

14.02.2022

Court : 04
Item : 08
Matter : **MAT**
Status : DISMISSED
Transcriber: nandy

MAT 79 of 2022

with

CAN 1 of 2022

Dr. Moitreyee Chowdhury & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Amiya Kumar Dutta, Advocate

Mr. Kaustav Chatterjee, Advocate

.....for the Appellants

Mr. Swapan Kumar Dutta, Advocate

Mr. Pradyut Kumar Das, Advocate

.....for the State

Mr. Indranil Roy, Advocate

Mr. Sunit Kumar Roy, Advocate

.....for the National Medical Commission

A preliminary objection is taken by Mr. Swapan Kumar Dutta, learned Advocate, appearing for the State over the maintainability of the mandamus appeal challenging the impugned order dated January 18, 2022 passed in WPA 584 of 2022.

According to the learned Advocate for the State the impugned order was passed on concession made by the learned Advocate representing the appellant herein before the single Bench and, therefore, the appeal is not maintainable.

We have given our anxious consideration to the matter and upon perusal of the impugned order, more particularly, the second paragraph thereof, we find that though the Court has recorded

that there is no scope for passing an impugned order but disposed of the writ-petition on the prayer of the learned Advocate representing the appellant to consider the representation filed by him within a timeframe.

Mr. Amiya Kumar Dutta, learned Advocate, appearing for the appellant, submits that there has been a wrong submission on the part of the Senior Counsel appearing for his client and such submission without instruction could not be taken as a deterrent to his client. According to him, several notifications have been challenged in the said writ-petition and such executive orders were beyond the competence of the authority and the observations made in paragraph 2 came to be passed after holding that there is no scope for interim order when, in fact, it does so. It is further submitted by the appellant that time is the essence of the litigation and, therefore, the appeal was filed.

We are not impressed with the submission of the appellant that the moment the Court returned the findings that there is no scope for interim order, the appeal would be maintainable despite the fact that a submission made by the appellant moulding the relief claimed in the writ-petition so that the representation which has been filed, may be addressed and a decision be taken thereupon. The contention of the appellant appears to have been

founded upon the alleged wrong recording of the event or events or something, which never happened before the single Bench or something which happened under the misconception and without any specific instruction. All such matters pertains to a recording of the event, either correctly or incorrectly and, therefore, the remedy which lies with such litigant is to approach the same Bench promptly before such events fades from his/her memory. The appellate Court should be slow and circumspect in interfering with such order recording the events happened before the learned Judge until something is made patent from the record.

Thus we are of the opinion that in view of the concession made before the single Judge, the appeal is not maintainable.

However, liberty is granted to the appellant to approach the single Bench for an appropriate relief.

The appeal being **MAT 79 of 2022** is **dismissed**. The connected application being **CAN 1 of 2022** also stands **dismissed**.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

