

12-08-2022
Court No.1
Item no.2 & 3.
Aloke

**CALCUTTA HIGH COURT
CIRCUIT BENCH AT JALPAIGURI**

MAT 71 OF 2022
With
CAN 1 of 2022
Santa Mondal
Vs.
Prasun Sundar Tarafdar & Ors.
And
MAT 72 of 2022
With
CAN 1 of 2022
State of West Bengal & Ors.
Vs.
Prasun Sundar Tarafdar & Ors.

Mr. Kalyan Bandopadhyay, Senior Advocate
Mr. Saptangshu Basu, Senior Advocate
Mr. Ram Anand Agarwala, Advocate
Ms. Nibedita Pal, Advocate
Mr. Ananda Gopal Mukherjee, Advocate
Ms. Mousumi Das, Advocate
.....for the appellants (in MAT 71 of 2022) &
Respondent no.10 (in MAT 72 of 2022).

Mr. Parth Sarathi Sengupta, Senior Advocate
Mr. Sanjay Basu, Advocate
Mr. Piyush Agarwal, Advocate
Mr. Sourav Ganguly, Ms. Shrivalli Kajaria, Advocate
...for the appellants (in MAT 72 of 2022).

Mr. Subir Saha, Advocate
Mr. Bikramaditya Ghosh, Advocate
...for the State (in MAT 71 of 2022).

Mr. Joydeep Kar, Senior Advocate
Mr. Ekramul Bari, Advocate
Mr. Debajit Kundu, Advocate
Mr. Imtiazuddin, Advocate
.....for the respondent no.1.

Ms. Koyeli Bhattacharyya, Advocate
....for the WBBSE (in Both the Matters).

1. By consent of the parties both these appeals and the connected stay applications are taken up for hearing.
2. These appeals are directed against an order dated 4 August, 2022 (the impugned order) passed in WPA 2209 of 2021 (Prasun Sundar Tarafdar vs. State of West Bengal & Ors.) and WPA 1168 of 2022 (Santa Mondal vs. State of West Bengal and Ors.).
3. The subject matter of challenge in both the writ petitions pertains to the transfer of one Smt. Santa Mondal. In the earlier writ petition, being WPA 2209 of 2021, the writ petitioner being the Assistant Headmaster and Teacher-in-Charge of Shri Guru Vidyamandir High School (H.S.) has filed the writ petition in his personal capacity complaining of alleged illegalities and irregularities pertaining to a recommendation dated 28 September, 2021 whereby Smt. Mondal has been recommended as Headmistress of Shri Guru Vidyamandir High School (H.S.).
4. In the subsequent writ petition, being WPA 1168 of 2022 filed by Smt. Mondal, the grievance of the petitioner is directed against the refusal of the authorities to permit the petitioner to join her transfer place notwithstanding issuance of the transfer order in her favour to Shri Guru Vidyamandir High School (H.S.) from Birpara Girls High School (H.S.).

5. Before adverting to the impugned order some relevant orders which have been passed in both these writ petitions need to be highlighted:

- a) By an order dated 18 November, 2021, the writ petitioner in WPA 2209 of 2021 obtained an ex parte order of stay on the impugned recommendation on 28 September, 2021. The order was initially for a limited period and was extended by a Co-ordinate Bench on 20 December, 2021 for a period of ten weeks.
- b) By a transfer order dated 30 November, 2021 Smt. Mondal was directed to relocate as the Headmistress to Shri Guru Vidyamandir High School (H.S.). Pursuant to the said transfer order, Smt. Mondal was released by the Birpara Girls High School (H.S).
- c) Subsequently, by an order 29 April, 2022 a Learned Single Judge re-imposed and extended the interim order in favour of the petitioner in WPA 2209 of 2021.
- d) In this background, Smt. Mondal filed a writ petition being WPA 1168 of 2022 primarily on the ground that although she had been transferred she was unable to join her transfer place i.e Shri Guru Vidyamandir (H.S.). Upon this writ petition being moved, the prayer for an ad interim order was refused by the Learned Single Judge. Being aggrieved by refusal of the interim order, the petitioner preferred an appeal being MAT 62 of 2022.
- e) By an order dated 29 June, 2022 the Hon'ble Division Bench in MAT 62 of 2022, permitted Smt. Mondal to provisionally join the post of Headmistress of Shri Guru Vidyamandir High School (H.S.) as an ad interim measure.

f) Both the writ petitions have appeared subsequently before different Benches. The parties were repeatedly directed to complete their pleadings. There have also been repeated directions for the Trial Court to dispose of the writ petitions expeditiously.

g) By an order dated 14 July, 2022 a Learned Single Judge had clarified that Smt. Mondal shall perform her duties as Headmistress of Shri Guru High School in terms of the order dated 29 June, 2022 passed in MAT 62 of 2022.

6. In this background, the impugned order came to be passed. For the sake of convenience the impugned order is set out hereinbelow:

1. It appears that the transfer of the private respondent being respondent no.12 was wholly illegal to any school before completion of five years service and it is not known whether she applied through proper channel for transfer which cannot be done because of the Rule of five years service in a school before transfer and, therefore, it is alleged she wrote directly to some other official of Education Department for her transfer and the transfer order passed in favour of the respondent no.12. In respect of different illegalities CBI is making investigation in a large number of cases including other affairs of the Education Department.

2. As it has been alleged by the petitioner that the lady has been illegally transferred thrice which is wholly against the law, I direct CBI to investigate the matter along with other matters relating to School Service Commission and Education Department. For this matter C.B.I. may file a separate FIR, if necessary.

3. Today, learned advocate for the respondent no.12 prays for time who is appearing through Video Conference. I am not inclined to grant an adjournment. In view of such illegality I hold that as the transfer of the lady being respondent no.12 is void ab intio, she cannot work in Sri Guru Vidyamandir High School (H.S.), Champasari. By day after tomorrow she should go to her earlier school namely Birpara Girls'

High School (H.S.) and if she fails, there shall be a break in service.

4. *I have passed the order in presence of the learned advocate for the respondent no.12 and, therefore, she should communicate forthwith to the respondent no.12 that if she does not leave the Sri Guru Vidyamandir High School by 06.08.2022 and join Birpara Girls' High School with a copy of this order, she will face a break in service.*

5. *The question of locus of the petitioner was raised which I decide against the respondent as any illegality can be brought to the knowledge of the authority and if the authority is not reliable, it can be brought to the notice of the court and the court has jurisdiction to interfere with the illegality which I have done. The question of locus has been diluted and in such a case of blatant illegality by an authority question of locus cannot be a stumbling block. Question is whether there is an illegality or not. Here, the question is replied in the affirmative.*

6. *Learned advocate for the petitioner has relied upon a Division Bench judgement reported in (2009) 2 CHN 442 which is kept on record.*

7. *The petitioner is directed to send a copy of this order to the head of the CBI immediately so that they can take up the matter along with other matters.*

8. *Affidavit-in-opposition of the Commission be kept on record.*

9. *Said Santa Mondal is directed to meet the CBI officer as and when she would be called. CBI shall file a report in this matter along with other reports when such reports will be called for by this court.*

*This matter is treated as **heard-in-part matter.**"*

7. On behalf of the appellants it is contended that, the impugned order is liable to be set aside on the ground that it contains no reasons. It is further contended that the direction in the impugned order for the CBI to investigate the matter with liberty to

file a separate FIR if necessary unjustified and unwarranted. There was no prayer for the CBI to investigate. No specific relief had been claimed in this regard nor was there any factual foundation before the Court in passing of any such order. The further direction in the impugned order that *“unless Smt. Mondal joined Birpara Girls High School (H.S.) by day after tomorrow, there shall be a break in service”* is also wholly unwarranted and tantamounts to taking away the statutory right of appeal of a party. The appellants also assail the refusal of Trial Court to grant an adjournment of the hearing held on 4 August, 2022 sought for by the Advocate on behalf of the appellant. It is also submitted that the writ petitioner has no locus to file the writ petition. Moreover, there has been no infraction of any of the statutory Rules and Regulations. There was also no challenge to the transfer order dated 30 November, 2021 issued by the West Bengal Board of Secondary Education. As such, the directions contained in the impugned order are de hors the pleadings. A further contention raised on behalf of the appellants relates to the direction of the Trial Court to treat the matter as heard in part. The State of West Bengal adopted the submissions made on behalf of Smt. Mondal.

8. On behalf of the respondent no.1 it is contended that, the impugned order does not justify any

interference at all. It was further contended that the entire transfer proceedings beginning with the initiation of the recommendation dated 28 September, 2021 were illegal, irregular and improper. Hence, the Learned Trial Court was fully justified in passing the impugned order.

9. It is now well settled through a catena of decisions that orders or directions on the CBI to conduct an investigation are not to be passed as a matter of *routine or merely on the apprehension of a party*. This is an *extraordinary* measure and must be exercised *sparingly, cautiously* and only in *exceptional circumstances*. In passing such orders, or directions on the CBI, the Court invariably takes away the right from the police to discharge their statutory duties as per law. The purpose of such orders is to instill confidence in the investigation or where an incident may have national or international ramification. Thus, before arriving at any such conclusion, that the investigation is to be transferred to the CBI, the Court must consider the materials on record and arrive at a conclusion that such materials disclose a *prima facie* case warranting investigation by an independent agency like the CBI [*State of West Bengal & Ors. Vs. Sampat Lal & Ors. (1985) 1 SCC 317, State of West Bengal & Ors. Vs. Committee for Protection of Democratic Rights, West Bengal & Ors.*

(2010) 3 SCC 571 at para 17, Minor Irrigation and Rural Engineering Services, U.P. vs. Sahngoo Ram Arya (2002) 5 SCC 521 at paras 5 & 6, K.B. Rajendran vs. C.B. CID (2013) 12 SCC 480 at para 13, Arnab Goswami vs. Union of India (2020) 14 SCC page 12 at para 42,].

10. During the hearing before this Court, a specific query was raised by the Bench, to the Advocates appearing on behalf of the respondent no.1 as to whether any prayer for investigation to the CBI had been made by the respondent no.1 before the Trial Court. On behalf of the respondent no.1, it was categorically submitted that, no such prayer was made on behalf of the respondent no.1 before the Trial Court seeking directions on the CBI to investigate the matter. Hence, in our view, there was simply no factual foundation before the Trial Court in the pleadings or otherwise warranting the direction for an investigation in the matter by the CBI. We also find that the only ground in the impugned order was that “*in view of the allegation by the petitioner that the lady had been illegally transferred thrice which is wholly against the law*” the matter was directed to be investigated by the CBI. There is a prior reference in the impugned order to the fact that in respect of different illegalities and affairs of the Education Department the matter was being investigated by the

CBI. However, in our view in absence of any factual foundation in the pleadings being made by any of the parties nor any specific prayer for directing an investigation, the direction on the CBI to carry out an investigation is unsustainable. We are also of the view that such direction has been passed in a routine and casual manner. There were simply no materials before the Trial Court nor have any reasons been recorded in the impugned order warranting the direction on the CBI to conduct an investigation.

11. Reason is the life of law. It is now consistently been held that recording of reasons is essential feature of dispensation of justice. A party is entitled to know the reasons for grant or rejection of a prayer. Absence of reasons introduces an element of uncertainty, dissatisfaction and gives an entirely different dimension to the questions of law raised before any Court. Reasons are also the safeguards against the *ipse dixit* of the decision making process. They discuss how the judicial mind has been applied to the matter in issue and convey the nexus between the matter which has been considered and the conclusion based thereon. Judicial orders must meet the twin test of 'why' and 'what'. It is the 'why' which sustains the 'what'. [*Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota vs. Shukla and Brothers (2010) 4 SCC*

715 paras 24 to 27, Secretary and Curator Victoria Memorial Hall vs. Howrah Ganatrantik Nagrik Samity (2010) 3 SCC 732 paras 40 to 42, Uniworth Resorts Ltd. & Ors. Vs. Ashok Mittal & Ors. reported in (2007) 4 CHN 712].

12. A further argument on behalf of the appellants was that the writ petitioner in WPA 2209 of 2021 had no locus to maintain this writ petition. It was contended that the categorical averment at paragraph 4 of the writ petition was that the petitioner therein was not at all interested to oppose the action of the respondent for filling up the post of the Headmistress of the subject school. In this background, it was contended that the petitioner is not a person aggrieved. Reliance was also placed on the decisions reported in *(1976) 1 SCC 671*, *(1977) 1 SCC 486*, *(2016) 1 SCC 306* and *(2012) 20 SCC 87*. On the basis of the said decisions, it was contended that, an applicant must have a personal or individual right in the subject matter of the application. In other words, it is contended that as a general rule infringement of some legal right or prejudice to some legal interest inhering to the petitioner is necessary to give him locus standi in the matter. It is true that, in subsequent decisions there has been a radical shift towards an expanded concept of locus standi and this concept is now much wider [See *M.S.*

Jayaraj vs. Commissioner of Excise, Kerala & ors. (2000) 7 SCC 552]. However, we do not find any consideration of this aspect of the matter in the impugned order. The impugned order merely records that the question of locus has been diluted. A decision reported in (2009) 2 CHN 442 is referred to in the impugned order and directed to be kept with the records but not discussed. With the utmost of respect to the Learned Single Judge, we are of the view that this aspect of the matter required some consideration in the impugned order.

13. We are also of the view that the Learned Judge in passing the impugned order has arrived at a finding that Smt. Mondal had been illegally transferred. However, there are no reasons to justify such a finding. The Learned Judge has also concluded that the transfer of Smt. Mondal was *void ab initio* without giving any reasons thereof. There has been no discussion of the facts or the alleged infraction of the law in arriving at such a conclusion. The fact that the order of transfer dated 30 November, 2021 was not an issue raised in the pleadings in WPA 2209 of 2021 has also not been adverted to in the impugned order. The justification and the reasonableness for such a conclusion is wholly absent in the impugned order. Thus, in our view this finding is also unsustainable.

14. A further aspect of the matter as to non granting of an adjournment sought for on behalf of the appellant was also raised in this appeal. The appellants relied on the decision reported in *Union Bank of India vs. Sanjay Mittal & Ors. (2000) 2 CHN 616* to contend that the refusal to grant an adjournment on the date of passing of the impugned order was unwarranted. In our view, the granting or non granting of an adjournment is purely discretionary. Ordinarily, such directions are not to be interfered with. However, on behalf of the respondent no.1, it was categorically submitted that the prayer for adjournment had not been opposed before the Trial Court. In this background, we are of the view that this aspect of the matter would require further examination.

15. Another aspect of the impugned order which was argued was that the fact that the Learned Single Judge has kept the matter as *heard in part*. The marking of a matter as heard in part is an aspect exclusively within the discretion of the Learned Judge. This, in our view, is discretionary and does not call for any interference.

16. Both parties also made submissions on the aspect whether the impugned order is a final order or an interim order. This aspect of the matter also needs further examination.

17. For the foregoing reasons, there shall be an unconditional stay of the impugned order 4th August, 2022 until the disposal of the appeals. CAN 1 of 2022 in MAT 71 of 2022 and CAN 1 of 2022 in MAT 72 of 2022 stand allowed. We make it clear that our findings are *prima facie* and tentative for the purposes of adjudicating of the present applications.

18. It was submitted on behalf of the respondent no.1 that they deliberately chose not to file any further pleading before the Trial Court and that the pleadings before the Trial Court stood completed.

19. In view of the aforesaid, these appeals shall be heard on the pleadings filed before the Trial Court. All formalities stand dispensed with. As prayed for by the appellants, the School Service Commission is directed to serve a copy of the Affidavit in Opposition filed before the Trial Court to the Advocates on behalf of the appellants for preparation of necessary paperbooks. The appellants shall file informal paperbooks, printed, or type written, as the case may be within a period of four weeks from date. The aforesaid time period is peremptory.

20. List this matter before the next available Circuit Bench after the preparation of the paperbooks.

(Bivas Pattanayak, J.)

(Ravi Krishan Kapur, J.)

Later

It is submitted on behalf of the appellants that pursuant to the impugned order, an FIR has been filed by the CBI on 11 August, 2022, during the course of hearing.

Liberty is granted to the appellants to take appropriate steps in accordance with law as they may be advised.

(Bivas Pattanayak, J.)

(Ravi Krishan Kapur, J.)