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UNION OF INDIA AND ANR.

v.

AYUB ALI

AUGUST 30, 2006

B

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Constitution of India, 1950:

C *Article 226—Writ petition—Disputed questions of facts cannot be gone into in Writ petition.*

Judicial discipline:

D *Decision of one High Court, on identical issues, placed before concurrent Bench of another High Court—Non-consideration of—Propriety of—Held: Is inappropriate—High Court ought to have examined whether it was in agreement with the view expressed in the earlier writ petition where some identical issues were considered.*

E The respondent was a Class II Contractor registered with CPWD. The authorities refused to grant revalidation of his enlistment on the ground that he had failed to obtain requisite marks. Feeling aggrieved, he filed Writ Petition on the ground that authorities had wrongly assessed his performance. Single Judge of High Court allowed the Writ Petition. Appellant challenged the correctness of the order of Single Judge, which was dismissed summarily.

F In appeal to this Court, appellant contended that the LPA was dismissed summarily by the Division Bench without noticing that in a similar case (*Amrit Lal's case**), the concerned writ petitioner was denied relief.

Disposing of the appeal, the Court

G **HELD:** In *Amrit Lal's case**, a Division Bench of the High Court had expressed views which *prima facie* appeared to be at variance with the view expressed by Single Judge. This judgment was placed before the Division Bench in the Letters Patent Appeal for consideration, but Letters Patent

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Appeal was summarily dismissed. The manner of disposal is clearly inappropriate. It was open to the Division Bench to examine whether it was in agreement with the view expressed in the earlier writ petition where some identical issues were considered. But that has not been done. The two factors which went into the evaluation process were delay in completion of the work and quality of work. Both these aspects normally are not to be adjudicated in writ petitions because factual adjudication is necessary. This aspect has also not been considered by the Division Bench in the impugned order. [636-D-F]

Amrit Lal v. Union of India and Ors. CWP No. 6463 of (2001), Delhi High Court Division Bench Judgment dated 1.8.2002, referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8302 of 2003.

From Judgment and Order dated 24.2.2003 High Court of Delhi at New Delhi in L.P.A. No. 684/2002.

A.S. Bhasme and V.K. Verma for the Appellants.

G. Lal, D.K. Singh and Abhijit Sengupta for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Challenge in this appeal is to the judgment of a Division Bench of the Delhi High Court dismissing the Letters Patent Appeal filed by the appellant summarily. Writ petition was filed by the Respondent alleging that his pre-existing enlistment was not revaluated on erroneous premises. The writ petition was allowed by a learned Single Judge of the High Court. The Letters Patent Appeal questioning correctness of learned Single Judge's order was dismissed.

Respondent's application for revalidation of enlistment was refused on the ground that he did not fulfill the requisite criteria. It was indicated that on evaluation of his performance he fell short of the required marks and, therefore, his request for revalidation was not acceptable. Before the High Court the stand of the respondent was that the methodology adopted in assessing his performance was erroneous. It was denied of legitimate marks. Primarily on two grounds the marks were denied to the respondent.

The present appellants in the counter affidavit filed stated that the evaluation was done correctly. Learned Single Judge noticed that there were

- A two factors for which the marks were not allotted. Firstly, it related to delay in completion of work and secondly about the quality of work. He found that some of the authorities had accepted that the delay in completion of work was not attributable to the respondent and similarly certificates have been issued about the quality of work. Accordingly, direction was given to revalidate the respondent's registration as a Class II (B&R) contractor for a period of five years from the date of expiry of the respondent's earlier enlistment.

In support of the appeal learned counsel for the appellant submitted that the summary disposal of the Letters Patent Appeal is erroneous. Though it was specifically brought to the notice of the High Court that in a similar case, the concerned writ petitioner was denied relief. Letters Patent Appeal was dismissed by the Division Bench even without noticing the said judgment.

In response, learned counsel for the respondent submitted that the learned Single Judge has analysed the factual position elaborately and, therefore, the Division Bench was justified in summarily dismissing the Letters Patent Appeal.

We find that a Division Bench of the High Court in *Amrit Lal v. Union of India and Ors.* (CWP No. 6463 of 2001) by judgment dated 1.8.2002 had expressed views which *prima facie* appeared to be at variance with the view expressed by learned Single Judge. This judgment appears to have been placed before the Division Bench in the Letters Patent Appeal for consideration; but Letters Patent Appeal was summarily dismissed. The manner of disposal is clearly inappropriate. It was open to the Division Bench to examine whether it was in agreement with the view expressed in the earlier writ petition where some identical issues were considered. But that has not been done. The two factors which went into the evaluation process were delay in completion of the work and quality of work. Both these aspects normally are not to be adjudicated in writ petitions because factual adjudication is necessary. This aspect has also not been considered by the Division Bench in the impugned order.

G. It has been brought to our notice that during the pendency of the appeal this Court had permitted a fresh evaluation of the respondent's application for revalidation. It is pointed out by learned counsel for the appellant that on revaluation also the respondent was not found eligible. We do not think it necessary to deal with that aspect presently. It would be appropriate for the Division Bench of the High Court to hear the LPA No.684

of 2002 afresh and to dispose it of by a reasoned order. We make it clear that **A** we have not expressed any opinion on merits.

Appeal is accordingly disposed of without any orders as to costs.

D.G.

Appeal disposed of.

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