

16.02.2022

Court : 04
Item : 26
Matter : **MAT**
Status : **DO**
Transcriber: nandy

MAT 68 of 2022

with

CAN 1 of 2022

Visva-Bharati

Vs.

Sudipta Bhattacharya & Ors.

Mr. Soumya Majumdar, Advocate

Mr. Victor Chatterjee, Advocate

.....for the Appellant

Mr. Bikash Ranjan Bhattacharya, Sr. Advocate

Ms. Saloni Bhattacharya, Advocate

Ms. Ambiya Khatun, Advocate

.....for the Respondents/Writ-Petitioners

The instant appeal arises from an order dated January 10, 2022 passed in WPA 20916 of 2022 wherein an interim order of stay of an enquiry proceeding until the matter is finally heard out, is passed. The matter pertains to initiation of a departmental proceeding against the respondent no. 1. Enquiry Officers were appointed consisting of a retired Judge of the Delhi High Court, a practicing Lawyer and a Professor of the University. Immediately, the respondent no. 1 filed a writ-petition challenging the show-cause notice dated July 13, 2021 and an order was passed on October 8, 2021 to constitute the Board of Enquiry.

At the time of moving such writ-petition, the argument was restricted to a plea of bias for the purpose of an interim order. It is no doubt true

that the order dated October 8, 2021 would reveal that one of the Member of the Enquiry Committee i.e. the practicing Lawyer represented the Vice Chancellor in one of the proceeding filed at Delhi Court which led the single Bench to prima facie hold that it may construe bias and passed an interim order staying further proceeding of the enquiry.

Mr. Majumdar, learned Advocate, appearing for the appellant, submits that mere representing the Vice Chancellor at one point of time in a different case unconnected with the University, cannot be construed as bias but the fairness, impartiality and transparency of the proceeding would have to be judged in the course of the hearing, and the minutes and orders to be passed therein. In fact, he relied upon the first minutes of the Enquiry Committee to buttress the aforesaid contention that it would never be construed that the said Member had acted with malice or pre-determined mind.

It is no doubt true that document would reveal that the said Member represented the Vice Chancellor who was made party in a proceeding, in his individual capacity and not in his official capacity. Whether the action or conduct of the Member can be tainted with bias is relatively a

question of facts and then the law to be applied. The judgment of the Apex Court in ***Ramesh Chandra Vs. Delhi University & Ors. (2015) 5 SCC 549*** as relied upon by the single Bench while considering the case, where the retired Judge of a High Court who represented the University when he was a Lawyer, was appointed as Enquiry Officer and the allegation of bias was made.

In the backdrop of the aforesaid fact, the Apex Court held that the reputation of a Judge of a High Court, retired or otherwise, cannot be undermined in any circumstances as he always hold a good reputation and fairness in dispensation of justice. If such retired Judge is appointed as an Enquiry Officer though he has a large legal acumen and experience yet he should not be put to any kind of discomfort when the allegation is made in this regard.

There is no dispute to the enlightening observations made in the said judgment but the same cannot be construed to have universal application in all the cases which are to be considered on the facts thereof.

However, we find that the learned single Judge decided to hear out the matter upon exchange of affidavits and if in the meantime, the

enquiry proceeding continues, it may invite anomalous situation or render the exercise to the futility. There has been subsistence of an order for nearly a month or so and direction in the impugned order was passed to dispose of the writ-petition within the said time.

We feel it prudent that it would subserve justice if the writ-petition itself is disposed of. We are informed that the appellant has already filed affidavit-in-opposition but the reply has not been filed as yet.

In such perspective, we direct the respondent no. 1 to file reply within a week from date.

We request the Hon'ble Judge of the single Bench to take up the matter on priority basis and endeavour shall be shown to dispose of the same as expeditiously as possible.

The appeal being **MAT 68 of 2022** is **disposed of**. The connected application being **CAN 1 of 2022** also stands **disposed of**.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

