

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
(Original Side)

I.A No. G.A/1/2021
With
W.P.O/257/2020
In
A.P.O. No. 54 of 2021

The Kolkata Municipal Corporation & Ors.

Vs.

AI-Sumama Agro Foods Pvt. Ltd. & Ors.

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Kausik Chanda

For the Appellants : Mr. Alok Kumar Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.

For the Respondents : Mr. Asad Alvi. Adv.

Heard On : 22.11.2021, 30.11.2021 & 06.12.2021

CAV On : 06.12.2021

Judgment On : 17.12.2021

Arijit Banerjee, J.:

1. By consent of the parties the appeal and the stay application were taken up together for hearing.

2. The appeal is directed against a judgment and order dated March 11, 2021, whereby W.P.O 257 of 2020 was disposed of by a Learned Single Judge.

3. The writ petitioners/respondents had participated in a tender floated by the appellant Kolkata Municipal Corporation (for short 'KMC') for Operation, Maintenance and Overall Management of KMC's newly established modern Abattoir. They were unsuccessful. Their bid was rejected on the ground of technical disqualification. However, the earnest money deposit was not returned to them. Being aggrieved, they approached the Learned Single Judge.

4. By the order impugned the Learned Judge directed KMC to refund the earnest money deposited by the writ petitioners in terms of the "Request for Proposal". It was further directed that "in default of refund of earnest money within the date indicated above, interest at the rate of 6 per cent per annum till payment of the said amount is to be made by respondent No. 2 to the petitioner". Being aggrieved the KMC has come up in appeal.

5. Several grounds have been taken in the Memorandum of Appeal. However, we have heard Learned Counsel for the parties only on one ground, i.e., the Learned Single Judge did not have determination to hear the writ petition on which the impugned order was passed. We consciously deferred hearing the parties on the other points as we were of the view that if the ground indicated above succeeds, it would not be necessary for us to consider the other grounds of appeal.

6. Learned Senior Counsel representing the KMC submitted that on the date the impugned order was passed, i.e., March 11, 2021, the Learned Single Judge did not have determination to hear Corporation matters. That determination was with another Learned Judge of this Court. In support of his submission Learned Counsel drew our attention to the relevant Cause-list. It was submitted that an order passed by a Learned Judge in a matter which he did not have determination to hear, is a nullity.

7. Learned Advocate for the writ petitioners/respondents submitted that the Learned Judge concerned had determination to hear tender matters on the relevant date. KMC repeatedly stayed away from the Court. Hence, the Learned Judge had to dispose of the matter ex parte. If it is the contention of KMC that the Learned Judge lacked determination to hear the matter, it should have appeared before the Learned Judge and made such submission. An order passed by a Judge of this Court not having determination to hear the matter in which the order is passed, may be, at the highest, an irregular order but not a void order. The Learned Judge concerned had the jurisdiction to pass the impugned order under Article 226 of the Constitution of India.

8. In reply, Learned Advocate for the KMC submitted that since the Learned Judge did not have determination to hear Corporation matters, KMC's Learned Advocates were naturally not following the cause-list of that Learned Judge. Hence, KMC could not be represented before the Learned Judge on the date the impugned order was passed.

9. We have considered the rival contentions of the parties.

10. It is fairly well settled that a Learned Judge of a High Court derives jurisdiction to hear a particular matter only upon such matter being assigned or allotted to him/her. The Chief Justice is the Master of the Roster who is constitutionally empowered to decide which Judge shall hear which type of matters.

11. In the case of **Sohan Lal Baid v. State of West Bengal & Ors., AIR 1990 CAL 168**, a Division Bench of our Court, at paragraphs 18, 23, 24 and 28 of the reported judgment held, *inter alia*, as follows:-

*“18. It is thus clear that the Chief Justice of the High Court has the constitutional power to determine what Judge in each case is to sit alone, and what Judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts. In other words, the function of assignment of judicial business amongst the Judges of the High Court, whether sitting singly or in Division Courts, is entrusted by law to the Chief Justice and the Judge or Judges **derive jurisdiction to deal with and decide the cases or class of cases assigned to them by virtue of the determination made by the Chief Justice.** This power is derived not only from the provisions of Section 108 sub-Section (2) of the Government of India Act, 1915, which still subsists and the power whereunder still continues to be there, as held in National Sewing Thread Co. Ltd.’s case, but also inheres in the Chief Justice.*

23. *The foregoing review of the Constitutional and statutory provisions and the case law on the subject leaves no room for doubt or debate that once the Chief Justice has determined what Judges of the Court are to sit alone or to constitute the several Division Courts and has allocated the judicial business of the Court amongst them, the power and jurisdiction to take cognizance of the respective classes or categories of cases presented in a formal way for their decision, according to such determination, is acquired. To put it negatively, **the power and jurisdiction to take cognizance of and to hear specified categories or classes of cases and to adjudicate and exercise any judicial power in respect of them is derived only from the determination made by the Chief Justice in exercise of his constitutional, statutory and inherent powers and from no other source and no case which is not covered by such determination can be entertained, dealt with or decided by the Judges sitting singly or in Division Courts till such determination remains operative. . . .***

24. . . . *The cardinal position cannot be overlooked that before jurisdiction over the subject matter is exercised, the case must be legally brought before the concerned Court for the hearing and determination and that a judgment pronounced by Court without investment of jurisdiction is void.*

28. For the foregoing reasons, the order under appeal being without jurisdiction is and declared to be void and as having no effect in the eye of law.” (Emphasis is ours).

12. In **State of Maharashtra v. Narayan Shamrao Puranik, AIR 1982 SC 1198**, the Supreme Court observed that the Chief Justice is the Master of the Roster. He has full power, authority and jurisdiction in the matter of allocation of business of the High Court and the same inheres in him in the very nature of things. In the said case, the Supreme Court quoted with approval the following passage from a Full Bench decision of the Madras High Court in **Mayavaram Financial Corporation Ltd. v. The Registrar of Chits, 1991(2) L.W. 80:-**

*“The Hon’ble the Chief Justice has the inherent power to allocate the judicial business of the High Court including who of the Judges should sit alone and who should constitute the Bench of two or more Judges. No litigant shall, upon such constitution of a Bench or allotment of a case to a particular Judge of the Court will have a right to question the jurisdiction of the Judges or the Judges hearing the case. No person can claim as a matter of right that his petition be heard by a single Judge or a Division Bench or a particular single Judge or a particular Division Bench. **No Judge or a Bench of Judges will assume jurisdiction unless the case is allotted to him or them under the orders of the Hon’ble the Chief Justice.**” (Emphasis is ours)*

13. In ***Inder Mani v. Matheshwari Prasad, (1996) 6 SCC 587***, the Apex Court observed as follows:-

“It is the prerogative of the Chief Justice to constitute benches of his High Court and to allocate work to such benches. Judicial discipline requires that the puisne Judges of the High Court comply with directions given in this regard by their Chief Justice. In fact it is their duty to do so. Individual puisne Judges cannot pick and choose the matters they will hear or decide nor can they decide whether to sit singly or in a Division Bench.”

14. In ***State of Rajasthan v. Prakash Chand & Ors. (1998) 1 SCC 1***, the Supreme Court held, *inter alia*, that no Judge or a Bench of Judges can assume jurisdiction in a case pending in the High Court unless the case is allotted to him or them by the Chief Justice. Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the Court. In the said decision, in conclusion, the Supreme Court observed, *inter alia*, as follows:-

“1. That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

*2. That the Chief Justice is the master of the roster. He **alone** has the prerogative to constitute benches of the Court and allocate cases to the benches so constituted.*

3. That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.

*4. That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business **not otherwise assigned to them by or under the directions of the Chief Justice.***

.....

6. That the puisne Judges cannot “pick and choose” any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.

7. That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice.

.....”

15. Finally, in that case, the Supreme Court held the order impugned before it as being without jurisdiction.

16. In the case of **Smt. Maya Dixit & Ors. v. State of U.P., (2010) SCC OnLine ALL 1740**, a Full Bench of the Allahabad High Court held, inter alia, as follows:-

*“7. The issue, whether a Bench allotted a particular assignment can hear matters allotted to another Bench, in our opinion, need not be gone into at length, as the same has been extensively covered by a judgment of a learned Division Bench of this Court in **Prof. Y.C. Simhadri, Vice Chancellor, B.H.U. v. Deen Bandhu Pathak, Student**. We may gainfully reproduce paragraphs 16, 17 and 18 which read as under:*

16. Thus, the following principles emerge from the foregoing discussions:

- 1. The administrative control of the High Court vests in the Chief Justice alone and it is his prerogative to distribute business of the High Court both judicial and administrative.*
- 2. The Chief Justice alone has the right and power to decide how the Benches of the High Court are to be constituted: which Judge is to sit alone and which cases he can and is required to hear as also which Judges shall constitute a Division Bench and what work those Benches shall do.*
- 3. The puisne Judges can only do that work which is allotted to them by the Chief Justice or under his directions. No Judge or a Bench of Judges can assume**

jurisdiction in a case pending in the High Court unless the case is allotted to him or them by the Chief Justice.

4. *Any order which a Bench or a Single Judge may choose to make a case that is not placed before them or him by the Chief Justice or in accordance with his direction is an order without jurisdiction and void.*

.....” (Emphasis is ours)

17. From the aforesaid discussion, it is clear that the Chief Justice of a High Court alone has the power and authority to allocate particular types of cases to particular Judges. He decides the class of cases that a particular Judge can hear and decide. A Judge can take up only such matters as have been allocated to him by the Chief Justice and no other matters. The jurisdiction of a puisne Judge to hear a particular case stems from the allotment of such case to that Judge by the Chief Justice. That Judge will have no jurisdiction to hear any other matter. If a Judge hears a matter which is not within his determination and passes an order therein, such order will be void for want of jurisdiction.

18. In the present case, on the day the writ petition was disposed of by the Learned Single Judge, His Lordship did not have determination to take up writ applications against K.M.C. We are sure that this was not pointed out to the Learned Judge. Since we are of the view that an order passed in a matter which a Learned Judge did not have determination to hear, is a

nullity for inherent lack of jurisdiction, we are constrained to set aside the order under appeal on that ground alone. We have not gone into the merits of the writ petitioner's case. We remand the matter for being heard by the Learned Single Judge who presently has determination to hear the writ petition. Nothing in this order shall have any bearing on the merits of the case.

19. The appeal and the connected application are accordingly disposed of, without however any order as to costs.

20. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance of necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)