

21.03.2022

Court : 04
Item : PB-09
Matter : MAT
Status : DO
Transcriber: nandy

CAN 1 of 2022
in
MAT 318 of 2022

Susmita Maity Jana
Vs.

Ganguram Hemram @ Ganguram Hembram & Ors.

Mr. Debnath Ghosh, Advocate
Mr. Nilay Sengupta, Advocate
Mr. Sujit Banerjee, Advocate

.....for the Petitioner

Mr. Prantick Ghosh, Advocate
Mr. Siddhartha Sarkar, Advocate

.....for the Respondent No. 1

Mr. D.N. Maity, Advocate

.....for the Respondent Nos. 3 & 5 (WBUHS)

Mr. Tapan Kumar Mukherjee, Senior Advocate
Mr. Rajat Duatta, Advocate

.....for the State

The single Bench disposed of the matter directing the concerned Officer of the State Government i.e. the Sub-Inspector of School of the District Primary School Council, Paschim Medinipur to enquire into the matter as to whether the allegations made by the writ-petitioner are correct or not. It was further indicated that while undertaking such exercise, everybody must be given an opportunity to place his or her case before the aforesaid authority.

A preliminary objection was taken before us when the challenge is made by the private respondents on the *locus* of the writ-petitioner to maintain the writ-petition with such reliefs. It has been brought to our notice that concerning the identical cause of action a public interest litigation

was taken out by the writ-petitioner which was eventually dismissed on the ground of his *locus*. Immediately thereafter, the writ-petition was taken out for the self-same reliefs and without entering into the merits of the case in juxtaposition with the reliefs claimed therein, the impugned order is passed. The preliminary objection is based upon the point that in relation to any service dispute, a person who is not connected with the School nor with the Institution, cannot maintain a writ-petition for want of *locus standi*.

The attention of this Court was drawn to the judgment of the Supreme Court in case of ***Ayaubkhan Noorkhan Pathan Vs. State of Maharashtra & Ors.*** reported in **(2013) 4 SCC 465** that unless a person have shown violation of his statutory or legal rights judicially enforceable, he cannot maintain the writ-petition. There is no ambiguity in our mind that the instant writ-petition is not maintainable in absence of legal, constitutional or statutory rights recognized in the statutory documents but equally there is no difficulty in maintaining the writ-petition if the inaction of the authorities in discharging its statutory duties are projected. The impetus to the above can be had from the observations of the Apex Court in *Ayaubkhan Noorkhan Pathan* (supra) in the following:-

9. “It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons.

Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or **when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities.** Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : *State of Orissa v. Madan Gopal Rungta*, AIR 1952 SC 12; *Saghir Ahmad & Anr. v. State of U.P.*, AIR 1954 SC 728; *Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Ors.*, AIR 1962 SC 1044; *Rajendra Singh v. State of Madhya Pradesh*, AIR 1996 SC 2736; and *Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar & Ors.*, (2009) 2 SCC 784)."

(emphasis supplied)

It is no doubt true that the manner in which the reliefs are couched in the writ-petition raises a serious question on the *locus* of the petitioner. Equally, this Court cannot overlook the substantial relief to be granted if discerned from the pleadings to achieve the ends of justice.

By the impugned order, the Court noticed that the representation was made before the authority making serious allegations not only on misutilization of the fund but also the ill treatment perpetrated upon the Schedule Caste category students. Such

representation has been kept by the authority in suspended animation, which appears to the single Bench to be of serious concern. The authorities cannot keep the representation in abeyance for all time to come without addressing the issues raised therein. The person who has approached the authority can maintain a writ-petition alleging inaction on the part of the authority to discharge its solemn function or duty entrusted upon him. Precisely for the reason the writ-petition was disposed of directing the disposal of the said representation upon making an enquiry on the allegations made therein and to ascertain the truth which is one of the hallmark of the justice delivery system.

However, apprehension is shown at the time of hearing of the instant appeal that there has been a ruckus in the past when such enquiry was conducted and there is every possibility that it would be repeated. The single Bench has directed the enquiry to be conducted in presence of the persons who are interested in the cause of the allegations and we do not find that such direction would invite any ruckus. However, giving our anxious consideration on the aforesaid apprehension, we made it clear that the concern officer shall ensure that the persons who have a nexus or aggrieved by the cause being the bedrock of the allegation, shall only be permitted to heard and no other outsiders nor any extraneous factor shall be taken into account in this regard.

We thus do not find any infirmity in the order impugned and, therefore, **dispose of** the appeal being **MAT 318 of 2022** as well as the connected application being **CAN 1 of 2022** in the light of the observations made hereinabove.

No order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)