

01 17.02.22

Ct. No. 04

Akd

M.A.T. 170 of 2022
CAN 1 of 2022

**The Headmaster, Bora Madhusudan
High School
Vs.
Sankar Lal Khanra & Ors.**

Mr. Sambhunath De.

... for the appellant.

Mr. P. S. Bhattacharyya,

Mr. Raju Bhattacharyya,

Mr. Indrabhusan Das,

Mr. Sanjib Dawn.

... for the respondent

nos. 1 and 2.

Mr. Santanu Kumar Mitra.

... for the WBBSE.

Mr. Sirsanya Bandopadhyay,

Mr. Arka Kumar Nag.

... for the State.

This is an appeal at the behest of the Headmaster of Bora Madhusudan High School, Singur, Hooghly challenging the order dated 7th February, 2022 passed in WPA 17066 of 2021 to the extent that the adverse findings made in the said order has a far reaching consequences having based upon the wrong concession on facts by the Single Bench.

One of the question was whether the Headmaster of the said school forwarded the name of the writ petitioner to the West Bengal Board of Secondary Education for appearing in the Madhyamik Examination, 2021.

The learned Judge if the Single Bench recorded the events happened in course of the hearing and clearly stated that the learned Advocate for the Board heard the Headmaster by saying that he received the item but he did not sign the Acknowledgement Due Card. Learned Single Judge further proceeded to record that the information downloaded from the official website of Postal Department would reveal the

service to be effected by putting an endorsement “item delivered confirmed”. The Single Bench thus found that since the Headmaster has been heard saying that he received the document/item, but did not put the signature on the Acknowledgement Due Card, disbelieved such statement and stringent order was passed not only restraining the Headmaster/appellant to enter the school for a period of fifteen days, but the entire documents, which are in possession of the appellant, be seized in presence of an appropriate witness.

The learned Judge further recorded that the notice dated 16th December, 2020 produced by the Headmaster/appellant does not instill confidence that the notice was affixed on the notice board.

The bone of contention in the instant appeal on behalf of the appellant is that the appellant never communicated that he received item and did not put his signature on the Acknowledgement Due Card; therefore, such statement has been miscommunicated to the learned Single Judge.

However, the learned Advocate appearing for the respondents took an exception to the grounds taken in serial no. 9 of the Memorandum of Appeal, where it has been stated by the learned Advocate appearing for the Board misled the Court which led such observations to be made. The language in which the aforesaid ground is couched is not appropriate and realizing so the learned Advocate for the appellant fairly submitted that his client is not intending to press the said ground. However, the emphasis was made on recording of incorrect events happened before the Court and no explanation was offered from his client on the issue of affixation of notice on the notice board.

The events, which happened before the Single Bench, is ordinarily reflected in the order and the Appellate Court should not readily interfere with such findings unless all the parties appearing before it echoed in one voice that it was not so. There has been a divergent stand taken by the appearing Counsels and the learned Advocate appearing for the Board is very much vocal in his submission that what heard from the appellant has been communicated to the Court.

It would not be proper for the Appellate Court to interfere with such recording of events being not present in course of hearing and if the parties are not ad idem on the issue that the recording of events is wrong, it would not be proper for the Appellate Court to interfere with such findings. However, the litigant should not be rendered remediless. The litigant feeling aggrieved with the recording of events may approach the same Hon'ble Judge asserting the circumstances or the facts that it never happened and it is within the consideration of the said Hon'ble Judge whether to accept such explanation or not. Such approach should also be made by the litigant promptly before such events fades from the memory of the learned Judge, as it is not humanly possible to remember each and every event happened before the Court unless it is of some seminal importance.

Since the parties are not agreeing on the submission of the appellant made on the issue of recording of such events, we thus refrain ourselves from interfering with the said order, but equally we may observe that it is open to the appellant to approach the same learned Judge in the Single Bench disclosing all relevant facts and documents, which either led such statements to be made or such statements were not never made and the moment

such approach is made we expect that the learned Single Judge will consider after giving due consideration to such facts.

With the above observations, the instant appeal is disposed of. Connected application is also disposed of.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)