

15.01.2021

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W.P.A. 159 of 2021

(Through Video Conference)

Tapan Das
Vs.
The State of West Bengal & ors.

Mr. Ekramul Bari
Syed Mansur Ali
.... for the petitioner

Ms. Chaitali Bhattacharya
Mr. K. C. Kapas
... for the State

Heard the matter at length.

Certain issues have cropped up during the hearing of the writ petition which has resulted in Mr. Bari's prayer for withdrawal of the writ petition with liberty to file afresh with amendment to the prayer portion and additions of material facts.

Mrs. Bhattacharya, learned Counsel appearing on behalf of the State opposes such withdrawal and such additions/amendments in the prayer portion of the writ petition on the ground that the scope of the writ petition cannot be allowed to be enlarged by such colourable exercise of withdrawal of the writ petition.

In my view, whether the writ petition can be withdrawn with liberty to file afresh is a discretion left to

the Court and not subject to the choice of the respondents.

If any precedent is required to be referred to illustrate that this Court possesses the power to grant such liberty, one should look no further than the dictum of the Supreme Court rendered in ***Sarguja Transport Service –v- State Transport Appellate Tribunal, M.P., Gwalior, and Ors.*** reported in ***(1987) 1 SCC 5***, wherein the Court had held that the principle underlying Order XXIII, Rule 1 of the Code of Civil Procedure, 1908 was also extended, in the interests of administration of justice, to cases of withdrawal of writ petitions also, *inter alia*, on the ground of public policy. As Order XXIII, Rule 1 of such Code has been extended to writ petitions, the entirety of Rule 1 thus becomes applicable. Accordingly, a bare perusal of clause (b) to sub-Rule (3) of Order XXIII, Rule 1 showcases that this Court possesses the power to grant such liberty to the petitioner.

In my view, justice would be subserved if the writ petition is allowed to be withdrawn with liberty to the petitioner to file afresh by making proper amendments.

In light of the above reasons, I allow the petitioner to withdraw the writ petition with liberty to file afresh on the selfsame cause of action with amendments in the prayer portion as well as additions with regard to the documents such as the appeal court's order.

Accordingly, this writ petition is dismissed as withdrawn with liberty to file afresh.

(Shekhar B. Saraf, J.)