

08.04.2021
Item No. 12
Ct. No. 04
PG

M.A.T. 507 of 2019
With
I.A. no. CAN 2 of 2019 (Old CAN 4332 of 2019)

Achintya Kumar Mahato
Vs.
Smt. Amita Mishra & Ors.

Ms. Kaberi Ghosh (Dey).....for applicant/appellant

Mr. Amitesh Banerjee, sr. adv., Sr. Standing Counsel
Mr. Tarak Karan.....for State

Ms. Ghosh (Dey), learned advocate appears on behalf of applicant, who was respondent no.5 in the writ petition. She submits, by notification dated 18th September, 2015 her client was appointed Chairperson of Child Welfare Committee, for three years from date of the notification. The writ petition challenging the notification was filed, in which State made application for vacating the interim order passed therein. Her client was served with copy of the writ petition and had appeared when it was moved and thereafter. However, copy of the vacating application was not served on her client. On the date when the vacating application was called on for hearing, on consent of petitioner and State (applicant in the vacating application), the writ petition was

itself taken up for hearing and dealt with by impugned order dated 30th November, 2017. This resulted in her client going unrepresented in the writ petition.

Mr. Banerjee, learned senior advocate, Senior Standing Counsel appears on behalf of State and points out that on 24th February, 2016 applicant was represented. We notice that order dated 24th February, 2016 was made in the writ petition.

We set out below first paragraph in impugned order:

“Although the application for vacating the interim order being C.A.N. 9729 of 2016 is appearing in the combined monthly list, with the consent of the parties, the writ petition itself is taken up for hearing treating the same as also on the list.”

We enquired of Mr. Banerjee and he submits, the records be called for to ascertain whether copy of the vacating application had been served on applicant. We are not inclined to make the direction because even if the vacating application stood served on applicant, said person could have chosen to go unrepresented on the hearing of it since the application was in resistance to the challenge in the writ petition, a like cause. However, the writ petition having been dealt with on consent of writ petitioner and State, left out applicant from the hearing of it.

In the circumstances, we are inclined to deal with the appeal itself. We have ascertained from our order dated 26th March, 2021 that we had satisfied ourselves regarding service on writ petitioner, who goes unrepresented. This being a mandamus appeal and we intending to remand the writ petition for hearing, to include applicant, we see no impediment by absence of writ petitioner.

The writ petition is remanded for hearing afresh. Impugned order will be there for consideration by the writ Court and applicant/appellant will be heard on whether or not it should remain or be appropriately altered on the hearing. Operation of impugned order is stayed for four weeks, within which time the writ petition is expected to be heard and dealt with on remand. Extension of this stay can only be obtained from the writ Court.

Applicant/appellant will serve copy of this order on writ petitioner and thereafter mention, upon notice to the parties, for listing.

The application along with the appeal are disposed of.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)

