

22     **15.07.  
2022**

Ct. No. 04

Ab

**WP.CT 44 of 2022**

**Union of India and others**

**Vs.**

**Suprovath Bagh.**  
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**Mr. S. N. Dutta.**

**... for the petitioners.**

**Mr. Majnur Ali Sardar,  
Mr. Sirajul Haque.**

**... for the respondent.**

The impugned order is set aside for the reasons as indicated herein below:

An application was taken out by the private respondent for setting aside the article of charges served upon him along with show-cause notice and also the departmental proceeding contemplated against the private respondent.

It appears from the impugned order that the Tribunal on the date of moving the said tribunal application found that the respondent has not appeared and a direction was passed upon the private respondent being the applicant before the Tribunal to issue notice upon the respondent, which was made returnable after four weeks. The Tribunal thereafter proceeded to consider the prayer for passing an interim order.

The next page of the impugned order would reveal that the Tribunal recorded the submissions advanced by the private respondent in support of the claim made in the tribunal application but surreptitiously jumped to the conclusion that if the interim order is not passed, it would cause prejudice to the private respondent. The Tribunal has miserably failed to record its independent finding while passing the interim order ex parte and, therefore, has violated the Rule of procedures, which

provides that the orders should be passed in presence of other side.

There is no difficulty in understanding that in case of an emergent situation, the Tribunal may pass an ex parte ad interim order instead of service upon the respondent but must record a strong reasons for the same and cannot act in a lopsided manner and pass the order without recording any reasons. The reason is the soul and heartbeat of the order in whose absence it cannot survive. It is ardent duty of the Tribunal to record the reason while passing an ex parte interim order so that the other side is in a position to answer the show-cause, so issued and in the event chose to move higher forum, it would help the higher forum to understand the thought process behind passing the interim order ex parte.

Time and again the Apex Court has reminded the sub-ordinate Courts as well as the Tribunal that recording a reason in a judicial proceeding is indispensable and any order, which is bereft of reason, cannot be said to be an order in the eye of law. The impugned order is one of such example where the Tribunal simply quoted the three golden principles by passing the injunction and did not return its independent finding not only on the existence of a prima facie case but on the balance of convenience and inconvenience and irreparable loss and injury that would be caused.

In **Shiv Kumar Chadha etc. vs. Municipal Corporation of Delhi**, reported in (1993) 3 SCC 161, the Apex Court has highlighted the importance of recording the reasons at the time of passing an ex parte interim order and deprecated the manner by simply quoting the provisions of law and its principles without recording any independent findings thereupon.

We, thus, cannot sustain the impugned order. The same is hereby set aside.

However, it is open to the private respondent to pray for an interim order before the Tribunal and if such approach is made, the Tribunal after hearing the respective parties would pass the order by recording proper reasons in accordance with law.

With these observations, the writ petition is disposed of.

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

**(Harish Tandon, J.)**

**(Shampa Dutt (Paul), J.)**