

03.02.2022
Item No.17
Crt. No.11.
KB

MAT 168 of 2016
with
IA No. CAN 1 of 2016
(Old No. CAN 1298 of 2016)
with
IA No. CAN 2 of 2016
(Old No. CAN 1299 of 2016)

The State of West Bengal and others
-Vs-
Sri Avijit Saha
(Via Video Conference)

Mr. Susovan Sengupta
Mr. Subir Pal

... For the appellants

Mr. Debabarata Saha Roy
Mr. Pingal Bhattacharyya
Mr. Subhankar Das
Mr. Neil Basu

... For the Respondents.

The State is the appellant in this appeal being MAT 168 of 2016. The appeal is directed against the judgement and order of the Hon'ble Single Bench dated 27th July, 2015.

By the order impugned dated 27th July, 2015, a batch of five analogous writ petitions were decided by a common judgement and order. The writ petition out of which the present appeal arises, i.e. W.P. No. 15326 (W) of 2014 and its connected application was one of the said five writ petitions decided by the common judgement and order dated 27th July, 2015.

By the judgement and order dated 27th July, 2015 the Hon'ble Single Bench directed the State authorities to complete the selection of Fair Price Shop Owners in accordance with the provisions of the 2003 Public Distribution Control Order within a time as specified by the said order.

Aggrieved by the judgement and order dated 27th July, 2015 (*supra*) the State filed a batch of appeals connected to the batch of five writ petitions. Three of the said appeals being MAT 123 of 2016, MAT 124 of 2016 and MAT 452 of 2016 were decided by the Hon'ble Single Bench in favour of the writ petitioners and against the State appellants. Accordingly, the judgement and order dated 27th July, 2015 stood affirmed.

Being further aggrieved by the order of the Hon'ble Division Bench in the three appeals, the State preferred three Special Leave Petitions, being No. SLP(C) No.6663/2017, SLP(C)No.6402 of 2017 and SLP(C) No.10025 of 2019. The three Special Leave Petitions were dismissed by the Hon'ble 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.

Mr. Saha Roy, Learned Counsel appearing for the Respondents in this appeal, submits that the

Respondents being one of the batch of the writ petitions analogously decided by the judgement and order dated 27th July, 2015, requires to be treated at par with the other writ petitioners who were the Respondents in the appeal filed by the State before the Hon'ble Division Bench and thereafter before the Hon'ble Supreme Court.

Mr. Saha Roy submits that this appeal arising out of a common analogous writ petition cannot be considered to be any other case which is not covered by the special facts and circumstances of the five writ petitions and the appeals filed by the State.

It is submitted that for such reasons the present appeal cannot be treated to be circumscribed by the law of precedence, since in so far as the concept of precedence would only apply when there is a difference of facts and circumstances connected to the present appeal and the set of analogous appeals finally decided upto the Hon'ble Apex Court.

It is submitted that the respondents should therefore be permitted to enjoy the fruits of the judgement and order of the Hon'ble Single Bench dated 27th July, 2015.

However, Mr. Sengupta, Learned State Counsel relying on the authority of *2019(4) SCC Page 376* submits that the directions of the Hon'ble Supreme Court by the

order in the three SLPs dated 14th January, 2020 ended with the facts and circumstances of the said appeals.

Accordingly, the issues in so far as they reached the Hon'ble Apex Court in all the Special Leave Petitions, be considered to be henceforth closed.

Having heard the parties and considering the materials placed, this Court does not find that the State authorities have 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 and circumstances from the analogous writ petitions which concluded with the dismissal of the Special Leave Petitions by the Hon'ble Apex Court.

This Court is 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.

Accordingly, **MAT 168 of 2016** with **IA No. CAN 1 of 2016 (Old No. CAN 1298 of 2016)** and **IA No. CAN 2 of 2016 (Old No. CAN 1299 of 2016)** stand **dismissed**.

Interim order, if any, stands vacated.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)