

## Rajesh Kumar and Others Vs Rajan and Others

**Court:** Calcutta High Court

**Date of Decision:** March 8, 2005

**Acts Referred:** Administrative Tribunals Act, 1985 â€” Section 19

Constitution of India, 1950 â€” Article 226, 227

Criminal Procedure Code, 1973 (CrPC) â€” Section 482

**Citation:** (2006) 2 CALLT 387 : (2006) 4 CHN 633 : (2006) 110 FLR 604

**Hon'ble Judges:** Subhro Kamal Mukherjee, J; Arun Kumar Bhattacharya, J

**Bench:** Division Bench

**Advocate:** Haradhan Banerjee and Amitava Pain, for the Appellant; H.R. Bahadur, for administration and K. Vijay Kumar, for the Respondent

**Final Decision:** Allowed

### Judgement

Subhro Kamal Mukherjee, J.

This is an application under Article 226 of the Constitution of India against the orders dated December 21,

2005 passed by the Central Administrative Tribunal, Calcutta Bench, Circuit Bench at Port Blair.

2. The writ petitioners, by filing an application u/s 19 of the Administrative Tribunals Act, 1985, challenged the selection process in the posts of

Inspectors and Sub-Inspectors of Co-operative Societies. The said application was registered as O.A. No. 67/AN/2002.

3. Before the judgment could be pronounced in the said case, the petitioners filed an application for withdrawal of the said application u/s 19 of the

Administrative Tribunals Act, 1985. It was contended that all the petitioners were not interested to proceed with the said application as by efflux of

time they have got their own sources of income. The said application was registered as MA No. 29/AN/2005.

4. The Tribunal, however, by the order impugned, rejected such application as the hearing of the main application was concluded and order was

reserved. After rejection of the application, the Tribunal allowed the application u/s 19 of the Administrative Tribunals Act, 1985 and set aside the

selection process so far as the Sub-Inspectors of Co-operative Societies were concerned.

5. Being aggrieved, the petitioners have come up with this application.

6. We have perused the application for withdrawal. The petitioners wanted to withdraw and abandon their claims without permission to file fresh

application on the same subject-matter.

7. In *Sm. Saraswati Bala Samanta and Others Vs. Surabala Dassi and Others*, , a Division Bench of this Court, *inter alia*, holds that if the plaintiff

desires to withdraw the suit and does not want permission to institute a fresh suit, he is at liberty to do so. The Court has no discretion in the matter

and the plaintiff is entitled to withdraw the suit as a matter of right. The consequence of such withdrawal is that the plaintiff is precluded from

instituting any fresh suit in respect of the subject-matter of the suit.

8. The Supreme Court of India in the case of *Hulas Rai Baij Nath Vs. Firm K.B. Bass and Co.*, , *inter alia*, holds that law gives an unqualified right

to a plaintiff to withdraw from a suit, and if no permission to file a fresh suit is sought, the plaintiff becomes liable for such costs as the Court may

award and becomes precluded from instituting any fresh suit in respect of the subject-matter.

9. The principle of withdrawal from or abandonment of the proceedings is based on the maxim *invito beneficial non datur* meaning that a benefit is

not conferred on one, who is unwilling to receive it; that is to say, no one can be compelled to accept a benefit. Every man may renounce a benefit

or waive a privilege, which the law has conferred upon him. Law confers upon a man no right or benefit, which he does not desire. Second

proceeding after withdrawal or abandonment of first proceeding is barred, not because of the principles of the *res judicata*, as there has been no

adjudication, but because, whoever waives, abandons or disclaims a right, will lose it.

10. The reliance placed by the Tribunal in the case of *State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others*, , was misplaced. That

was the case of a police officer. It was detected that the police officer was in possession of pecuniary resources or properties in his name and/or in

the names of the members of his family, close relative and associate, which were found to be disproportionate to his known source of income. The

Government of Maharashtra accorded sanction to the prosecution of the said public servant. The police officer filed one criminal writ petition in the

High Court u/s 482 of the Code of Criminal Procedure, 1973 or under Article 227 of the Constitution of India and, by the judgment impugned

before the Apex Court, the High Court quashed the proceedings pending before the learned Special Court, Greater Bombay, against the public

servant. During the course of his argument, the learned Advocate appearing for the public servant submitted that the public servant should be

allowed to withdraw the original writ petition and he should be permitted to agitate all the contentions, which he had raised, before the learned

Special Judge. In the aforesaid background, the Apex Court observed that it was strange that when the petition had been filed in the High Court,

judgment obtained and the losing party came to the Superior Court, then, in order to avoid an unfavorable order, a request should be made for

the withdrawal of the original proceeding in an effort to avoid an adverse decision from the Superior Court with a view to repaginate the same

contentions once again before the Subordinate Court. The Supreme Court deprecated such practices as such practices would be opposed to

judicial discipline and might lead to unhealthy practices which would not be conducive. On the facts of the case, the Supreme Court declined

permission to the public servant to withdraw his writ petition.

11. In this case, the judgment was not pronounced in the matter. Before the Tribunal could pronounce the judgment, the petitioners unconditionally

prayed for leave to withdraw the proceeding. The Tribunal had no discretion left in the matter; the Tribunal had no option, but to allow such

prayer.

12. Therefore, the order impugned dated December 21, 2005 passed by the Central Administrative Tribunal, rejecting the application for

withdrawal, are not based on the proper legal tests. The order impugned is set aside. The application for withdrawal is, thus, allowed. The order of

the Tribunal dated December 21, 2005 allowing the application u/s 19 is also set aside. The, application u/s 19 of the Administrative Tribunals Act,

1985, which was registered as O.A. No.67/AN/2002, is dismissed.

13. This application is, thus, allowed.

14. We make no order as to costs.

Arun Kumar Bhattacharya, J.

I agree.