

20.05.2022
Item No.4
Crt. No.11.
KB/FB/gsd

**MAT 784 of 2022
with
IA No. CAN 1 of 2022
(Assigned)**

**Dr. Partha Chatterjee
-Versus-
Laxmi Tunga & Ors.**

**Mr. A. K. Mitra, Sr. Advocate
Mr. Kalyan Bandyopadhyay, Sr. Advocate
Mr. Suman Sengupta
Mr. Subhankar Nag
... For the Appellant**

**Mr. Bikash Ranjan Bhattacharyya, Sr. Advocate
Mr. Firdous Samim
Ms. Gopa Biswas
Ms. Mousumi Hazra
... For the respondents
Mr. S. N. Mookherjee, Ld. Advocate General
Mr. Anirban Roy, Ld. G.P.
Mr. Pantu Deb Roy
Mr. Bhaskar Prasad Vaisya
Mr. D. N. Mukherjee
... for the State**

**Ms. Koyeli Bhattacharyya
... for the WBBSE**

Party/parties is/are represented in the order of
their name/names as printed above in the cause title.

This appeal is directed against the Order dated
18th May, 2022 in WPA 18585 of 2021 in the matter of
Laxmi Tunga & Ors. -Vs- The State of West Bengal &
Ors.

Several points have been argued by Learned Senior Counsel appearing for the parties.

Mr. Anindya Kumar Mitra, Learned Senior Counsel appearing for the appellant, submits that the Order impugned is against the principles of natural justice as well as the procedures required to be followed in an adversarial litigation. It is submitted that the Hon'ble Single Bench has converted the adjudication into a Public Interest Litigation (*PIL*) without presently holding the determination to do so.

Learned Senior Counsel reiterates the position that Orders are being passed against the appellant, who is a Senior State Minister, without even making the appellant a party to the writ petition. Relying on several judicial authorities, it is submitted that in the order impugned in this appeal, the Hon'ble Single Bench has expressed the *expectation* that the appellant should step down from his position of State responsibilities and also, steps be taken in this regard by the appropriate higher authorities.

Mr. Mitra submits that the afore-stated *expectation* expressed by the Hon'ble Single Bench in a formal Order requires to be forthwith expunged, the same being beyond pleadings in the writ petition as well as the same being in the nature of pre-judging any investigation

without granting the appellant an opportunity of being heard.

Mr. Kalyan Kumar Bandyopadhyay, Learned Senior Counsel, relies on several judicial authorities to highlight the point that there is a distinction between *monitoring* and *supervising* an investigation.

Mr. Bandyopadhyay submits that the Hon'ble Single Bench may arguably, *monitor* an investigation by directing the Central Bureau of Investigation (CBI) to do so. However, the tenor and content of the Orders of the Hon'ble Single Bench, including the Order impugned dated 18th May, 2022 in this appeal, show that the Hon'ble Single Bench has gone beyond the judicial restraint of *monitoring* an investigation and stepped into a role of an investigating agency by issuing directions in aid of *supervising* the course of investigation.

Mr. Bandyopadhyay further submits that the *expectation* expressed by the Hon'ble Single Bench as referred to above in this Order, requires to be expunged since the same has the tendency to stigmatise the appellant in society without the investigation having reached a conclusion and, even without the opportunity of being heard granted to the appellant although such is provided for in the Order of the Hon'ble Division Bench dated 18th May, 2022 in a series of appeals decided on similar points.

Mr. Bikash Ranjan Bhattacharyya, Learned Senior Counsel appearing for the Private Respondents in this appeal/the writ petitioners, submits that the opinion expressed by the Hon'ble Single Bench connected to its *expectation* may be considered to be in the nature of an *obiter*. However, Mr. Bhattacharyya submits that there is no requirement to expunge the remarks and takes the stand that on the point of expunction the private respondents intend to submit before this Court on merits.

Having heard the parties and considering the materials placed, this Court arrives at the following findings.

First, the issues connected to the nature of the investigation have been already discussed threadbare by this Court in a series of appeals being MAT 490 of 2022 (*Dr. Santi Prasad Sinha –Vs- Laxmi Tunga & Ors.*) with other similar appeals by a common Judgment and Order of this Court dated 18th May, 2022.

This Court therefore finds no reason to sit either in appeal or judicial review of its own Order dated 18th May, 2022 presented in the guise of a separate appeal.

This appeal accordingly cannot be argued by the appellant on points already decided by the common and detailed Judgement and Order of this Court dated 18th May, 2022.

It also transpires from the record that the writ petition out of which this appeal arises, is also a writ petition included in the common Judgement and Order dated 18th May, 2022 (*supra*) connected to MAT 481 of 2022.

Accordingly, the appellant shall be entitled to raise all the above discussed points before the Hon'ble Single Bench.

However, with regard to the expression of the *expectation* by the Hon'ble Single Bench in its Order dated 18th May, 2022, this Court holds the same to be an *obiter* and hence not binding at this stage.

MAT 784 of 2022 with IA CAN No. 1 of 2022 stand accordingly **disposed of**.

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

Urgent Photostat certified copy of this Order, if applied for, be given to the parties on usual undertaking.

(Ananda Kumar Mukherjee, J.) (Subrata Talukdar, J.)