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Ct. No. 04

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WP.CT. 13 of 2022

**Union of India & Ors.
Vs.
Ashraful Mondal & Anr.**

**Mr. Sanojit Kumar Ghosh.
... for the petitioners.**

Despite service there is no representation on behalf of the respondents. The affidavit of service filed in Court today be kept with the record.

The petitioners appear to have beleaguered between the passing of the interim order and the direction for filing affidavits disclosing the facts pertaining to compliance of the earlier direction passed by the Tribunal.

By the impugned order the Tribunal directed the respondents, the petitioners herein, to file reply clarifying the assessment as reflected in the speaking order within four weeks and an opportunity was given to the applicants of the tribunal application to file reply within two weeks thereafter.

Such being the tenet of the order, our endeavour has failed to find out any interim order passed by the Tribunal. Ordinarily the interim order is construed when the authorities or the respondents to the proceedings are put to any restrictions from doing a thing or abstain from doing the same thing. In other words, when any order of interdict is passed restraining a party to do a particular thing or not to do a particular thing, such order in ordinary parlance is construed as an interim order.

The impugned order proceeds simplicitor on disclosure of the facts in the form of clarification, which can never be construed as an interim order, but the order in furtherance of the proceeding more particularly in pursuit to deciding the

disputes/cause of the case. Such order can never be brought within the zone of “case decided”, as it does not affect the rights of either of the parties to the litigation.

Initially we were astonished or to be correctly expressed as perplexed whether the writ petition of such nature is maintainable before this Court. We are conscious of the proposition that there is a gulf of difference between maintainability and entertainability of a judicial proceeding. The proceeding may be maintainable before the Court but may not be entertained in absence of sufficient materials disclosed therein.

The dispute pertains to recruitment and traveled thrice before the Tribunal. The first tribunal application being OA 566 of 2013 was filed by the respondent for a direction upon the authorities to declare the result of the selection held on 15.05.2013 and 29.03.2013 initiated in pursuance of the recruitment notice dated 28th January, 2012. The said original application was disposed of on 26th June, 2013 directing the authorities to take a decision on the representation of the respondent herein in accordance with law at an early date and such decision should be communicated to him. The decision was taken on 18th July, 2013 holding that on an overall performance the selection committee declared him unsuitable to be appointed to such post. The said order dated 18th July, 2013 was again challenged by the respondent in OA 1255 of 2013. The aforesaid original application was again disposed of by the Tribunal on 20th November, 2019 with the categorical finding that the said decision has been passed in cryptic manner without indicating any reason in extenso and was, therefore, set aside. Simultaneously the Tribunal directed the concerned

authority to decide the matter afresh by giving proper reasons within sixteen weeks from the date of the receipt of the said order.

In pursuance of the said direction the authority passed an order dated 13th March, 2020, which was communicated to the respondent vide letter dated 17th March, 2020. The said communicating letter containing the decision was again challenged in OA 855 of 2020 with consequential relief for appointing the respondent to the said post under the sports quota.

When the matter was moved before the Tribunal on 21st March, 2021 the Tribunal found that the respondents must clarify their stand for assessment as shown in the speaking order more particularly when the earlier assessment order was set aside by the Tribunal and fixed the matter on a posterior date.

The challenge is made to the said order on three fold grounds; firstly, the Tribunal could not pass the interim order, secondly, the authority have already taken a decision in compliance of an order passed in an earlier tribunal application and thirdly, the competent authority have assessed the performance of the respondent and found him unsuitable for the said post.

So far as the first ground is concerned, we have already indicated that there is no interim order passed by the Tribunal in the impugned order and, therefore, the misconception having created in the mind of the petitioners is unfounded and unsustainable.

So far as the second ground, i.e. the decision of the authority in compliance with the order passed in an earlier tribunal application is concerned, the same is the subject matter of scrutiny by the Tribunal, as the proceeding is still pending before it and has not

been decided finally.

The High Court in exercise of power of judicial review should not normally usurp the power of the Tribunal and must confine to the decision ultimately taken. If the order of such nature is amenable to be interfered with in exercise of power of judicial review, it would render the Tribunal non-est or non-functional, as every matter would be decided by the High Court even if the Tribunal has not passed the final order. There must be some restraint in entertaining such application when belligerent litigant approaches the High Court having full resources and inviting the decision to be passed, which would render the tribunal application otiose or nugatory.

Our attention is drawn to Annexure P-2 to the instant writ petition containing the reply of the respondent, which according to the learned Advocate for the petitioners was filed prior to passing of the impugned order.

We do not find from the verification portion the date on which the said reply was affirmed and filed in the Tribunal; even if we consider the statement made at the Bar that it was filed before passing of the impugned order, yet one can perceive from the tenet of the order that the Tribunal was not satisfied with the explanations offered therein and invited further clarification in the form of affidavit, which cannot be said to be unreasonable.

If the proceedings are proceeded in pursuit of the search of truth and for such the Tribunal has directed further clarification to be brought, we do not find any illegality or infirmity in the said decision.

So far as the third ground is concerned, the speaking order dated 13th March, 2020 is a subject matter of scrutiny in the tribunal application and

challenge is thrown by the respondent; therefore, unless the final decision is taken in this regard, we do not find any justification in the stand of the petitioners to jump the procedural stairs and approach this Court to take a final decision.

We find that there is a complete wastage of resources at the disposal of the petitioners as well as the precious time of Court by filing such a frivolous writ petition.

The writ petition is thus dismissed with costs assessed at Rs.50,000/- to be deposited with the State Legal Services Authority within two weeks from date.

In the event of deposit such costs the State Legal Services Authority shall keep the same in an account earmarked for juvenile. Failure to deposit the same, the Tribunal shall ensure that the said amount is deposited before an opportunity is given to the respondents to defend the claim of the petitioner therein.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

