

02.05.2022

WPCT 30 of 2022

Court : 04
Item : PB-08
Matter : WPCT
Status : DO
Transcriber: nandy

Anirban Ghosh
Vs.
The Union of India & Ors.

Mr. Surajit Samanta, Advocate
Ms. Sohini Sarkar, Advocate
Mr. Biswajit Samanta, Advocate ... for the Petitioners
Mr. Arijit Majumdar, Advocate ... for the Union of India

The writ-petition has been filed before this Court challenging the order dated April 12, 2022 passed by the Central Administrative Tribunal, Kolkata Bench in OA 635 of 2022. The impugned order would reveal that prior to the said tribunal application another tribunal application being OA 766 of 2021 was filed before the Tribunal which came to be disposed of directing the respondent authorities to refer the dispute or the claim of the writ-petitioner to the concerned expert in the field to give his opinion on the equivalence of the degree as an essential condition of educational qualification fixed for A-level Competency Certificate Course in Computer Science. Consequently, direction was passed to complete the exercise within 16 weeks from the date of communication of the said order.

The observation recorded in the impugned order manifests that the present tribunal application was taken out presuming that such expert has submitted the report and opined in favour of the writ-petitioner. Such being the position, the Tribunal fixed the matter on May 17, 2022 with specific direction upon the respondents to bring forth the record of the equivalence assessment of the expert in terms of the order passed by the Tribunal

in an earlier round of litigation. The Tribunal further found on the basis of submission of the respondents that in the meantime the restructure of the cadre of the respondent organization has taken place and directed amendment of the cause title to be effected in the light of the same.

Such being the order, the writ-petitioner has filed a supplementary affidavit asserting that the moment a notice is served upon the respondent authorities of the instant writ-petition and the date having communicated for its listing before the Bench, the concerned authority have acted in haste and passed an order on April 25, 2022 rejecting the claim of the writ-petitioner.

Taking clue from the aforesaid fact, an argument is advanced that if the party to the litigation has prevaricated his stand and rushed in an unprecedented manner to negate the claim, there is no fetter having put on the Court to take note of the same and pass an appropriate order. To buttress the submission, reliance is placed upon an unreported judgment of this Court rendered in CPAN 1424 of 2003 in WPST 612 of 2003 decided on September 12, 2003.

There is no quarrel to the proposition that if the orders/directions passed by the Court or the Tribunal have not complied with in proper perspective and the Court or the Tribunal finds that an argument is made to circumvent the same taking a circuitous route, there is no fetter on the part of the Court or the Tribunal to entertain the application for contempt and ensure strict compliance of the order as intended. Furthermore, the Constitution Bench decision rendered in case of *L.*

Chandra Kumar Vs. Union of India & Ors. reported in **1997 (3) SCC 261** have retained the power of judicial review conferred upon the High Court under Article 226 being a basic structure and cannot be abridged and/or curtailed in any manner whatsoever. It has been further highlighted therein that the Tribunal acts as a forum of first instance and has been given a wide power including the power to declare an Act as *ultra vires* except the Act, which is a source of its existence.

All such submissions which is advanced before us is available and/or amenable to the taken up before the Tribunal where the main matter is still pending and once such facts are brought, we trust and hope that the Tribunal shall show alacrity in addressing such issue by passing an appropriate order in accordance with law.

There is no quarrel to the proposition of law that the Tribunal or the Courts does not lack jurisdiction based on equity to pass restrained order in mandatory form even at the interlocutory stage but it depends upon the high degree of prima facie case, irreparable loss and injury and balance of convenience and inconvenience. Such power is to be exercised under exceptional circumstances and in rarest of rare cases. It is inconceivable that the Court would pass an order in mandatory form without affording an opportunity of hearing to the other side.

We thus do not think that it is a fit case where this Court should exercise its power of judicial review when the matter is pending before the Tribunal and the points canvassed herein can be conveniently taken and decided by the Tribunal following the Rules of law.

Since the matter is already fixed on May 17, 2022, it is expected that the Tribunal would give some precedence to the matter in view of the prevailing circumstances and an appropriate order would be passed.

With these observations, the writ-petition being **WPCT 30 of 2022** is **disposed of**.

(Harish Tandon, J)

(Rabindranath Samanta, J)

