect to the re?draw held on August 28, 2018 pursuant to the decisions in the earlier round of litigation which had become final. Mr. Mukherjee has relied upon the judgments reported in, inter alia, (1999)1 SCC 492 (Raunaq International Limited Vs. I.V.R.Construction Ltd. & Ors.) at page 27 where it has been clearly held by the Hon'ble Supreme Court that any judicial relief at the instance of a party who does not fulfill the requisite criteria seems to be misplaced. This was, of course, in the context of the question of granting stay while hearing the writ petition and not a final relief. Mr. Mukherjee has also relied upon a judgment reported in (1997)4 SCC 426 (University of Cochin Vs. N.S.Kanjoonjamma &Ors.) at page 4 on the question of estoppel against the writ petitioner when the writ petitioner was a candidate who had applied for and sat for selection and had remained unsuccessful. The Hon'ble Supreme Court in the said case had held having participated in the selection the candidate was estopped from challenging the correctness of the procedure. Of course the question of fraud had not been raised in the said case and here Mr. Banerjee's client has raised a question of collusion by the oil marketing company and the relies on a document which subsequently was alleged by the authority concerned not to have been issued from his office under Right to Information Act.

Mr. Mukherjee had relied upon the judgment reported in (2001)4SCC234 (Vinoy Kumar Vs. State of U.P.& Ors.) at paragraph 2 thereof. This judgment, however, poses some difficulty for Mr. Banerjee. Paragraph 2 of the said judgment holds as follows:?

"2. Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction.

The exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or quo warranto or filed in public interest. It is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries are caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases. Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief. "

Where Mr. Banerjee's client's rights have been invaded or not depends upon whether he can be said to be affected by an order passed by the oil marketing company directing re?draw. That must be tested on the anvil of whether if the re?draw have not been made it could have inure to the benefit of the present writ petitioner. But the present petitioner had been held to be eligible in the selection process commenced by the advertisement in which the re?draw was held. This finding of ineligibility so far as the petitioner is concerned was upheld upto the Hon'ble Supreme Court. So even if the re? draw was cancelled for whatever the petitioner alleged it would not have inured to his benefit since he could not have been eligible under the said advertisement even if the re? draw was cancelled. Thus it is difficult to accept that merely for academic purpose or for identifying the bad practices of the oil marketing company this court's jurisdiction should be invoked. I am not satisfied with what the oil marketing company has done as appears in earlier orders recorded but the writ petitioner cannot take advantage of it so long as his ineligibility under the terms and conditions of the advertisement stands. Mr. Mukherjee had also cited a decision reported in 1991 Supp(2) SCC 432 on the question of the maintainability of a writ petition at the instance of a candidate who could not show that he had a certificate of eligibility. However, this aspect has been dealt with as above.

Mr. Ashok Banerjee, learned senior advocate while replying had drawn my attention to the same paragraph 50 to argue that no issue had been decided by the Hon'ble Division Bench on the question of eligibility of the private respondent herein. The Hon'ble Division Bench had expressly left it open to be decided by the oil marketing company at the stage of verification after the lottery/ draw if the said private respondent in this matter had succeeded in the re?draw. Mr. Banerjee has rightly submitted that this cannot operate as an issue of estoppel as against him whether by records or by judgment since he says he is aggrieved by the decision of the oil marketing company on verification of the private respondent's documents pertaining to eligibility which admittedly happened after the Hon'ble Division Bench's order. I agree that this question was not decided but at the same time I hold that Mr. Banerjee's client is not "person aggrieved" within the meaning of law to challenge the said decision of verification so long as

his own eligibility criteria is held to be absent in a *lis inter?parte* which has achieved finality. It only remains for me to deal with the judgments cited by Mr. Banerjee. Mr. Banerjee relied on the judgment reported in AIR 1966 SC 828 (paragraph 28) in support of the proposition that the extraordinary relief asked for under Article 226 of the Constitution of India must be to enforce a legal right which shall ordinarily be the personal or individual right of the petitioner himself though in case of some of the writs like habeas corpus or *quo warranto* this rule may have to be relaxed or modified. Mr. Mukherjee has possibly referred to the character of the oil marketing company as a trustee of the public resources which distributed material resources by it to invoke this judgment.

Mr. Banerjee has also relied upon last part of the said paragraph which says that expression "ordinary" includes exceptional cases where even if a person does not have proprietary or even fiduciary interest in the subject?matter he can file a writ petition if he is prejudicially affected by an act or omission of an authority.

In the instant case the writ petition is not for habeas corpus or in the nature of *quo warranto* as appears from my discussion as above. The writ petitioner cannot be held to be a person prejudiced by the verification of the documents submitted by the private respondent. This judgment, therefore, will not help Mr. Banerjee.

Next judgment that he has relied upon is (1986)2 SCC 679 mainly paragraphs 19 and 20 which relate to general principles on which a writ in the nature of *mandamus* is issued and as Mr. Banerjee has emphasised the ratio of the judgment that power to issue the writ of *mandamus* or the writ in the nature of *mandamus* must be held to inhere in the High Court under Article 226 of the Constitution of India where the Government or public authority act to frustrate the object of the policy. He submits that acts of the respondents frustrate the object for which verification is to be made and that a local person shall be appointed which is a welfare measure. So even if he is not personally interested he can canvas this cause of action. While there is no quarrel with this proposition as a general principle in the facts of this case the Hon'ble Supreme Court was not dealing with a litigant whose own eligibility had been held to be absent right upto the Hon'ble Supreme Court. A little difference in facts makes a lot of difference in the value of a judgment as precedent. I am fortified in this issue by a judgment of more than 100 years standing which has been followed in this jurisdiction almost without interruption being *Quin Vs Leatham* reported in (1901) AC 495. That leaves us with only the judgment reported in (2008) 2 SCC 533 more precisely paragraphs 10 and 12 thereof. I bow down to that principle laid down by the Hon'ble Supreme Court and apply it in the present case to hold that the judgments I have distinguished are not authorities which bind me in the facts of the case whether cited by Mr. Mukherjee or by Mr. Banerjee as I have indicated above. As a result, while I hold that the question of verification of the eligibility criteria of the private respondent was left open for decision by the Hon'ble Division Bench. I also hold that this cannot be done at the instance of the present writ petitioner in the present writ petition because he has been held to

be ineligible in terms of the same advertisement under which the re?draw was held. Accordingly, though I deprecate the manner in which the oil marketing company has chosen to disregard the fact that a certificate annexed to the application by the private respondent was alleged not to have been issued by the office of the Sub?Divisional Officer in the facts of the case and on the law applicable as aforesaid I hold that the writ petitioner is not entitled to challenge this and thus do not call on Mr. Yadav, learned advocate for the respondents no. 1 to 3, to reply and dismiss the writ petition. This dismissal shall not prevent the oil marketing company from instituting procedure by which the verification of any document submitted along with the application must be carried out before drawing of the lot or draw is made in terms of clause 9.2 of brochure where draw of lot only held between and among eligible applicants who are residence of the Gram Panchayet or the corresponding administration/ revenue structure of the advertised RGGLV location and in terms of the said clause where only applicants satisfying the eligibility criteria will be eligible for draw of lots.

This, however, is in respect of future advertisements and procedures for selection because the present advertisement and its fruits have ended with the selection of the present private respondent.

With the above observations and directions this writ petition being W.P.No. 24437(W) of 2018 stands dismissed without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.