

28.06.2021
SL No.4
Court No.16
(gc)

WPCT 30 of 2021

**Union of India & Ors.
Vs.
Bikash Raj**

(Via Video Conference)

Mr. Alok Kumar Banerjee,
Mr. Santosh Kumar Pandey,
...for the Petitioners.
Mr. Ujjal Kr. Ray,
Mr. Arpa Chakraborty,
...for the Respondent.

We have heard the learned Counsel for the parties. It has been fairly submitted on behalf of the private respondent that the finding of the Tribunal in paragraph (iii) is factually incorrect. The finding of the Tribunal in paragraph (iii) reads:-

“(iii) The ASPO, KGP Sub Division is admittedly the one who has witnessed the incident complained of and has himself punished the applicant as his Disciplinary Authority.”

If this is factually incorrect then the application of the legal maxim *Nemo debet in causa sua* may not be applicable.

The learned Counsel for the private respondent submits that in the written notes of argument he has raised some other points showing likelihood of bias of ASPO, KGP Sub Division and draws our attention to the order of the enquiry officer during the enquiry proceeding whereby the enquiry officer has recorded that amongst others, Sri

Aniruddha Biswas, ASPO, KGP Sub Division, Kharagpur may be summoned as one of the witnesses. It is submitted that Mr. Biswas in spite of issuance of summons did not appear. However, there is no finding to that effect in the Tribunal nor it has been reflected in the order passed by the Tribunal.

In view of the argument that the point raised before the Tribunal has not been considered in its proper perspective and the said issue has not been discussed in the judgment of the learned Tribunal although it formed part of the pleading and written notes of submission, we set aside the order.

The matter is remanded to the Tribunal for reconsideration of the matter afresh. Since all the materials are before the Tribunal, the parties shall only advance their arguments along with their brief notes of argument if they so desire. In the event notes of arguments are filed, it should be exchanged so that both the parties can be aware of the points raised by the other side. The Tribunal is requested to dispose of the said application within a period of three months from the date of communication of this order by either of the parties. We make it clear that we have not gone into the merits of the matter. The order of remand is primarily on the ground that the aforesaid finding of the Tribunal is an error apparent on the face of the record and needs rectification.

With the aforesaid observation, the writ petition, being WPCT 30 of 2021, stand disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)