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Court
No. 11 11.07.2022
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CPAN 1069 of 2021
Pankaj Kumar Sarkar
-vs-
Eshita Deb Barma and Others
In
FMA 1232 of 2021
With
CAN 1 of 2021
Pankaj Kumar Sarkar
-VS-
Food Corporation of India

Mr. Pankaj Kumar Sarkar

... -in-person

Mr. Kamal Kumar Chattopadhyay

... for the respondent

Party/Parties is/are represented in the order of their name/names as printed above in the cause title.

Under consideration before this Court is a second Contempt Application filed by the appellant-in-person numbered as CPAN 1069 of 2021.

The appellant-in-person contends that Paragraph 14 of the Affidavit-in-opposition filed by the Respondents/the Alleged Contemnors/Food Corporation of India (*FCI*) is contumacious in as much as the Respondents/the Alleged Contemnors/Food Corporation of India (*FCI*) have absolved themselves from any responsibility to hold an enquiry under their extant Regulations. The statements made in Paragraph 14 by the Respondents/the Alleged

Contemnors/Food Corporation of India (*FCI*) to the extent that the Regulations permit the competent authority of the *FCI* to dispense with an enquiry in an appropriate factual scenario, is, according to the appellant, against the law of the land.

The appellant, in support of his contentions, relies upon two judgments of the Hon'ble Apex Court reported in **(2001) 1 SCC 165 [In Re: Food Corporation of India, Hyderabad & Ors. -Vs- A. Prahalada Rao & Anr.]** and, a Reportable Judgment in **Civil Appeal Nos. 7201-7202 of 2008 [In Re.: Food Corporation of India & Ors. -Vs- Sarat Chandra Goswami]**.

Per contra, Mr. Chattopadhyay, Learned Counsel appearing for the *FCI*, submits that it is within the competence of the authority to act in terms of its Regulations. The appellant had approached the Hon'ble Single Bench seeking reliefs *qua* the penalty imposed against him following a Departmental Enquiry (*D.E.*) and the Hon'ble Single Bench was pleased to turn down the prayer of the appellant.

It would be profitable at this juncture to quote the relevant observations of the Hon'ble Single Bench while dismissing the writ petition of the appellant in WP 1688(W) of 2015 with CAN 4839 of 2019, which read as follows:

“In substance, (a) the writ petitioner seeks

to firstly reopen the entire enquiry and the final order against him; (b) seek the benefit of D.P.C. in which he participated pursuant to leave granted by the Single Bench in W.P. 1312(W)/2006.

In support of his contention as regards reopening of the final order, the writ petitioner would rely upon a decision of the Hon'ble Supreme Court in the case of **State of Odisha & anr. vs. Mamata Mohanti** delivered on 09.02.2011 in Civil Appeal No. 1272/2011.

The writ petitioner also relies upon a decision of the Hon'ble Supreme Court in the case of **Nand Kishore vs. State of Punjab** reported in **JT 1995 (7) Supreme Court 69**.

The petitioner further relies upon a decision of the Hon'ble Supreme Court in the case of **F.C.I. vs. Sarat Ch. Ghosh** dated 21.05.2014 delivered by the Hon'ble Supreme Court in Civil Appeal No. 7201-7202/2008.

Let us take the first argument of the petitioner and the judgments relied upon.

It is clear from the facts narrated hereinabove that the order of punishment imposed on the petitioner pursuant to departmental proceedings has been upheld by

the Division Bench of this Court in its judgment delivered on 02.04.2008 in A.P.O. 322/2007 (supra).

The question of the departmental proceedings being reopened either on the basis of some internal notings in the Vigilance File of the petitioner or any discovery of new material, does not and cannot arise.”

To the mind of this Court, upon a close reading of the appellant's contention that the Respondents/the Alleged Contemnors/Food Corporation of India (FCI) ought to have acted in terms of their Regulations pertaining to the D.E. in which the appellant was the subject of the enquiry, amounts to an argument on merits in the appeal itself.

To the further mind of this Court, the validity of an action taken by the Respondents/the Alleged Contemnors/Food Corporation of India (FCI) to act or not to act under its Regulations which is the subject-matter of the appeal itself and having been decided on merits by the Hon'ble Single Bench against the appellant, cannot be allowed to be opened in a Contempt Application.

For the above reasons, this Court is of the view that the appeal itself be considered on merits.

Since it is submitted by the parties that the Paper Book(s) have been prepared and served, **FMA 1232 of 2021** be listed under the heading “**Hearing (Gr.-VI) within the first six matters** in the **Combined Monthly List of August, 2022.**

CPAN 1069 of 2021 stands accordingly **dismissed.**

All parties to act on a server copy of this order duly obtained from the official website of the Hon’ble High Court, Calcutta.

(Lapita Banerji, J.)

(Subrata Talukdar,J.)