

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 12719 of 2023

Chattisgarh Sponge Iron Manufacturers Association

Vs.

The Union of India and others

For the petitioner	:	Mr. Pratip Kumar Tarafder Mr. Sambuddha Dutta
For the Union of India	:	Mr. Madhu Jana Ms. Palima Bhadra
For the respondent nos.2 to 4	:	Mr. Ayan Poddar Mr. Soham Dutta
Hearing concluded on	:	11.07.2023
Judgment on	:	07.08.2023

Sabyasachi Bhattacharyya, J:-

1. A question of maintainability has been raised by the respondent nos. 2 to 4, on the ground that the registered society, not being an independent juristic entity, cannot maintain the writ petition in its own name.
2. There is a reason why this court is not of the opinion that the writ can be decided on a question of law only, even if the principle embodied in Order XIV Rule 2 (2) (b) of the Code of Civil Procedure is applied.
3. First, both parties have argued the matter at length, on all questions of fact and law involved in the case, including the issue of

maintainability. Hence, it would be an injustice to restrict judgment on the maintainability issue alone.

4. Secondly, in the facts of the case, a question arises as to whether the defect is curable, to decide which, the court has to enter into several questions of fact, such as, who has affirmed the writ, whether she/he was authorised in law to sue on behalf of the society, and several allied facts. Hence, it cannot be said strictly that the issue is a pure question of law.
5. However, the issue of maintainability is taken up first for adjudication. Learned counsel for the respondent nos.2 to 4 contends that the writ petition is not maintainable in its present form. The Chattisgarh Sponge Iron Manufacturers Association has, in its own name, filed the writ petition. However, as per Section 22 of the Chattisgarh Societies Registration Act, 1973 (hereinafter referred to as, "the 1973 Act"), every society may sue or be sued in the name of the President or Chairman or Principal Secretary or the Trustees, as shall be determined by the Regulation of the Society, and in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion.
6. The present writ petition, however, has not been filed by any of the said officials of the society and, as such ought to be dismissed.
7. It is next contended that even in terms of the by-laws of the societies, Clause 14 confers power on the General Body of the Association to authorise the President, by passing a resolution, to do all legal works which are necessary for smooth running of the Association.

8. However, in the present case, it is not the President who has been entrusted with the authority to move the writ petition. The deponent in the affidavit supporting the writ petition, it is submitted, seeks to place reliance on an authorisation by the President. However, the President does not have the power under the by-laws to so authorise a third person to file a writ petition for the Society.
9. The purported resolution annexed to the supplementary affidavit filed today by the petitioner, it is argued, is not genuine and has been manufactured as an afterthought. In any event, it is contended, the purported resolution appoints the deponent of the writ petition, who is not the President, to affirm the writ petition. However, there is no such provision either in the by-laws or the 1973 Act.
10. It is further submitted by learned counsel for the respondent nos.2 to 4 that mere authorisation to affirm an affidavit and present a writ petition cannot cure the defect which is implicit in the presentation of the writ petition. Although anybody having direct knowledge may affirm an affidavit and file the writ petition on behalf of another person, under Section 22 of the 1973 Act, the President, Secretary or other official designated therein has to file the writ petition and not the Association in its own name.
11. Thus, it is contended, the writ petition ought to be dismissed on such score alone.
12. Learned counsel for the petitioner places reliance on the judgement in *Uday Shankar Triyar vs. Ram Kalewar Prasad Singh and another* reported at (2006) 1 SCC 75, where it was held by the Supreme Court,

inter alia, that non-compliance of any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects, if observed, and irregularities which are curable, should not be allowed to defeat substantive rights or to cause injustice. In the present case, it is contended that the defect alleged by the respondent nos.2 to 4, even if true, is at the best a curable defect. Hence, it does not entail the dismissal of the writ petition without giving an opportunity to the petitioners to cure the same.

- 13.** Learned counsel next contends that there is no defect in the filing of the writ petition as procedure is the handmaid of justice. Learned counsel places reliance on the certificate dated May 17, 2023 issued by the President of the petitioner-Association, annexed to the writ petition as the last annexure thereof, whereby the deponent of the affidavit supporting the writ petition, namely Prasanna Kumar Barik, was authorised to sign on the affidavit and all related papers pertaining to any writ petition to be filed in the court on behalf of the petitioner-Association.
- 14.** It is further argued that the petitioner has also annexed to the supplementary affidavit filed to it the minutes of the concerned resolution of the Association, taken in a general body meeting of the same, whereby it was resolved that Prasanna Kumar Barik, an employee and authorised signatory of the Association, was authorised to file and move the necessary writ petition before this Court against

the Coal India Limited and other authorities, as well as file and move other proceedings as may be necessary.

15. It is, thus, argued that the writ petition ought not to be dismissed. In the least, the petitioners ought to be given an opportunity to cure any defect, if found by the Court.
16. A perusal of By-law 14 of the By-laws of the petitioner-Association shows that the last paragraph thereof is relevant in the present case. However, contrary to the contention of respondent nos.2 to 4, the same does not pertain to the presentation of a writ petition. Insofar as the specific language of the said paragraph goes, the stipulation is that *for any expenses of more than Rs.5,000/-*, a general body can authorise the President by passing a resolution.
17. The presentation of a writ petition is not a question of spending an amount more than Rs.5,000/- in conducting the day-to-day affairs of the Association.
18. In the very next sentence, it is stipulated that the President will also have powers to do all such legal works which are necessary for smooth running of the Association. Reading the said sentence in proper perspective, the key expression is “for smooth running of the Association”. The “legal works” referred to therein obviously pertain to the day-to-day affairs of the Association, for smooth running of which, certain actions may have to be taken which have legal fallouts. For example, there may be an occasion where contracts have to be entered into or certain documents having legal implication might have to be signed on behalf of the Association by the President. However,

nothing in the said By-law empowers the general body to authorise the President to sue or be sued on behalf of the Association. Hence, the said By-law can be eliminated from the present consideration.

- 19.** Taking into consideration Section 22 of the 1973 Act, the same provides that a Society may sue or be sued “in the name of” the President or Chairman or Principal Secretary or the trustees “as determined by the Regulation of the Society”.
- 20.** The Regulations of the Society do not so determine. Hence, we are to fall back upon the residuary provision of Section 22, that is, any other such person as shall be appointed by the governing body for the occasion.
- 21.** Considering carefully the documents presented by the petitioner, the last annexure to the writ petition, which is an authorisation to the concerned person, Sri Prasanna Kumar Barik, to sign on the affidavit and related papers regarding the writ petition, cannot constitute such an appointment as contemplated in Section 22. First, the President does not have any power under the Act or the By-laws to sub-delegate his name-lending authority or suing in the name of the Association. That apart, as rightly argued by the respondent nos.2 to 4, the authorisation dated May 17, 2023 merely relates to signing on the affidavit and/or related papers pertaining to the writ petition “on behalf” the petitioner-Association. Mere authorisation to affirm an affidavit to support the contentions made in a writ petition cannot be a valid substitute for the writ petition itself being presented by the said person, in the name of whom the Association sues.

- 22.** Inasmuch as the minutes annexed to the supplementary affidavit is concerned, on the other hand, the same merely discloses a resolution by the general body of the Association authorising Prasanna Kumar Barik as the authorised signatory to file and move the necessary writ petition before this Court as well as file and move other proceedings as may be necessary for and on behalf of the Association. First, such authorisation is also of the nature of the power granted by the President as annexed to the writ petition, inasmuch as the same merely authorises Prasanna Kumar Barik to present a writ petition and/or file the same or affirm affidavit supporting the same for and on behalf of the Association. Secondly, Section 22 of the 1973 Act is on a higher footing, since the same requires a formal appointment by the governing body for the occasion. The language of Section 22 is that the society may sue or be sued in the name of such person “as appointed by the governing body”. In the present case, there is nothing on record to show that the governing body of the Association has appointed the said Prasanna Kumar Barik within the contemplation of Section 22.
- 23.** The petitioner’s argument, that the term “may” used in the said Section confers a discretionary flavour to the said provision, cannot be accepted. In the circumstances, the expression “may” has to be construed to create a compulsion on the society to have such person as contemplated therein as a name-lender for the purpose of presentation of a litigation.

24. However, the petitioner is justified in contending that the defect-in-question is curable. Taking a cue from *Uday Shankar Triyar (supra)*, procedure is the handmaid of justice and a procedural requirement cannot be elevated to such a level that the same would entail that non-compliance is visited by a dismissal of a writ petition.
25. In any event, jurisdiction of judicial review under Article 226 of the Constitution of India vested in the High Courts is plenary in the sense that the court can also *suo motu* take into cognizance illegalities and violation of rights perpetrated by public authorities, provided the illegality or violation is brought to the notice of the court. It is sufficient that the cause of action of the writ is brought to the notice of the court by way of an affidavit, for the writ court to enquire into the legality or otherwise of the impugned action.
26. The Society cannot be left without a remedy since, in the present case, the governing body has not appointed anybody in whose name the writ petition is to be preferred, nor is the President, Secretary, etc. determined to so sue in the Regulations of the Society. The principle of *Ubi jus ibi remedium* is apt in the context.
27. In this context, the respondents have cited *Illachi Devi (Dead) by LRS. and others Vs. Jain Society, Protection of Orphan India and others*, reported at AIR 2003 SC 3397 for the proposition that a registered society is not capable of suing or being sued in its own name.
28. Again, in *National Council of YMCA's of India Vs. Skippers Textiles Private Limited*, reported at 2009 SCC OnLine Cal 909 and in 12, I.C. Bose Road Tenants' Association Vs. Collector of Howrah & others,

reported at *1977 SCC OnLine Cal 221*, the same proposition was laid down.

- 29.** The provision of Section 22 of the 1973 Act may strictly apply to regular suits presented within the contemplation of the Code of Civil Procedure or the Specific Relief Act. However, insofar as the writ jurisdiction is concerned, it is more in the nature of a judicial review by the court, if a contravention of law or natural justice has occurred, than an occasion for the litigant to file a proceeding before the court to thrash out a contractual or individual relief.
- 30.** Hence, the defect alleged by the respondent nos.2 to 4 in filing the writ petition is, at the most, a curable defect.
- 31.** Hence, the same can be easily rectified by granting the petitioner an opportunity to carry out the necessary consequential amendment to the Cause Title of the writ petition by incorporating the person who has been appointed by the governing body of the Association for the purpose of preferring the writ petition. That apart, the petitioner is required to be given the liberty to file a resolution by the governing body of the Association appointing the signatory of the affidavit as the person in whose name the society may file the present writ petition. The said maintainability issue being resolved at that, necessary directions in that regard are reserved till the end of the judgment.
- 32.** The rest of the issues are now taken up for hearing.

33. Another aspect which has to be considered is whether the petitioner, after having participated in the auction process, ought to be permitted to prefer the present challenge.
34. The defence taken by the petitioner on such score is that, although the petitioner participated in the tender, the same was challenged before entering into a contract.
35. On such count, the nature of the challenge ought to be looked into. The petitioner contends that the respondent-Authorities have contravened the Government Policy, by which they are bound, in framing the tender terms.
36. The respondent nos.2 to 4 have cited *Madho Das Mundra Vs. Railtel Corporation of India Limited and another*, reported at 2021 SCC OnLine Cal 3031 and *National High Speed Rail Corporation Limited Vs. Monte Carlo Limited and another*, reported at (2022) 6 SCC 401, where it was reiterated that after having participated in a tender process, a successful bidder cannot challenge the terms and conditions of the tender or the auction document.
37. There is no reason why this Court should deviate from such proposition, as laid down by this Court as well as the Supreme Court. In fact, the defence of the petitioner is flimsy, since the mere fact, that the challenge has been preferred before entering into a contract, is not germane. The petitioner participated in the tender process, thus, submitting to the provisions of the tender document and the terms and conditions thereof. Thereafter, at the stage of entering into

contract, it does not lie in the mouth of the petitioner to challenge the provisions of the tender document itself.

- 38.** In fact, the petitioner is barred by the principle of acquiescence from throwing a challenge to the said provisions.
- 39.** Here, it is relevant to consider that the petitioner has preferred the present challenge on the high ground that the tender conditions are violative of the policy of the Government itself. An examination of the said issue leads us to a perusal of the policy itself.
- 40.** One of the arguments raised by the petitioner's is that the impugned tender connects premium to percentage instead of per tonne basis and also connects it to modulated price for the purpose of indexation. It is submitted that the same is contrary to the policy decision.
- 41.** However, the policy of the Ministry of Coal, Government of India dated February 15, 2016 does not put in place any such restriction. The only relevant stipulation is in Clause 2 thereof, where the broad guidelines for methodology for coal linkages/LOAs to non-regulated sector in competitive bidding have been stipulated.
- 42.** Sub-clause (d) of Clause 2 specifies that the initial floor price shall be set at the relevant CIL/SCCL (ROM) Price and bidders shall bid for premium above this price.
- 43.** Hence, the only consideration which has to be taken into account is that the initial floor price shall be set at the ROM Price and the bidders shall bid for premium above the said price. None of the said restrictions pertain to the premium being linked with modulated price or percentage basis.

- 44.** The other relevant consideration might be sub-clause (i) of the guidelines, which stipulates that the proportion of coal allocation between power and non-power sectors may be continued at the same level as average proportion of the last five years, that is, 75% power and 25% non-power, which may be reviewed by the Ministry of Coal as and when required.
- 45.** The said provision has also not been modified in any manner by the tender conditions.
- 46.** In sub-clause (f) of Clause 2, it is provided that that the ROM price to be paid shall be “suitably” indexed for subsequent years and the successful bid premium shall remain constant over the contract period. None of such conditions are violated if the premium is linked with modulated price or a percentage basis.
- 47.** The chart provided in sub-clause (e) is merely by way illustration and is not conclusive or exhaustive. In the said chart, the premium over CIL (ROM) price has been shown to be Rs. 200/- per tonne. The said example, however, does not in any manner curtail the right of the tender issuing authorities to introduce an additional criterion of linkage with percentage, in addition to tonnage.
- 48.** The premium on percentage basis contemplated in the tender is not in derogation of or in substitution of the tonne basis as contemplated in the guidelines.
- 49.** Rather, the same is supplementary to the ‘per tonne’ fixation of premium.

- 50.** Insofar as the absence of exit clause is concerned, sub-clause (iii) of the guidelines stipulates that there may not be prior termination of FSAs (Fuel Supply Agreements) of non-regulated sector “as of now”. Thus, rather than envisage any exit clause, the Guidelines have prohibited early exit. Hence, the absence of exit clause in the tender clauses is rather in line with the guidelines, contrary to the arguments of the petitioner.
- 51.** The petitioner cites *Amarjit Singh Ahluwalia (DR) Vs. State of Punjab and others*, reported at (1975) 3 SCC 503, for the proposition that governmental authority cannot, at its own sweet will, depart from even an administrative instruction without rational justification. *B.S. Minhas Vs. Indian Statistical Institute and others*, reported at (1983) 4 SCC 582, has also been cited by the petitioner for the proposition that it is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged, and it must scrupulously observed those standards, on pain of invalidation of an act in violation of them.
- 52.** The petitioner also cites *M.P. Power Management Company Limited, Jabalpur Vs. Sky Power Southeast Solar India Private Limited and others*, reported at (2023) 2 SCC 703, where it was held by the Supreme Court that State action, even in contractual matters, must pass the test of non-arbitrariness.
- 53.** However, the said tests are not relevant in the present case, since no patent arbitrariness or gross deviation from the Government policy guidelines has been established by the petitioner.

- 54.** The deviations alleged by the petitioner are on the application by the respondent-Authorities of the policy guidelines of the Government. However, sufficient flexibility has been permitted, even as per the said guidelines, to be exercised by the respondent-Authorities.
- 55.** The impugned decisions of the respondents, such as imposition of premium on percentage basis along with tonnage as well as linking the same to market fluctuations, cannot be said to be arbitrary, being within the discretionary jurisdiction of the authorities.
- 56.** In fact, unless that much leeway is permitted to the Government authorities, it would be extremely difficult for such authorities to function in exercise of the duties cast on them in the commercial and public sectors.
- 57.** The parameters given by the guidelines are only loose parameters, as a general indication as to the contours within which the respondents are to act. In the present case, nothing has been done by the respondent-Authorities to contravene the basic tenets of the said guidelines.
- 58.** However, the judgments cited by the respondents in favour of the proposition that courts do not readily interfere with policy guidelines, are also not relevant. For example, in *State of Punjab and others Vs. Ram Lubhaya Bagga and others*, reported at (1998) 4 SCC 117, it was held by the Supreme Court that it is not normally within the domain of any court to weigh the pros and cons of the policy or to scrutinise it and test the degree of its beneficial or equitable disposition for the

purpose of varying, modifying and annulling it, based on howsoever sound and good reasoning.

- 59.** In *State of Orissa Vs. Gopinath Dash and others*, reported at (2005) 13 SCC 495, the Supreme Court observed that the Constitution does not permit the court to direct or advice the executive in the matter of policy, unless authorities transgress their constitutional limits or statutory powers. Similarly, in *Directorate of Film Festivals and others Vs. Gaurav Ashwin Jain and others*, reported at (2007) 4 SCC 737, the Supreme Court reiterated that the courts do not act as appellate authorities examining the correctness, suitability and appropriateness of a policy and the scope of judicial review when examining a policy is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitutions or any statutory provision or is manifestly arbitrary. The legality of the policy, and not the wisdom or soundness of the same, is the subject of judicial review.
- 60.** In the present case, however, the petitioner has not challenged the policy guidelines of the Government but rely on the same, arguing that the impugned conditions of the tender are in contravention of such policy. As such, the said citations are irrelevant for the present adjudication.
- 61.** In view of the above discussions, there is nothing in the impugned conditions of the tender which require any interference by the writ court.
- 62.** However, in view of the defects in presentation of the writ petition, the petitioner is directed to file, within a week from date, the minutes of a

resolution taken by the governing body of the petitioner-Association appointing Sri Prasanna Kumar Barik as the person in whose name the society may present the writ petition. That apart, the learned Advocate on record for the petitioner is also directed to carry out the necessary amendment to the Cause Title of the writ petition by incorporating the name of Prasanna Kumar Barik as the petitioner in whose name the society is presenting the writ petition within two days from now.

63. If such steps, as directed in the immediately preceding paragraph, are not taken by the petitioner, the writ petition shall be deemed to stand dismissed on the ground of maintainability as well, apart from the other grounds stipulated above.
64. Accordingly, WPA No.12719 of 2023 is dismissed on contest, without any order as to costs.
65. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

Later

After the judgment is passed, an order of stay is prayed for.

However, since the writ petition itself has been dismissed, a stay of operation of the same would not serve any effective purpose for either of the parties.

Accordingly, such prayer is refused.

(Sabyasachi Bhattacharyya, J.)