

21/01/2021
Item 1(t)DL
AB/S DE

Through Video Conference

**M.A.T. 80 of 2021
With
I. A. CAN 1 of 2021**

**RDS Project Limited & Anr.
-Vs-
Union of India & Others**

Mr. Phiroze Edulji,
Mr. Saryati Datta,
Ms. Rajnandini Das ...For the Appellants.

This appeal is founded on two issues raised as to the jurisdiction of the learned Single Judge, who heard WPA 9338 of 2020 on 11.01.2021.

We have heard learned Counsel appearing for the appellants on both the issues.

The first issue pointed out is that as per the determination (roster) decided by the Chief Justice, the matter could not have been taken up merely on the basis of the notification regarding the approval granted by the Chief Justice for the recommendations made by the Committee assisting the Chief Justice touching COVID related matters. That is a factual misconception. This is because the Chief Justice had exercised his authority as master of the roster and issued a decision on 2nd December, 2020, which finds expression through the notification issued by the Registrar General under the directions of the Chief

Justice on 4.12.2020 being Notification No.4385-RG. The existence of such notification has been deliberated upon and learned Counsel for the appellants has mentioned that he has now seen that notification. This means that the question raised on the eligibility of the matters being listed before the Principal Bench on the basis of roster determined for hearing before the Principal Bench does not survive for further consideration in favour of the appellants.

The next issue raised on behalf of the appellants is regarding the listing of the matter on a particular day and the question whether affidavits were permitted to be exchanged to the satisfaction of the Judge, who was to take up the matter. We have carefully considered the views of the learned Single Judge after hearing the parties at length. On such issue we quote the relevant portion from the impugned order dated 11.01.2021 :

“I have heard the parties at length. I find from the records that this writ petition was filed on 12 November, 2020 before this Hon’ble Court when due to the ongoing pandemic no Regular Bench was sitting at Port-Blair. The petitioner moved his writ petition on 27 November, 2020 and obtained an interim order, inter alia, restraining the letter of invocation of the bank guarantee. The parties were also directed to file their respective affidavits. The matter was directed to appear one week after the ensuing vacation on 5 January, 2021. Thereafter, the Department of this Hon’ble Court has filed a

compliance report inter alia recording that the time to file the affidavits has expired. Consequently, the matter was placed before this Bench.

My present determination pertains to the hearing of writ petitions irrespective of classification and applications connected thereto. I am of the view that once the time to file the affidavits had expired a writ petition is ready for hearing and I have determination to hear and dispose of the same. Moreover, the report of the Assistant Registrar dated 5 January, 2021 inter alia records that the parties have not filed their respective affidavits in terms of the interim order dated 27 November, 2020 and that the time of filing affidavits having expired automatically classifies this writ petition as ready "For Hearing". It was in this background that the Department had placed the matter before this Court. For the foregoing reasons, the objections raised by the petitioner are misconceived and rejected. I also find that there being no Regular Bench presently operational at Port-Blair, I have the regular determination to hear writ petitions ready for hearing. Both the points raised by Mr. Edulji are rejected."

We are of the considered view that there is no error of jurisdiction, illegality, impropriety or procedural irregularity in the learned Single Judge further proceeding to consider the matter following the order dated 11.01.2021. We caution ourselves to desist, at this stage, from going into further on this aspect since the fruit is not ripe enough for us to peck to decide whether the appellants are trying to wriggle out of the available jurisdiction or unjustly attempting

to scout other jurisdictions. We make these observations and leave that issue there.

For the aforesaid reasons, we do not find any merit in this appeal.

In the result, this appeal is dismissed along with the connected application.

There will be no order as to costs.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Thottathil B. Radhakrishnan, C.J.)

(Arijit Banerjee, J.)