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WPO/1504/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SRI ASHWINI KUMAR DAMANI
VS
STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 23rd August, 2023.

Appearance:

Mr. Debnath Ghosh, Adv.

Mr. Rohitendra Chandra Deb, Adv.

Mr. Saptarshi Datta, Adv.

Mr. Satadeep Bhattacharyya, Adv.

Ms. Srinjita Ghosh, Adv.

Mr. Pourush Kanti Pal, Adv.

. . .for the petitioner.

Mr. Arka Kr. Nag, Adv.

...for the State

Mr. Sagar Bandopadhyay, Adv.

Mr. Lalit Baid, Adv.

Mr. Tamoghna Saha, Adv.

Ms. Aparupa Ghosal, Adv.

. . .for the respondent no. 4.

Mr. Abhijit Ray, Adv.

. . .for the respondent no.5.

The Court: At the outset, learned counsel for the respondent no.4 seeks to raise an objection as to whether the petitioner has locus standi to maintain the present writ petition. It is argued that no legal right has been vested under Section 23 on the petitioner to file a writ petition. It is argued that no legal right

has been infringed in the present case to vest the Court with the power under Article 226 of the Constitution to issue a writ of mandamus.

In support of his argument, learned counsel for the respondent no.4 cites the language of Section 23 of the West Bengal Societies Registration Act, 1961 which opens with the words “where on information received, the State Government is of opinion . . .” .

Learned counsel for the respondent no.4 cites a five judge Bench decision of the Supreme Court in *Calcutta Gas Company (Proprietary) Ltd. versus State of West Bengal and Ors.* reported at AIR 1962 SC 1044. In the said case, the Supreme Court had observed that Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. However, in the same breath, the Supreme Court observed that it is implicit to the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right.

The Supreme Court further observed that the right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself.

Learned counsel next cites another judgment of the Supreme Court reported at (1977) 4 SCC 145 (*Bihar Eastern Gangetic Fishermen Co-Operative Society Ltd. versus Sipahi Singh and Others*) where the Supreme Court observed, inter alia, that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. It was further held that

in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.

Learned counsel then relies on *Oriental Bank of Commerce versus Sunder Lal Jain and Another* reported at (2008) 2 SCC 280. In the said judgment, the Supreme Court observed, inter alia, that the principles on which a writ of mandamus can be issued had been stated in the law of extra ordinary legal remedies by F.G. Ferris and F.G. Ferris, Jr. which have been adopted in our country.

It was observed, while quoting from the said work, that mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest Court of general jurisdiction in the name of the sovereignty, directed to any natural person, corporation or inferior Court, addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed. The chief function of the writ is to compel the performance of public duties prescribed by statute.

Mandamus, it was observed, is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the Court, subject to the well settled principles established by the Courts. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles and before granting the writ, the Court may, and should, look to the larger public interest which may be concerned.

Thus, it is argued, the present writ petition is not maintainable at the behest of the petitioner whose right as a member of the society, in any event, has not been established by any cogent document.

Learned counsel for the State adopts the argument of respondent no.4 as to maintainability at the behest of the petitioner and further submits that even from the representation annexed to the writ petition, the nature of complaints of the writ petitioner are disclosed, regarding which the relief of the writ petitioners may lie under the appropriate statutes but not under Section 23 of the Act of 1961.

In any event, it is contended that the State does not, in principle, have any objection, if directed by the Court, to look into the issues, subject to the above submissions.

Learned counsel appearing for the petitioner, in reply to the question of maintainability, cites the judgment of the Supreme Court in *Ghulam Qadir versus Special Tribunal and Others*, reported at (2002) 1 SCC 33, in which the Supreme Court had observed, inter alia, that there is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case of habeas corpus or quo warranto. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the said Article. While further commenting on the issue, the Supreme Court observed that the orthodox rule of interpretation regarding the locus standi of a person has undergone a sea change with the development of constitutional law in our country and constitutional Courts have been adopting a

liberal approach in dealing with cases or dislodging the claim of a litigant merely on hyper technical grounds. If a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition cannot be rejected on the ground of lack of locus standi. Learned counsel also places reliance on a co-ordinate Bench judgment of this Court where the learned Single Judge had passed an order on a higher footing than the present case, in so far as the Court had appointed auditors to look into the affairs of a society. It is submitted that in the present case, the petitioner only chooses a consideration of its complaint by the State Government under Section 23 of the 1961 Act.

On the question of locus standi of the petitioner, the judgments cited by the parties are uniform on the aspect that a writ of mandamus can be issued only when there is an infraction of a legal right. The infraction of a legal right, as held in the judgment of Calcutta Gas Company (supra), has further been elaborated in the subsequent judgments cited by the respondent no.4 as well.

In paragraph 15 of Bihar Eastern Gangetic (supra), the Supreme Court elaborated on the issue of infraction of a legal duty. While doing so, it was observed that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ was held to be to compel performance of public duties prescribed by statute. In such context, it was held that it has to be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.

In so far as *Tirumala Tirupati Devasthanams versus K. Jotheeswara Pillai (dead) by Lrs. And Others.* reported at 2007 9 SCC 461 is concerned, the same principle was reiterated. The Court echoed the observations in *Bihar Eastern Gangetic (supra)*, while holding there is a statutory duty imposed upon the officer concerned and there is a failure on the part of the officer to discharge the statutory obligation, which is sufficient to invoke the writ jurisdiction and issue a writ of mandamus.

In *Oriental Bank of Commerce, (supra)* the Supreme Court went a step further and also considered the observations made in the 'Law of Extra Ordinary Legal Remedies'. It was held that the very principles had been adopted in our country as well.

A scrutiny of the excerpts from the said book, quoted in paragraph 11 of the judgment, indicates that the chief function of the writ of mandamus is to compel the performance of public duties prescribed by statute. It was further observed that mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the Court subject to the well settled principles established by the Courts. Mandamus, it was observed, is classed as a legal remedy, but its issuance is largely controlled by equitable principles, looking to the larger public interest which may be considered. In fact, it was observed that a larger public interest is often overlooked by private litigants when striving for private ends.

Read in appropriate context, the above judgments clearly lay down that there are two vital components to the exercise of the writ jurisdiction while

issuing a writ of mandamus – the first, a statutory duty imposed on an authority and second, the infringement of the legal right of the applicant.

The infringement of a legal right may be of different shades and types.

As observed in the judgment of Oriental Bank of Commerce (*supra*), a legal right may be said to be infringed when the said legal right flows from a statute and imposes a statutory duty upon an official, which has not been properly undertaken by the said official. An element of public duty has to flow from the duty so cast by the statute.

Taking a proper look at the language of Section 23 of the 1961 Act which is the subject matter of consideration in the instant case, the very opening lines of the said Section speaks about the following:- “Where on information received, the State Government is of opinion that there are circumstances suggesting that the business of a society is being conducted with intent to defraud its creditors, members or any other person, or that the society is guilty of mismanaging its affairs or of any fraudulent or unlawful Act, the State Government may appoint a competent person as Commissioner for Enquiry to investigate into the affairs of the society or inspect any institution managed by the society and report on such matters as the State Government may direct...”.

Sub-section (4) of Section 23 stipulates that on the conclusion of the investigation or inspection, if directed, the Commissioner for Enquiry shall make a report to the Government on the matters on which he was directed to report. A penalty is imposed on the officer in case of default to file such report.

Sub-section (6) provides that on perusal of the report, the State Government may give such directions as it may think fit to the society for the

removal of any defects or irregularities within such time as may be specified and on the society making any default, the State Government may direct the Registrar to move the court for dissolution of society. If on a perusal of the report, as per Sub-Section (7), the State Government is of the opinion that any person is in relation to the formation, promotion, management or conduct of the business of the society, guilty of any offence for which he is criminally liable, the Government may direct the prosecution of such person for the offence.

Sections 24 and 25 of the Act deal with dissolution, respectively by resolution and by the Court.

Hence, a comprehensive perusal of the scope of Section 23 of the 1961 Act indicates that the same may culminate in directions by the State for action to be taken before the Civil Court for dissolution of the society and, if necessary, for criminal prosecution.

Both the said outcomes directly affect the interest of members, allottees and other interested persons with regard to a society.

Read in such context, the judgment of Ghulam Qadir (*supra*) cited by the petitioner acquires importance. In the said judgment, the Supreme Court was discussing the devolution of the locus standi in the constitutional writ jurisdiction. It was observed that the orthodox rule of interpretation regarding the locus standi has undergone a sea change with the development of constitutional law and constitutional Courts have adopted a liberal approach in dealing with cases or dislodging the claim of a litigant merely on a hyper technical ground.

As observed in paragraph 38 of the said judgment, in the present case, the person approached the Court has *prima facie* satisfied that the impugned inaction of the State, in not looking into and forming an opinion under Section 23 on the complaints made by the petitioner, is likely to adversely affect the petitioner's right as an allottee and a member which has its source in a statutory provision in the form of Section 23 of the 1961 Act. The petitioner has established the allotment in his favour *prima facie* from the annexures to the writ petition, including the document annexed at page 32 of the writ petition.

Section 23, in fact, casts an obligation on the State Government to consider information, in whatever form it reaches the State Government, and to form an opinion thereon as regards the criteria stipulated in the said Section. The expression "information received" may also be in the form of a specific complaint lodged by a member of a society, an allottee of a society or in some cases, even a third party stranger having some interest in the functioning of the society. In fact, Section 23(1) is wider than the above interpretation, in as much as it does not distinguish between information in the form of a complaint from a stranger and that from a member of a society or any interested person.

In the present case, it is not in doubt that the petitioner has raised certain serious complaints regarding the functioning of the society, which might or might not culminate in the options as enumerated in the last few sub-sections of Section 23 of the 1961 Act.

In so far as the citation of Chandan Chakraborty versus the State of West Bengal & Ors. reported in 2016 SCC OnLine Cal 1095 is concerned, however, I am not satisfied that any ratio was laid down therein regarding the locus standi

of the petitioner. In the said case, the writ petitioner had approached the Court with regard to complaints on the accounts in respect of a Registrar Society. The erstwhile President therein had been proceeded against for defalcation of funds of the society. The relevant documents were with the society. In such context, necessary orders were observed by the Court to be issued directing the Registrar to appoint an auditor to prepare such account etc. Since the Court was of the opinion that in the circumstances, the Registrar was to appoint a suitable auditor or auditors, the matter was not restricted to the limited question of locus standi, nor was the issue of locus standi or any aspect in that regard raised, as rightly pointed out by learned counsel for the respondent no.4 in the present case. Thus the said decision is not germane in the instant case, since no ratio regarding locus standi was laid down therein.

However, in view of the discussions above, the petitioner definitely has the locus standi to point out to the Court the inaction on the part of the State Government in not advertng to the complaints lodged by the petitioner, treating the same to be information received within the purview of Section 23(1) of the 1961 Act, and to form an opinion, on reasons ascribed by the State Government, as to whether there are circumstances suggested within the contours of Section 23 of the Act. Hence, the objection as to locus standi is turned down.

The writ petition is entertained. In view of the prayer of the writ petitioner being innocuous, the writ petition is being decided without directing affidavits, of course, with the rider that it is deemed that none of the allegations made in the writ petition are admitted by the respondents.

WPO 1504 of 2023 is, thus, disposed of by directing the respondent no.1, that is, the State of West Bengal, to decide on the complaints lodged by the writ petitioner with regard to the functioning of the cooperative society in question being the Marshall House Owners' Society, in terms of the representation annexed at pages 112 and 123 of the present writ petition. It is expected that such exercise will be completed by the State Government within four weeks from date and a decision shall be taken by the State Government as to whether it is of the opinion that the subsequent clauses of Section 23 of the 1961 Act after sub-Section (1), would be invoked or not. The outcome of such consideration shall be intimated by the respondent no.1 in writing both to the petitioner and the respondent no.4 and also to the concerned cooperative society immediately thereafter.

(SABYASACHI BHATTACHARYYA, J.)

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