

81 **08.08.**
2022
Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WPLRT 37 of 2022

Joydev Bera and another
Vs.
The State of West Bengal and others.

Mr. D.K. Adhikari,
Mr. Debdip Adhikari.
... for the petitioners.

Mr. Md. T.M. Siddiqui,
Mr. Supratim Dhar,
Mr. Dhananjoy Nayak.
... for the State.

By filing the instant writ petition, what could not be disclosed in the Tribunal is sought to be disclosed for the first time by the writ petitioners.

The impugned order dated 27th August 2021 reveal that the writ petitioners relied upon an order dated 8th July 2008 passed by this Court granting an interim order, which put a fetter in proceeding with the tribunal application in view of the pendency of the Special Leave Petition No. 26172 of 2008 before the Supreme Court.

At the very outset, we invited the attention of the learned Advocate for the writ petitioners to place the order dated 8th July 2008 but our dismay, the learned Advocate for the writ petitioners showed his inability to produce the same.

It appears from the impugned order that on an earlier occasion i.e. on 28th June 2011 relying upon the order of the High Court dated 8th July 2008 a prayer was made for stay of further proceedings of the tribunal application till the disposal of the Supreme Court case.

Noticing the aforesaid order, the Tribunal has simply directed the matter to go out of the list as the petitioners were of the view that in view of the order dated 8th July 2008, the tribunal application should not be proceeded with until final disposal of the Supreme Court case.

A diametrically opposite stand has been taken before us and the learned Advocate for the writ petitioners want to reopen the entire issue involved in the tribunal application, as if in this writ petition the Court is deciding the main issue and disposing of the tribunal application, which is still pending.

The hierarchy of the system is to be maintained and the High Court though bestowed with the power under Article 226 of the Constitution of India should not usurp the power of the original authority acting as a Court of first instance and decide the cause, which would virtually make the tribunal application disposed of.

Since we are not satisfied, as the order dated 8th July 2008 has not been placed before us, we are unable to pursue ourselves to the contention of the writ petitioners that the said order suffers infirmity and/or illegality.

The writ petition is, thus, dismissed.

However, liberty is granted to the writ petitioners to file a substantive application disclosing all the facts, which are made in the instant writ petition and if such approach is made, the Tribunal shall consider the same in accordance with law.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)

