Asoke Ghose Vs Susanta Debanshi and Others

M.A.T. No. 247 of 2005 and CAN No. 827 of 2005 in Writ Petition No. 17077 (W) of 2002

Court: Calcutta High Court

Date of Decision: July 25, 2006

Citation: (2007) 2 CHN 197 : 110 CWN 846

Hon'ble Judges: Prabuddha Sankar Banerjee, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Bimal Chatterjee, Kalyan Bandopadhyay and Swapan Banerjee, Sajal Chakraborty, for the Appellant; Kashi Kanta Moitra, Partha Dutta, Madhusudan Dutta, for the Respondent

Final Decision: Dismissed

Judgement

Bhaskar Bhattacharya, J.
This mandamus appeal is at the instance of a private respondent and is directed against the order dated January

28, 2005 passed by a learned Single Judge thereby allowing a writ application by directing the State respondent to allow the writ petitioner to

function as M.R. Dealer in the village Dakshin Rasa on the basis of and pursuant to the order dated 18th March, 2002 issued by Sub-Divisional

Controller (F & S) Suri, Birbhum.

2. The facts giving rise to filing of this mandamus appeal may be summed up thus:

(a) The Sub-Divisional Controller (F & S) Suri, published an advertisement inviting applications for appointment of an M.R. Dealer at Dakshin

Rasa in the district of Birbhum. The writ petitioner and the respondent No. 5, among others, submitted application in response to the said

advertisement.

(b) The candidature of the writ petitioner was recommended by the Enquiry Officer as the most suitable candidate for the appointment of M.R.

Dealership in question and the report of the Enquiry Officer was thereafter forwarded to ""Khadya-O-Sarabaraha Sthayee Samity"" (hereinafter

referred to as K.O.S.S.S.) for necessary adjudication.

(c) The respondent No. 5 filed a writ application before this Court challenging the authority of K.O.S.S.S. to take part in the selection process for

the appointment of M.R. Dealership. The said writ application on behalf of the respondent No. 5 being W.P. No. 19644 (W) of 2000 was initially

moved before this Court on 21"" November, 2000 whereupon the Hon''ble Justice Basudeva Panigrahi passed an interim order granting liberty to

the Sub-Divisional Controller, Suri, to make an ad hoc appointment of M.R. Dealership ignoring the recommendation of K.O.S.S.S. and after

considering the qualifications of all other claimants including the writ petitioner and the respondent No. 5.

(d) Pursuant to the aforesaid order passed by Basudeva Panigrahi, J., the Sub-Divisional Controller issued memo dated 18th December, 2000

thereby provisionally appointing the writ petitioner as M.R. Dealer at Dakshin Rasa on purely ad hoc basis.

(e) The writ petitioner thereafter filed a writ application before this Court in connection with the said appointment which was numbered as W.P.

No. 4720 (W) of 2001. Both the aforesaid writ applications being W.P. No. 4720 (W) of 2001 and the earlier one namely, W.P. No. 19644 (W)

of 2000 filed by the respondent No. 5, were finally disposed of by order dated 30th February, 2002 passed by Ashim Kumar Banerjee, J. by

which the Sub-Divisional Controller, Suri was directed to consider the issue of appointment of concerned M.R. Dealership ignoring the

recommendation of K.O.S.S.S. and after taking into consideration the Inspection Report. His Lordship directed the Sub-Divisional Controller to

pass a reasoned order while making such appointment. His Lordship further made it clear that the writ petitioner in W.P. No. 4720 (W) of 2001

would not claim any equity on the basis of his appointment on the ad hoc arrangement earlier passed by virtue of the liberty granted by Panigrahi, J.

(f) In compliance with the aforesaid order dated 20th February, 2002, the Sub-Divisional Controller, Suri, passed a reasoned order on 18th

March, 2002 thereby regularising the earlier appointment of M.R. Dealership 1 in favour of the writ petitioner by holding that he was the fittest

candidate.

(g) Challenging the said order dated 18th March, 2002, passed by the Sub-Divisional Controller, Suri, the respondent No. 5 filed another writ

application being W.P. No. 6080 (W) of 2002 and the said application was finally disposed of by Amitava Lala, J. by order dated 12th August,

2002 with the direction to the District Controller (F & S), Suri, to consider the representation of the respondent No. 5 for appointing him as the

M.R. Dealer within a period of one month from the date of communication of that order giving him fullest opportunity of hearing and by passing a

reasoned order.

(h) In compliance with the aforesaid order passed by Lala, J., the District Controller (F & S), Birbhum, by the order dated 13th September, 2002

without hearing any other person than the respondent No. 5 directed the Sub-Divisional Controller to take necessary measure for appointing the

respondent No. 5 as M.R. Dealer of Rasa village and consequently, the Sub-Divisional Controller issued memo dated 25th October, 2002

terminating M.R. Dealership of the writ petitioner. The writ petitioner however, preferred an appeal before the Division Bench of this Court

challenging the order dated 12th August, 2002 passed by Amitava Lala, J. in W.P. No. 6080 (W) of 2002 on September 13, 2002 and

subsequently, filed a separate writ application on November 14, 2002 out of which the present appeal arises challenging the order dated

September 13, 2002 passed by the District Controller and the subsequent order dated October 25, 2002 passed by the Sub-Divisional

Controller.

(i) The mandamus appeal, preferred against the order of Lala, J. was ultimately allowed thereby setting aside the order passed His Lordship. The

Division Bench while allowing the appeal did not make any observation about the pending writ application and kept all points open.

3. The present writ application was opposed by the present appellant but ultimately, the learned Single Judge by the order impugned herein has

allowed the writ application thereby directing the Sub-Divisional Controller to give effect to the order dated March 18, 2002 regarding

appointment of M.R. Dealer in favour of the writ petitioner pursuant to the order passed by Ashim Kumar Banerjee, J.

4. Being dissatisfied, the respondent No. 5 has come up with the present mandamus appeal.

5. After hearing Mr. Chatterjee, the learned senior Counsel appearing on behalf of the appellant and Mr. Moitra, the learned senior Counsel

appearing on behalf of the writ petitioner and after going through the materials on record we find that pursuant to the order passed by Ashim

Kumar Banerjee, J. the Sub-Divisional Controller regularised the previous ad hoc appointment in favour of the writ petitioner. It is true that such

order was challenged by the present appellant by filing a separate writ application before Amitava Lala, J. and the said writ application having been

allowed, the District Controller, subsequently, passed a fresh order of appointment in favour of the appellant. However, the Division Bench having

set aside the order passed by Lala, J., the subsequent orders passed pursuant to the order of Lala, J. became ineffective. Since, the order passed

by the Division Bench is binding upon the parties there is no question of disputing the correctness of the earlier order of the Sub-Divisional

Controller which was passed pursuant to the order passed by Ashim Kumar Banerjee, J. The Division Bench in the earlier appeal found that the

order of Lala, J. was not correct and set aside the same and thus, there was no justification of interfering with the earlier order passed by the Sub-

Divisional Controller regularising the appointment of the present writ petitioner. The questions now sought to be raised before us by the appellant

regarding the merit of the earlier order regularising the appointment of the private respondent were all available to the appellant in the earlier

mandamus appeal where they figured as respondent and thus, those questions are no longer open to them being barred by the principle of

constructive res judicata,

6. Therefore, the learned Single Judge did not commit any illegality in directing the Sub-Divisional Controller to immediately give effect to the

earlier order regularising the appointment of the writ petitioner in the post of M.R. Dealer which has since revived and attained finality the moment

the order passed by Lala, J. has been set aside by the Division Bench.

7. We, therefore, find no merit in this appeal and the same is dismissed accordingly. In the facts and circumstances, there will be, however, no

order as to costs.

Prabuddha Sankar Banerjee, J.

8. I agree.