

(2006) 01 CAL CK 0035

Calcutta High Court

Case No: M.A.T. No. 003 of 2005 with C.A.N. No. 002 of 2006

Parul Debnath and
Others

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: Jan. 18, 2006

Citation: (2006) 3 CHN 462

Hon'ble Judges: Tapan Kumar Dutt, J; Jayanta Kumar Biswas, J

Bench: Division Bench

Advocate: B.K. Das, for the Appellant; S.K. Mondal, for the Respondent

Final Decision: Allowed

Judgement

Jayanta Kumar Biswas, J.

This appeal has been preferred against the order of the Single Judge dated December 8, 2005, which is :

After having heard both the learned Advocate Mr. B. K. Das and Mr. S. K. Mondal, appearing on behalf of the petitioners and the concerned respondents respectively, the order was passed Yesterday namely on 7.12.2005.

The matter has appeared today in the cause list as "to be mentioned" at the instance of this Court. It is found from the cause title of the present writ petition that about 130 writ petitioners, who are employed as Home Guards have joined together and filed one writ application to obtain relief individually in their favour.

If the writ petition succeeds, all the writ petitioners, who have joined together in this writ petition, will be individually benefited in respect of their claims in this writ application. However, I am not minded to direct each writ petitioner to file a separate writ application at this stage.

Instead, the writ petitioners, who are 130 in number, shall individually pay Court-fees, except those who have already paid Court-fees, fixed for one writ application each within a period of four weeks from date.

The above direction for payment of Court-fees is to be treated to be mandatory by each of the writ petitioners herein. This order is to be treated as part of the order dated 7.12.2005.

2. The order impugned in the appeal was made in the writ petition (No. 195 of 2005) that was taken out by 130 persons jointly. All the petitioners were working as Home Guards in the Andaman and Nicobar Home Guard Organization under the A and N Administration.

3. In view of the various decisions given from time to time by different Courts regarding regularisation and absorption of the Home Guards working under the A and N Administration, the respondents in the writ petition prepared a scheme for the purpose. It was notified by the administration on April 05,2005. Terms and conditions of the scheme were to govern all the writ petitioners.

4. They felt that terms and conditions of the scheme had not been determined according to the various decisions given by the Courts in the previous cases. Hence, questioning the reasonableness and propriety of the scheme they took out the writ petition, and for the purpose they joined together.

5. While they prayed for mandamus directing the respondents to prepare the scheme according to the observations made and decisions given in the cases previously filed, they also prayed for incidental reliefs.

6. Since one writ petition was filed by all of them, they paid Court-fees necessary for one writ petition. By the impugned order the Single Judge directed them to pay Court-fees necessary for presenting 130 writ petitions.

7. Advocate for the appellants submits that since there was only one cause of action and all the 130 persons wanted relief in connection with the scheme framed by the respondents in the writ petition for all the Home Guards including the 130 persons who joined in the single writ petition, they were entitled to join in one writ petition as petitioners.

8. He says that if all the 130 writ petitioners brought separate writ petition, common question of law as well as of fact would arise regarding the reasonableness and propriety of the terms and conditions mentioned in the scheme concerned.

9. According to him there was no need to file 130 separate writ petitions when the cause of action was not more than one, and hence one writ petition was rightly filed by all the 130 person affixing Court-fees required for one petition.

10. Facing with the situation Advocate for the respondents finds really little to say. He only points out that the impugned order was made by the Court suo motu and

not because of any objection raised by his clients.

11. In our view, on the facts of the case, there is no need to direct the 130 writ petitioners to pay Court-fees for 130 writ petitions. It has not been held by the Single Judge that all the 130 persons were not entitled to join in one writ petition.

12. If all of them are not entitled to join in one writ petition, then they cannot remain joint petitioners in one writ petition only by paying Court-fees required for 130 writ petitions. In our view, it cannot be said that the single writ petition presented by them is hit by the rule of multifariousness, a rule of convenience only. The question of payment of Court-fees is connected with the service wanted, not the benefits expected to flow from the orders.

13. We agree with Advocate for the appellants that since all the 130 persons decided to question the same scheme notified by the respondents, they were entitled to join in one writ petition. We also agree with him that if all the 130 persons brought separate writ petitions, then common question of law as well as of fact would arise in all the cases. We find that he is right in saying that the writ petition did not involve more than one cause of action.

14. These being the factual and legal positions, we are of the view that there is no reason to ask the appellants to pay Court-fees necessary for presenting 130 writ petitions.

15. For these reasons we allow the appeal. The order dated December 8, 2005 is hereby set aside. The writ petition, we are told that it was admitted, shall be taken up for consideration on merits. Parties will be at liberty to exchange their affidavits according to the directions given in the writ petition. There shall be no order for costs in the appeal.

16. The stay application (C. A. N. No. 002 of 2006) is not appearing today. By consent of Advocates for the parties, we treat it as on the day's list, and it is being disposed of as such.

17. In view of this order made by us disposing of the appeal finally, nothing remains to be decided in the stay application. Hence, we order that the application shall be deemed to be disposed of also without any order for costs in it.

18. Urgent certified xerox copy of the order, if applied for, shall be given to the parties, on the usual undertaking.

Tapan Kumar Dutt, J.

18. I agree.