

FORM NO. J (2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

THE HON'BLE JUSTICE OM NARAYAN RAI

WPA 27526 OF 2024

SANTANU KUMAR ROY

Vs.

UNION OF INDIA & ORS.

FOR THE PETITIONER : MR. ANAMITRA BANERJEE, ADVOCATE

FOR THE RESPONDENT : MR. SUBRATA KUMAR SINHA, ADVOCATE
NOS. 2 TO 5

FOR THE : MR. SHAUNAK GHOSE, ADVOCATE
RESPONDENT NO. 6 MR. MD. SUHAIL, ADVOCATE
MS. PARAMITA MONDAL, ADVOCATE
MR. SUMAN HALDER

HEARD ON : MARCH 28, 2025

JUDGMENT ON : MARCH 28, 2025

THE COURT:

1. The writ petitioner claims to be a Customer Service Provider (hereafter "CSP") engaged by the Business Correspondent (hereafter "BC"), namely, the respondent No. 6 herein. The petitioner complains that the petitioner's services as such CSP has been arbitrarily terminated by the respondent No. 6. The petitioner principally prays for a direction upon the Respondents to take steps for returning the petitioner's CSP ID to him.

2. On a pointed query from the Court as to how a writ petition would be maintained in the present fact situation, Mr. Anamitra Banerjee, the learned Advocate for the writ petitioner relies on the celebrated judgment of the Hon'ble Supreme Court rendered in the case of ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others vs. V.R. Rudani and Others***¹. Paragraph 17 of the said judgment has been relied on to submit that a writ of mandamus can be issued to any person or authority and as such, the writ petitioner is entitled to avail of the writ remedy under Article 226 of the Constitution of India against the respondents herein.
3. He further relies on the guidelines for engaging BC issued by the Reserve Bank of India on September 28, 2010 and submits that the duties performed by the petitioner are in the nature of public duties. He further submits that the petitioner is an important link between remote villages and the State Bank of India and that the CSPs like the petitioner are instrumental in drawing deposits from the villagers in remote villages to the State Bank of India. Mr. Banerjee has relied on the aforesaid guidelines issued by the Reserve Bank of India to demonstrate that the Banks have been made responsible for the actions of the BCs and their sub-agents as well.
4. It has been further submitted that as the petitioner is the ultimate delegate of the Bank only and since the petitioner's services as CSP have been terminated arbitrarily, therefore, the petitioner has rightly invoked the jurisdiction of this Court under Article 226 of the Constitution of India. He submits that the reliefs prayed for by the petitioner in the writ petition should be granted to the petitioner.
5. Mr. Sinha, the learned advocate appearing for the State Bank of India vehemently opposes the writ application. It has been submitted on

¹ (1989) 2 SCC 691

behalf of the State Bank of India that the writ application is not fit to be entertained for the primary reason that the decision whereby the writ petitioner's services was terminated, does not form part of the writ petition. A copy of the termination letter dated March 01, 2024 which enumerates the reasons for termination of the petitioner's services has been handed up to the Court. While relying thereon, it is submitted that such termination having been done by a private entity, writ jurisdiction of this Court could not have been invoked by the writ petitioner.

6. It is further submitted that BCs are engaged by the Banks on the basis of individual agreements between the Bank and the relevant BCs. In the context of the case at hand, a copy of an agreement dated March 14, 2023 entered into between the State Bank of India and the respondent No. 6 has been produced before the Court by Mr. Sinha. He has taken this Court through the various clauses of the agreement to drive home the point that even the relationship between the BCs and the Bank is purely contractual. Specific emphasis has been laid on clause 10 of the said agreement to demonstrate that the BC (who has been termed as service provider or SP in the said agreement) is to act as an independent service provider and that the BC or service provider would not be deemed to be an agent of the Bank except in respect of transactions or services which give rise to principal-agent relationship by implication or express agreement between the parties. Drawing attention of the Court to the several sub-clauses of clause 10, it has been further sought to be highlighted that none of the employees, agents, representatives and sub-contractors of the BC has been permitted to hold out or represent him/her/it as an agent of the Bank. Attention of this Court has also been drawn to annexure-A appended to the said agreement to demonstrate that the BCs are only entitled to commission income from the Bank and nothing more.

7. Mr. Sinha also relies on the agreement entered into between the respondent No. 6 and the writ petitioner to demonstrate that the writ petitioner was not permitted to use the logo or symbol of the Bank for any purpose; that the writ petitioner was to act as an independent service provider and that the petitioner would not even be deemed to be an agent of the respondent No. 6 except in respect of transactions or services which gave rise to principal-agent relationship by implication.
8. Clause 10 of the said agreement is highlighted to pinpoint that the right to terminate the agreement by giving a month's notice was reserved with the respondent No. 6. Attention of the Court has also been invited to the schedule appended to the said agreement in order to demonstrate that the remuneration paid to the writ petitioner was to be so paid by the respondent No. 6 only and not the Bank.
9. On the whole, it has been sought to be demonstrated by the Bank that there is no privity of contract between the Bank and the writ petitioner and that being so, the writ petitioner cannot maintain a writ petition against the Bank.
10. Mr. Sinha, the learned advocate appearing for the Bank places reliance on a judgment dated November 28, 2018 passed by the High Court of Rajasthan in the case of **State Bank of India vs. Ashish Kumar** in **D.B. Spl. Appl. Writ No. 1063/2018**. Paragraphs 23 to 35 of the said decision have been placed before the Court to show that it was held by the High Court of Rajasthan in the said case that BCs could not be deemed to have been employees of the State Bank of India. Relying on the said judgment, it has been submitted that since writ petitions filed by the BCs seeking the status of an employee of the State Bank of India were dismissed by the said High Court holding that writ remedy was not the appropriate remedy for the petitioner's therein, the writ petitioner here, who does not even have a direct contractual relationship or privity of contract with the

Bank, cannot be permitted to avail of the highly prerogative writ remedy. It has been brought to the notice of this Court that the judgment passed by the High Court of Rajasthan on November 28, 2018 was carried to the Hon'ble Supreme Court of India in Special Leave to Appeal (C) No. 3995/2019 and that the same was ultimately dismissed by an order dated January 8, 2020 by the Hon'ble Supreme Court.

11. The learned advocate appearing for the respondent No. 6 adopts the submissions made by the learned advocate appearing for the Bank.
12. Having heard the learned advocates appearing for the parties and having perused the material on record, this Court finds substance in the submissions made by Mr. Sinha, the learned advocate appearing on behalf of the Bank.
13. Indeed, it has not been demonstrated to any degree of satisfaction by the writ petitioner that the writ petitioner has any relationship with the Bank that would entitle the writ petitioner to avail of the extraordinary writ remedy under Article 226 of the Constitution of India. The various clauses of the two agreements that have been placed before this Court put it beyond the pale of doubt that there is no privity of contract between the Bank and the writ petitioner. In fact, existence of a contractual relationship between the Bank and the writ petitioner, would also not have *ipso facto* entitled the petitioner to approach this Court in its writ jurisdiction. Rather, authorities are legion that prohibit a writ Court from exercising discretion in favour of a person who seeks enforcement of contractual rights, vis-a-vis, a State entity, through issuance of a writ under Article 226 of the Constitution of India, unless it is demonstrated before the writ Court that either there is a public element involved in the lis presented before it or that the action of the respondent State entity in the given case is either arbitrary or unfair or discriminatory.

(See - **M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd.**²)

14. Even otherwise the writ petition deserves dismissal. The principal prayer of the petitioner is for returning of or restoration of the CSP ID to the petitioner. Such prayer can only be granted as a consequential relief upon reinstatement of the petitioner as a CSP. This in turn will be possible only if the petitioner's termination is set aside. To get the order/letter of termination annulled there must be a challenge thrown to it which unfortunately is lacking in the petitioner's petition. The deletion of the petitioner's CSP ID is just a consequence of the termination of his services by the respondent no.6. It is now very well settled that challenge to a consequential order cannot be entertained if the basic order/main order is left unassailed. (See- **Edukanti Kistamma v. S. Venkatareddy**³)
15. The celebrated judgment of the Hon'ble Supreme Court in the case of **Andi Mukta Sadguru** (supra) that has been cited unfortunately does not help the petitioner. Indeed, as held in **Andi Mukta Sadguru** (supra), writ can also be issued to a private person but then the same can be done only if such person is discharging public functions. The opening sentence of paragraph 15 and the entirety of paragraph 20 of the said report are the most edifying in the present context. The same read thus:

“15. If the rights are purely of a private character no mandamus can issue.

20. *The term “authority” used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights*

² (2023) 2 SCC 703

³ (2010) 1 SCC 756

as well as non-fundamental rights. The words “any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.”

(Emphasis supplied by underlining)

16. Indeed, State Bank of India is amenable to the writ jurisdiction of this Court but not at all at the instance of the petitioner in the present case inasmuch as there is nothing done by the Bank for the petitioner to be aggrieved. The petitioner’s grievance owes its genesis to the act/action of a private person being the BC (i.e. the respondent no.6) with whom the petitioner had an agreement. There is no public duty involved in the relationship between the respondent no.6 and petitioner. The respondent no.6 is therefore also not amenable to the writ jurisdiction of this Court. In view of the aforesaid, the writ petition is not entertained.
17. The petitioner is left free to avail of such other remedies as may be available to him under law. The writ petition being **WPA 27526 of 2024** is thus **disposed of** without any order as to costs.
18. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(OM NARAYAN RAI, J.)