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Court : Patna

Decided On : Jul-04-1995

Judge : P.K. Deb, J.

Appeal No. : Civil Writ Jurisdiction Case Nos. 3056/94 and 3058/94 (R)

Appellant : Biren Poddar and ors. and Binod Poddar and ors.

Respondent : State Bank of India and ors.

Disposition : Petition Dismissed

Judgement :

P.K. Deb, J.

1. Both these writ petitions are taken up together as they relate to same set of facts and points of law involved are the same.

2. The grievances of the petitioners in both the writ petitions are that the respondent No. 1 floated its share to general public as per the decision taken by the Government of India. In the month of December, 1993, the respondent No. 1 offered twelve crores forty lacs Equity shares of Rs. 10/- each at a premium of Rs. 90/- per share. Cut of this, offer to general public was to the tune of Rs. 750 crores. Such Public issue of the equity shares of the State Bank of India was opened on 15.12.1993 and closed on 24.12.1993. Extensive advertisements were

made for wider circulation to the general public and in response to the same, the petitioners in both the writ petitions applied by filing separate and individual applications for allotment of 50 Equity Shares by depositing cheque of Rs. 5,000/- each, details of which were given in Para-9 of the writ petitions. Respondent No. 3 M/s. Mas Services (Pvt.) Ltd. was appointed as Registrar to the Issues. Final allotment of the Equity Shares were made in consultation with the Securities & Exchange Board of India and the Bombay Stock Exchange. There was overwhelming response to this public Issue and on 4.3.1994 it was published in Economic Times regarding the fixed basis of allotment of shares to the public.

3. It is the contention of the petitioners that as decided by the Management, each and every applicants were to be allotted 50 Equity Shares on firm basis and the Press release was also made to that effect, but curiously enough although all the applicants of the petitions were found to be correct and regular as per applications, they were not allotted Equity shares and letters were issued rejecting their applications. Petitioners then through their Advocate made representation but the said representation was-not paid heed to. The sum and substance of the contention of the petitioners is that when their applications were received-in regular way without any hindrance and were accepted by the Management of the State Bank of India then there applications cannot be rejected on any flimsy ground when the terms and conditions were very much there within the offer by the S.B.I, as contained in Annexure-3. When the representation of the petitioners were not attended to then CWJC No. 1499 of 1994 (R) was filed by the petitioners which was disposed of by this Court on 24.8.1994 asking the Managing Director, of the respondent No. 1 to pass an order with reasons thereto on the representations taking into consideration the basis of allotment published in Economic Times within three weeks from the date of receipt of the Order. The copy of the Order is contained in Annexure-7. By Annexure-9, an order was passed by the Managing Director stating that already the application of the petitioners were rejected before the Patna High Court passed the order as mentioned above and that the applications of the petitioners were validly rejected as multiple.

This Order has been challenged in these writ petitions.

4. It should be mentioned here that the petitioners of CWJC No. 3058 of 1994 (R) filed similar writ being filed similar writ being CWJC No. 1498 of 1994 (R) which was also disposed of in the same terms and conditions as mentioned above in CWJC No. 1499 of 1994 (R).

5. Mr. Biren Poddar, petitioner No. 1, who happens to be the Advocate of this Bar strenuously argued that the rejection of the offer on the applications made by the petitioners on flimsy ground of being multiple is against all norms and the contractual obligations cannot be ignored by the respondents on their whims when terms and conditions were properly and elaborately mentioned in Annexure-2 containing the memorandum of floating of Equity shares.

6. In the counter-affidavit filed on behalf of the S.B.I., it has been stated that the contractual obligation was closed a long time back and the deposits made by the petitioners had already been refunded to them and they had accepted the same and encashed the cheques and as such after a long time when the obligation was totally over the petitioners had no authority to move this Court that too in a writ jurisdiction.

It is the contention of Mr. Kameshwar Prasad, Advocate appearing for the S.B.I., that applications were received in a bulk and beyond, the scope of issue of Equity shares limited for the purpose and those applications were put to the Computer and when the Computer gave negative result against the application of the petitioner, the same were rejected being multiple and as such there is no scope for reopening the same even if it is contended that the rejection was not proper. His further contention is with regard to the maintainability of the writ petitions inasmuch as the contractual obligations being not a Statutory one, writ Courts have no jurisdiction to entertain the grievance and the petitioners are at liberty to move any appropriate forum for redressal of their grievance. He has referred to the decisions of the Apex Court with regard to this maintainability point in *Bareilly Development Authority and Anr. v. Ajay Pal Singh and Ors.* : [1989]1SCR743 , *Divisional Forest Officer v. Bishwanath Tea Com. Ltd.* : [1981]3SCR662 . The Apex Court has continuously maintained that when the rights flow from a contract not being a statutory one, breach of the same cannot be enforced in writ jurisdiction under

Article 226 of the Constitution of India.

7. Mr. Poddar appearing for and on behalf of the petitioner has relied on a Full Bench decision of this Court of Pancham Singh's, case, as reported in 1991 (1) PLJR, 352. In the case of Pancham Singh, a difference has been made as to the contractual obligation between the State and the individual on the basis of statutory contract and a pure contract, it has been held that when the contractual obligation flows from statutory contract the agreement is executed. In accordance with Article 229, the same cannot be cancelled on the breach of the contractual obligation without reasonable and fair play and in that circumstance writ jurisdiction can be invoked. The decision of the Supreme Court has been discussed in Pancham Singh's case.

8. Facts and circumstances of the present case totally fall with the first category of contract as enunciated by the Full Bench, The offer-contract between the respondent No. 1 and the petitioners in the present case is totally a non statutory one and purely a contractual and thus invoking of jurisdiction under Article 226 is not sustainable. In Pancham Singh's case, the statutory obligation was made between the State and the individual and same terms and conditions were afterwards varied and changed and the contractual obligations were cancelled by the State and then the Court held that the writ Court can interfere in such gross violation when the cancellation is de hors on the face of it. But, in the present case the fact is otherwise, A purely contractual and contractual agreement was floated by the State amongst the individuals and it is stated by the petitioners that the ground of rejection were not correct but there is a Clause In Annexure-3 'to the effect that if the applications were multiple then the same can be rejected. According to the petitioners, the said ground of multiplicity is only an arbitrary, finding and not based on facts.

9. This point cannot be decided by this Writ Court when there is difference of contention between the parties on this factual aspect. Moreover, the Clause-VI under Column-C of Annexure-2, there is inherent power of the Bank reserving its full unqualified and absolute right to accept or reject any application or a part of it without any reason whatsoever and the application of the petitioners were filed

fully knowing the Clause of agreement. Practically, the respondent No. 1 is not duty bound to give reasons for its refusal of entertaining the applications of the petitioners but as this Court impressed upon the respondent No. 1 to give reasons they gave reasons by Annexure-9. Moreover, it appears that the contractual obligation had already been ended long back and the petitioners had accepted the position when they encashed the refund amount sent by the respondent No. 1. In such circumstances, the petitioners are not entitled to reopen the same when acceptance is there on the face of it and admitted by the petitioners. It might be that the reasons given by the respondent No. 1 in rejecting the application of the petitioners are not proper but then also the respondent No. 1 had the unqualified right to reject the applications without giving reasons whatsoever.

On the ground of maintainability alone, these writ petitions are liable to be dismissed.

10. In the result, the writ petition are dismissed, but, no cost is awarded to either of the parties, in the facts and circumstances of the case.

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