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Calcutta High Court

Case No: W.P.C.T. No. 523 of 2006

Kallol Bhattacharjee and Others		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: Dec. 13, 2006

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 19
- Constitution of India, 1950 - Article 226, 227

Hon'ble Judges: Kishore Kumar Prasad, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Sandeep Sanyal and Sukanta Das, for the Appellant; Uday Sankar Bhattacharya, for the Respondent

Judgement

1. This writ-application under Article 226/227 of the Constitution of India is at the instance of applicants u/s 19 of the Administrative Tribunal Act, 1985 and is directed against order dated 2nd May, 2006 passed by the Central Administrative Tribunal, Calcutta Bench, thereby rejecting the application filed by the writ-petitioners before such Tribunal on the ground of want of necessary parties.

2. In the application before the Tribunal the grievance of the writ-petitioners were that one Smt. Sumita Sengupta and Sri Ranjan Ghosh were improperly given promotion by superseding the writ-petitioners and they challenged such order.

3. The Union of India in its reply took specific plea that the application was not maintainable in the absence of those two persons.

4. The Union of India having taken such preliminary objection as regards the maintainability of the application for want of necessary parties in the re joinder filed by the present writ petitioners although they maintained their stance that even in the absence of

those persons the application was maintainable, nevertheless it was specifically stated that the writ petitioners were ready to make those persons parties, if so directed by the Tribunal.

5. As indicated earlier, the Tribunal by the order impugned herein has rejected the application on the ground of want of necessary parties.

6. Being dissatisfied, the applicants have come up with the present writ-application.

7. The learned Advocate appealing on behalf of the Writ-petitioners has vehemently contended before us that in the rejoinder before the Tribunal his clients having agreed to make those persons parties, in the event the Tribunal accepted the preliminary objection taken by the Union of India, the Tribunal ought not to have dismissed the application altogether for want of necessary parties. According to the learned advocate for the writ-petitioners, once the Tribunal came to the conclusion that the application Was not maintainable for the absence of those two persons, his clients having agreed to make those persons parties, ought to have passed direction for making Those persons as parties instead of dismissing the application altogether.

8. The learned Advocate appearing on behalf of the Union of India has opposed the aforesaid contention advanced by the learned Advocate for the writ petitioners and has contended that his client having taken specific plea as regards non joinder of the parties, the writ petitioners ought to have accepted such position of making those persons as parties immediately without waiting for the decision of the Tribunal.

9. Alter hearing the learned Counsel for the parties and alter going through the materials on record, we find substance in the contention of the writ-petitioners that in such a situation, the Tribunal instead of dismissing the application altogether ought to have given an opportunity to implead those persons as parties.

10. It is now settled law that if the defendant in a proceeding takes any objection as regards the maintainability of the proceedings in the absence of necessary party, it is for the plaintiff to decide whether it will accept the objection of the defendant or will take the risk by proceeding in absence of those alleged parties.

11. In the case before us, once such objection was taken by the Union of India, although the writ petitioners maintained their original stance that those two persons are not necessary parties, they also specifically stated in the rejoinder that in the event the Tribunal accepts the aforesaid preliminary objection of the Union of India, they are ready to make those persons as parties.

12. In such a situation in our view, it was the duty of the Tribunal to decide that issue as a preliminary issue as the same was a pure question of law and once it is held that the preliminary objection taken by the Union of India was justified, it ought to have, instead of dismissing the application at that stage, given mm opportunity to implead those persons

as parties.

13. We, therefore, set aside the order impugned and direct the writ-petitioners to make those two persons as parties in the original application filed before the Tribunal. Such step should he taken within three weeks from today. If such application is filed, the Tribunal will dispose of such application after Riving an opportunity of hearing to the Union of India as well as those two added parties and thereafter will proceed on merit in accordance with law.

14. We make it clear that we have otherwise not gone into the merit of the matter and we approve the decision of the Tribunal that for effective adjudication of the dispute involved those two persons are necessary parties.

15. With the above observation this application is disposed of accordingly.

16. Let Xerox certified copy of this order, if applied for, be supplied to the parties within a week from the date of making of such application on compliance with requisite formalities.