

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate side

PRESENT:

HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE PARTHA SARATHI SEN

MAT 167 OF 2016
with
I.A. No. CAN 1 of 2016 (Old No. CAN 1300 of 2016)
with
I.A. No. CAN 2 of 2016 (Old No. CAN 1301 of 2016)

The State of West Bengal & Ors.

Vs.

Deepmala Shaw

For the State/Appellant : **Mr. Susovan Sengupta, Adv.**
Mr. Subir Pal, Adv.

For the Respondent/writ petitioner: **Mr. Debabrata Saha Roy, Adv.**
Mr. Pingal Bhattacharyya, Adv.
Mr. Subhankar Das, Adv.
Mr. Neil Basu, Adv.
Mr. S. Biswas, Adv.

Heard on : **30.08.2022, 16.09.2016, 16.11.2022**

Judgment on : **23.11.2022.**

CHITTA RANJAN DASH, J.:-

1. The State is the appellant in this appeal being M.A.T. No. 167 of 2016 arising out of order passed by Hon'ble Single Judge on 27.07.2015 in W.P. No. 15324 (W) of 2014.
2. By the impugned order dated 27.07.2015, batch of five writ petitions were decided by Hon'ble Single Bench analogously by passing a common judgment. Those writ petitions are W.P. No. 9272 (W) of 2013, W.P. No. 15323 (W) of 2014, W.P. No. 15326 (W) of 2014, W.P. No. 25338 (W) of 2014 including W.P. No. 15324 (W) of 2014 (out of which the present appeal arises).
3. By the impugned judgment Hon'ble Single Judge directed the State authorities to complete the selection of fair price shop owners in accordance with the provisions of the 2003 Control Order within the time specified in the order.
4. Aggrieved by the said judgment passed by Hon'ble Single Judge, the State filed a batch of five appeals before the Division Bench. Three of the said appeals being M.A.T. 123 of 2016, M.A.T. 124 of 2016 and M.A.T. 452 of 2016 were taken up by Hon'ble Division Bench for analogous hearing and by order dated 20.07.2016 Hon'ble Division Bench affirmed the impugned order passed by Hon'ble Single Judge on 27.07.2015.
5. Being further aggrieved by the order passed by Hon'ble Division Bench in the three appeals, the State preferred three Special Leave Petitions being SLP (C) No. 6663 of 2017, SLP (C) No. 6402 of 2017 and SLP (C) No. 10025 of 2019. All these three special leave petitions were dismissed by Hon'ble the Apex Court

observing that since the order of dismissal is passed in the special circumstances of the case, such may not be treated as a precedent in any other case.

6. Mr. Sengupta, learned Counsel for the appellant/State submits that Hon'ble Supreme Court having not given imprimatur to the findings of Hon'ble Division Bench and having dismissed the special leave petition in peculiar facts and circumstances of the case restricting the matter to the three S.L.P.s filed before it only, the State is free to raise submissions regarding the facts whether the common judgment passed in three appeals cover this appeal as well.

7. Mr. Saha Roy, learned Counsel appearing for the respondent in this appeal submits that the present appeal having arisen out of the common judgment passed by Hon'ble Single Judge in a batch of writ petitions after taking of analogous hearing, requires to be treated at par with the other writ petitions which have already been disposed of by the Division Bench and thereafter by Hon'ble Supreme Court. It is further submitted that after the S.L.P.s were dismissed by Hon'ble Supreme Court another appeal being M.A.T. 168 of 2016 arising out of the same common judgment has already been disposed of by Hon'ble Division Bench on 03.02.2022 holding that the said appeal is covered by earlier judgment of Hon'ble Division Bench and also the order passed by Hon'ble Supreme Court in the S.L.P.s.

8. It is further submitted by Mr. Saha Roy that the observation of Hon'ble Supreme Court to the effect that the dismissal of the S.L.P.s would not be a precedent in the special facts and circumstances of the case is not applicable to the present case inasmuch as the said special facts and circumstances are also

involved in the present case and the disposal of three common appeals by Hon'ble Division Bench by a common judgment and dismissal of S.L.P.s preferred against that common judgment by Hon'ble Supreme Court shall cover the facts of the present case squarely.

9. It is thus submitted that the respondent should be permitted to enjoy the fruit of the judgment and order passed by Hon'ble Single Judge on 27.07.2015.

10. Having heard the learned Counsels for the parties and considering the materials placed, this court is of the considered view that the State has not been able to point out that the writ petition out of which the present appeal arises as well as the present appeal are in any way different in the scope of interpretation of the facts, circumstances and questions of law from the analogous writ petitions disposed of by a common judgment by Hon'ble Single Judge, three analogous appeals disposed of by Hon'ble Division Bench by a common judgment and three analogous S.L.P.s dismissed by Hon'ble Supreme Court by a common order and the fourth appeal disposed of by Hon'ble Division Bench i.e. M.A.T. 168 of 2016 on 03.02.2022.

11. We are therefore of the view that judicial propriety and discipline demand that analogous matters be treated analogously throughout. The appeal of the State cannot be allowed to be continued on the basis of mere technicalities.

12. Before parting with the order we are of the view that the authority relied on by Mr. Susovan Sengupta, learned Counsel for the State reported in **2019 (4) SCC 376** has no application to the fact of the present case. Similarly, the judgement of Hon'ble Supreme Court in the case of **State of Odisha & Anr. Vs. Anup Kumar**

Senapati & Anr. reported in **2019 (19) SCC 626** which deals with claim of grant-in-aid after the 1994 grant-in-aid order was repealed and 2004 grant-in-aid order came into force is of no relevance so far as the present facts, circumstances and questions of law are concerned.

13. Accordingly, M.A.T. 167 of 2016 with I.A. Nos. CAN 1 of 2016 (old CAN No. 1300 of 2016) and CAN 2 of 2016 (old CAN No. 1301 of 2016) stand dismissed. Interim order, if any stands vacated.

14. There shall be no order, however, as to cost.

15. Pronounced in open Court on this day i.e. 23rd day of November, 2022.

16. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Partha Sarathi Sen, J.)

(Chitta Ranjan Dash, J.)