

SUPREME COURT OF INDIA

Sujitendra Nath Singh Roy

Vs.

State of West Bengal

C.A.No.7535 of 2011

(Vikramajit Sen and Shiva Kirti Singh JJ.)

13.03.2015

JUDGMENT

SHIVA KIRTI SINGH, J.

1. Heard learned counsel for both the parties. This appeal has been preferred to assail an order dated 20th March 2009 by the High Court at Calcutta in W.P.L.R.T. No.54 of 2009. The High Court placed reliance upon a Division Bench judgment of that very Court in the case of Manju Banerjee v. Debabrata Pal reported in (2006) 1 WBLR (Cal) 147 and held the writ petition preferred by the appellant to be not maintainable. The issue raised in this appeal is whether a writ application is maintainable against an order of West Bengal Land Reforms and Tenancy Tribunal ('the Tribunal'), refusing to initiate contempt proceedings against an authority arrayed as respondent no.5 before the Tribunal. Such pristine question of law does not require any reference to the facts which led the appellant to file O.A.No.2744 of 2007 corresponding to M.A.No.24 of 2008 before the Tribunal with a prayer to initiate proceeding under the Contempt of Courts Act, 1971.

2. Learned counsel for the appellant has placed before us the Division Bench judgment of Calcutta High Court in the case of Manju Banerjee (supra) and has submitted that the view taken therein that there is no right of appeal against dismissal of contempt proceeding, is correct and requires no discussion but the further view that even in gross cases of palpable contempt the concerned informant aggrieved by refusal to initiate contempt proceeding can move only the Supreme Court under Article 136 of the Constitution of India, has been assailed on the ground that such observation in the judgment is on account of non-appreciation of relevant facts in the judgment of the Constitution Bench of Supreme Court in the

case of *L. Chandra Kumar v. Union of India* (1997) 3 SCC 261. On behalf of appellant, it was further submitted that judgment in the case of *L. Chandra Kumar* (supra) was rendered on 18th March 1997. The relevant Act, i.e., The West Bengal Land Reforms & Tenancy Tribunal Act, 1997 (for brevity referred to as the 'Act of 1997') was enacted subsequently in terms of the enabling provisions under Article 323B of the Constitution of India. Under Section 15 of the Act of 1997 the Tribunal has been vested with such power to punish for its contempt as is vested in the High Court under the provisions of the Contempt of Courts Act, 1971. For convenience, Section 15 is set out hereinbelow:

"15. Power to punish for contempt of Tribunal.-The Tribunal shall have, and shall exercise, the same jurisdiction, power and authority in respect of contempt of the Tribunal as a High Court has and may exercise, and, for this purpose, the provisions of the Contempt of Courts Act, 1971, shall have effect, subject to the modifications that-the reference therein to a High Court shall be construed as a reference to the Tribunal, and the reference therein to the Advocate-General in Section 15 of the said Act shall be construed as a reference to the Advocate-General of the State."

3. There is no caveat to the proposition of law that under Section 19 of the Contempt of Courts Act, 1971 an appeal lies before the Supreme Court only against such order of the High Court which imposes punishment for contempt and no appeal will lie against an interlocutory order or an order dropping or refusing to initiate contempt proceedings. This was clearly laid down in the case of *State of Maharashtra v. Mahboob S. Allibhoy* (1996) 4 SCC 411. This view was also followed in several cases including in the case of *Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda* (2006) 5 SCC 399. In the case of *L. Chandra Kumar* (supra) a Constitution Bench of this Court declared certain clauses in Articles 323A and 323B of the Constitution of India to be unconstitutional to the extent they excluded the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution. This was on the premise that power of judicial review is a basic and essential feature of the Constitution and, therefore, could not be taken away even by constitutional amendment. Paragraphs 91, 92 and 93 of this judgment were highlighted by learned counsel for the appellant in support of his submission that all decisions of tribunals created pursuant to Article 323A or Article 323B of the Constitution have been held to be subject to the High Courts' writ jurisdiction under Article 226/227 of the Constitution.

4. On the other hand, learned counsel for the respondents relied upon paragraph 4 in the case of *Mahboob S. Allibhoy* (supra) wherein it was clarified that no appeal

is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt in terms of Section 19 of the Contempt of Courts Act, 1971. It was also submitted that since under Section 15 of the Act of 1997 the Tribunal enjoys same jurisdiction, power and authority as a High Court in respect of contempt under the provisions of the Contempt of Courts Act, therefore, High Court cannot exercise power of judicial review when the Tribunal exercises same powers as that of the High Court to reject or drop a contempt petition.

5. On a careful consideration of judgment of the Division Bench in the case of Manju Banerjee (supra) which has been followed in the impugned order, we are unable to agree with the view that writ petition under Article 226/227 of the Constitution is not maintainable when the Tribunal refuses to initiate a contempt proceeding. Such inference has been drawn by the Division Bench on the basis of some judgments of this Court such as in the case of D.N. Taneja v. Bhajan Lal (1988) 3 SCC 26. In those cases the order refusing to initiate proceeding had been passed by the High Court and not by a tribunal and, therefore, this Court observed that in a fit and proper case the aggrieved person who informed the court of the alleged act of contempt can approach the Supreme Court under Article 136 of the Constitution of India. Obviously in those cases there could be no occasion to observe that the aggrieved person can also approach the High Court under Article 226/227. The submission that because of similar powers of contempt vested in the Tribunal under Section 15 of the Act of 1997, the Tribunal ceases to be inferior to the High Court for exercise of writ jurisdiction is devoid of any substance because it ignores that High Courts have constitutional status and are vested with extraordinary writ jurisdiction whereas the Tribunal is only a creature of statute. Hence, in our considered view, in the case of Manju Banerjee (supra) the Division Bench of the Calcutta High Court does not lay down the law correctly that when the tribunal refuses to initiate contempt proceeding, the aggrieved person has remedy only under Article 136 and not under Article 226/227 of the Constitution.

6. As held by the Constitution Bench in the case of L. Chandra Kumar (supra) the power of judicial review of the High Court under Article 226/227 of the Constitution cannot be taken away by a law or even by a constitutional amendment. Hence, it will be indeed a rare case where the High Court can hold that a writ petition against any order of inferior court or tribunal is not maintainable. However, we hasten to add that it is always open for the High Court, in appropriate cases, to hold that a writ petition is not entertainable on account of propriety, constitutional scheme, some settled rules of self-restraint or its peculiar facts.

7. In view of the aforesaid discussion, the impugned order is set aside and the matter is remitted back to the High Court for considering the writ petition of the appellant afresh on its own merits and as per law. We make it clear that we have not applied ourselves to the merits of the matter. The appeal is allowed to the aforesaid extent. No costs.