

IN THE SUPREME COURT OF INDIA
[S.C.R. ORDER XXII RULE 2(1)]
CRIMINAL APPELLATE JURISDICTION
[UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA]
SPECIAL LEAVE PETITION (CIVIL) NO. OF 2021

[Arising out of the Judgment and final common order dated 09.11.2020 passed by the High Court of Judicature at Madras in WP.Nos.15553 & 15557 of 2020]

WITH PRAYER FOR INTERIM RELIEF

IN THE MATTER OF:

WP.Nos.15553 & 15557 of 2020

CA V.Venkata Sivakumar
S/o Late V S Gandhi
10/11, Dr. Subbarayan Nagar
Main Road Kodambakkam,
Chennai – 600 024

POSITION OF THE PARTIES

Before High Court

Before this Court

Petitioner

Petitioner

Versus

The Secretary
Institute of Cost Accountants of
India No.12,
Suddar Street
Kolkatta 700 016.

Respondent

Respondent

The Joint Secretary Union of India
Ministry of Corporate Affairs
5th Floor, A-Wing, Sastri Bhavan
Dr.Rajendra Prasad Road
New Delhi 110 001

Respondent

Respondent

The Secretary
Institute of Chartered Accountants
of India ICAI Bhawan,
Indraprastha Marg
Post Box 7100,
New Delhi 110 002

Respondent

Respondent

Mr.Atul Gupta President of ICAI
ICAI Bhawan, Indraprastha
Marg Post Box 7100,
New Delhi 110 002.

Respondent

Respondent

TO

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
HON'BLE COMPANION JUSTICES OF THE HON'BLE
SUPREME COURT OF INDIA,

THE HUMBLE PETITION OF THE ABOVE NAMED
PETITIONER

MOST RESPECTFULLY SHOWETH:

1. The Petitioner is filing the present Petition for under Article 136 of the Constitution of India against the impugned judgment and final order

dated 09.11.2020 passed by the High Court of Judicature at Madras in WP.Nos.15553 & 15557 of 2020..

2. **QUESTION OF LAW;**

The following questions of law arise in the instant petition for consideration of this Hon'ble Court:-

A Bare perusal of the facts on record, citations relied, it will become plain that the Hon'ble High Court has dealt with the case arbitrarily by dismissing the petition at the admission stage itself in spite of the fact that the petition was filed as per the ratio settled by the Hon'ble Division bench in Writ Appeal 696 of 2018 which is a clear violation of Art. 141 of the Constitution therefore the appellant prays for intervention of this Highest Court of Land to see that injustice is not perpetrated by the decisions of the Hon'ble High Court

- i. The Hon'ble High Court dismissed the petition at the admission stage itself by concluding in Para 7.....*The petitioner/party-in-person, under the garb of this litigation, wants to reopen the issue which has already been concluded in the order passed in WP.No.30203 of 2016 which came to be confirmed by the judgment in WA.No.696 of 2018 ignoring the fact that this petition is filed in accordance with the ratio laid down by The Hon'ble Division bench in WA 696 of 2018 in Para 11 The party-in-person has not filed the writ petition in his personal capacity or as a public interest litigation. Instead, it is in the nature of an action for and on behalf of the third Respondent. In effect, using a private law analogy, the present writ petition and the appeal arising there from appear to be in the nature of a derivative action.*

- a. Was the Hon'ble High Court ignored Art 141 of the Constitution and the settled law laid down by this Hon'ble Court in catena of judgments including that of Sundarjas Kanyalal Bhatija & Ors vs Collector, Thane, Maharashtra & ... SCC

“It would be difficult for us to appreciate the judgment of the High Court. One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-judge court, the Judges are bound by precedents and

procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand that where a learned single judge or a Division Bench does not agree with the decision of a Bench of co-ordinate jurisdiction, the matter shall be referred to a larger Bench. It is a subversion of judicial process not to follow this procedure”

Das Gupta, J., in Mahadeolal Kanodia v. The Administrator General of West Bengal, AIR 1960 SC 926 said (at 941):

"We have noticed with some regret that when the earlier decision of two Judges of the same High Court in Deorajin's case, 58 Cal WN 64 (AIR 1954 Cal 119) was cited before the learned Judges who heard the present appeal they took on themselves to say that the previous decision was wrong, instead of following the usual procedure in case of difference of opinion with an earlier decision, of referring no less than legal propriety form the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of co-ordinate jurisdiction in a High Court start overruling one another's decision."

Lala Shri Bhagwan and Anr. v. Ram Chand and Anr., AIR 1965 SC 1767

"It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned single judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a single judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is rounded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Judges departed from this traditional way in the present case and choose to examine the question himself."

- ii. The Hon`ble 1st Bench in the WA 696 of 2018 categorically mentioned that, the important issues having a bearing on the outcome of the petition in favor of the appellant though raised were not considered and the same was agitated in the Writ Petition 15553 of 2020 which was not considered.

Para 13..... One more issue was raised by the parties, namely, the correspondence with the Ministry of Corporate Affairs with regard to the use of the acronym ICAI. By letter dated 17.06.2020, the Ministry of Corporate Affairs had advised the first Respondent that it is not desirable for the first Respondent to use the acronym ICAI..... This correspondence was exchanged after the writ petition was filed and in light of the conclusions that we have set out above, we do not propose to issue any such direction.

- a. Was the Hon`ble High Court is justified in ignoring the issue agitated and relief sought are totally different and the prayer

for seeking issue of Writ of Mandamus is in accordance with the law settled by this Hon`ble Court.

- b. Was the Hon`ble High Court justified in ignoring the fact that the issue for adjudicated is the petition is the maintainability or the *locustandi* of the petitioner and not the merits of the case which were not decided.
- c. Was the Hon`ble High Court is justified in ignoring the fact that a bare perusal of the averments in the orders passed by the Hon`ble Division Bench will clearly establish that the 1st Respondent being the statutory body is acting *ultra vires* to the constitution by blatantly misrepresenting and cheating the innocent young students and public in a country governed by rule of law.
- d. Was the Hon`ble High Court justified in ignoring the direction of the 2nd Respondent vide its letter 17.06.2020 which in effect confirms the issues agitated and prayer sought by the petitioner in the Writ Petition 30203 of 2016

5. GROUNDS

Erroneous and Arbitrary Dismissal on grounds of lack of locus standi:

- i. Because the Hon`ble High Court totally ignored the fact that the Petitioner filed the above Public Interest Litigation in WP Nos. 15553 & 15557 of 2020. Ratio settled by the Division Bench in WA No. 696 of 2018, had categorically observed that Petitioner ought to have filed as PIL.

“The party-in-person has not filed the writ petition in his personal capacity or as public interest litigation. Instead, it is in the nature of an action for and on behalf of the third respondent.”

However, the Hon`ble High Court disregarding the ratio settled dismissed the petition *in limini*- at the admission stage itself.

- ii. Because the Hon`ble High Court ignored the fact that the Petitioner being a rightful citizen of the Country, gold medalist in graduate course, qualified auditor, being member of the 3rd Respondent institution for more than 30 years and being a

teacher teaching the curriculum of the CA studies and successfully coached thousands of students who have become CAs, further the Petitioner is one of the senior most members of the 3rd Respondent Institution holding membership for more than 3 decades and it is his moral responsibility to preserve and protect the 3rd Respondent Institution.

- iii. Because the Hon`ble High Court ignored the fact that the 3rd Respondent had not taken action against the illegal act of the 1st Respondent. This fact has also been recorded by the Learned Single Judge of Madras High Court in the W.P. No. 30203 of 2016. Relevant portion is extracted for this Court's convenience:

17. "It is to be noted at this juncture that even after such stand of the first respondent was informed to the third respondent as early as on 20.08.2015, it seems, that the third respondent has not taken any legal proceedings so far before any court of law against the first respondent."

Hence owing to the omission of duty by 3rd Respondent, Petitioner had filed the aforesaid Writ Petitions WP No. 30203 of 2016, WA No. 696 of 2018 and WP (PIL) Nos. 15553 and 15557 of 2020. Therefore Petitioner has locus standi to file the above Public Interest Litigation in order to protect his profession, its integrity, members of the professional community and young minds from being misled from their dreams and passion.

- iv. Because the Hon`ble High Court ignored the fact that the Petitioner as per Art. 51A is duty bound to work for greater public interest to protect the young children dreaming to pursue their career as CA from being misled or confused. Hence Petitioner had locus standi to file the Public Interest Litigation. Therefore PILs WP Nos. 15553 and 15557 of 2020 did not lack locus standi.

- v. Because the Hon`ble High Court ignored the fact that the Petitioner in the WA 696 of 2018, had also brought to notice the letter sent by 2nd Respondent dated 17.06.2020 requesting the 1st Respondent to desist from using the acronym ICAI to its name and the harsh reply given by the 1st Respondent vide letter dated 25.06.2020.
- vi. Because the Hon`ble High Court ignored the observation wherein, the Hon`ble High Court has recorded the aforesaid letters sent back and forth between the 1st and 2nd Respondents, it had not taken any action only upon the reason that those letters are not subject matter of Writ Appeal. The observation made by the High Court in Writ Appeal is extracted below for this Hon`ble Court's convenience:

“By letter dated 17.06.2020, the Ministry of Corporate Affairs had advised the first Respondent that it is not desirable for the first Respondent to use the acronym ICAI. However, by subsequent letter dated 26.06.2020, the earlier letter was modified and paragraph 7, which dealt with the non-desirability of using the acronym ICAI, was withdrawn by the Ministry of Corporate Affairs. By relying upon these documents, the party-in-person had contended that the Ministry of Corporate Affairs is of the view that the first Respondent should desist from using the acronym ICAI, and that a direction should be issued to that effect. This correspondence was exchanged after the writ petition was filed and in light of the conclusions that we have set out above, we do not propose to issue any such direction.”

- vii. Because the Hon`ble High Court erroneously concluded that the said PILs were distinct from the facts of the case of the Writ Petition and Writ Appeal already filed by the Petitioner and gives rise to

different cause of action. While this being so, without looking into the merits of the case, the Hon'ble High Court of Madras has dismissed the Public Interest Litigations on the grounds of lack of locus standi and matter being already settled.

- viii. Because the Hon'ble High Court disregarded the settled principle of law that there is no bar for a case dismissed on grounds of locus standi to be re-agitated in the Court of law. Law of Res Judicata shall not apply to the PILs in hand as facts giving rise to the case are distinct.
- ix. Because the Hon'ble High Court ignored the ratio laid down in the W.A. No. 696 of 2018 wherein it was categorically observed that Petitioner ought to have approached the Court by way of the Public Interest Litigation, it is the law laid down by the High Court to the specific case in hand.

As per Art 141 of Indian Constitution, law laid down by the Apex Court is binding on all citizens though they are no parties to the order. Similar though it is not laid down law, it has been constantly followed principle that decision of coordinate bench of the High Court is binding on the other coordinate bench of the same High Court. This view has been taken by the High Court of Bombay in the case of ***Vodafone India Limited v Commissioner of Central Excise, Mumbai – II – 2015 (9) TMI 583***. The relevant portion of the judgment is extracted below for this Hon'ble Court's convenience:

“It is now quite well settled that an interpretation of a statutory provision, and equally a misinterpretation, by one Bench of the High Court would be binding on a coordinate Bench of that very High Court. The subsequent Bench cannot come to the opinion that a particular provision was misinterpreted and under that pretext seek to reinterpret it again. If

the subsequent Bench is of the view that the statutory provisions are misconstrued and / or misinterpreted, the only recourse available to it would be to refer it to a larger Bench.”

- x. Because the Hon`ble High Court ignored the law settled by this Hon`ble Court on Art. 141 that when the Division Bench had taken a different opinion from the view already taken by the Coordinate Bench of the same High Court then the Division Bench ought to have referred the issue to Larger Bench. However, without referring to Larger Bench, the PILs have been dismissed erroneously.
- xi. Because the Hon`ble High Court erroneously came to the conclusion that

“(6) In the considered opinion of the Court, under the guise of filing these two writ petitions, the petitioner/party-in-person wants to re-argue the entire issue which was the subject matter of the writ petition in WP.No.30203 of 2016 as well as WA.No.696 of 2018, which came to be decided against the petitioner/party-in-person.

(7) The petitioner/party-in-person, under the garb of this litigation, wants to reopen the issue which has already been concluded in the order passed in WP.No.30203 of 2016 which came to be confirmed by the judgment in WA.No.696 of 2018 and as such, this Court is unable to come to the aid of the petitioner/party-in-person. If the petitioner/party-in-person is so advised and if it is available to him under law, he is at liberty to invoke the provisions of the Right to Information Act, before the concerned Public Information Authority to know about the fate/ stage of the representation dated 25.06.2020 submitted by the 1st Respondent.

(8) In the result, the writ petitions stand dismissed at the admission stage itself, subject to the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.”

The aforementioned observation made by the Court makes it clear that Petitioner was not given a chance to make out his case and PIL filed in the larger interest of the Public was dismissed *in limine* without being given sufficient opportunity. Hence the decision rendered by High Court in the PIL is arbitrary and deems to be set aside.

WWW.TAXSCAN.IN