

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE
(Through Video Conference)

MAT 1187 of 2021
with
CAN 1 of 2021

RCC Institute of Information Technology & Ors.
Vs.
Dr. Goutam Pal & Ors.

with
MAT 1071 of 2021
with
CAN 1 of 2021

Dr. Goutam Pal
Vs.
The State of West Bengal & Ors.

Mr. Piush Chaturvedi
Mr. Anujit Mookerji
... For the appellants in MAT 1187 of 2021 &
for the respondents RCC Institute of
Information Technology in MAT 1071 of 2021

Mr. Ranajit Chatterjee
Mr. Aniruddha Mitra
... For the appellant in MAT 1071 of 2021 &
for the respondent no.1 in MAT 1187 of 2021

Mr. Ankit Sureka
... For the respondent no.9 in MAT 1187 of 2021
& for the respondent no.6 in MAT 1071 of 2021

Mr. Tapan Kumar Mukherjee
Mr. Somnath Naskar
... For the State respondents

Both the appeals are filed against an order dated
September 15, 2021 passed by the Single Bench in WPA
13786 of 2021 whereby and whereunder the office order
dated August 4, 2021 issued by the Chairman, Governing
Body, RCC Institute of Information Technology, was set
aside.

The sole reason which has been assigned in the impugned order can be perceived from the meaningful reading of the observations recorded therein which leaves no ambiguity that the said office order dated August 4, 2021 was set aside solely on the ground that the moment the Division Bench in a pending Mandamus Appeal has directed the College authorities to complete the disciplinary proceeding, the action beyond the said stipulated period is *per se* illegal, more particularly in absence of any order extending such period. There is no difficulty in perceiving the grievance of the College authorities as an aggrieved person for the reason that the office order issued on August 4, 2021 was set aside, but we have been invited to consider whether the writ petitioner in the aforesaid writ petition can be said to be an aggrieved person so as to maintain the appeal under Clause 15 of the Letters Patent.

Mr. Chatterjee, learned advocate for the writ petitioner, submits that he raised a very serious issue relating to bias which has not been addressed nor any finding is returned thereupon. The writ petitioner felt aggrieved by such vacuum having created in the said judgment as the plea of bias strikes at the root of the issues involved in the writ petition.

A little prelude to the genesis of the said writ petition is required to be recapitulated and succinctly

narrated before we embark our journey to the points canvassed before us.

A disciplinary proceeding was initiated against the writ petitioner which culminated into an order of dismissal. The writ petitioner challenged the said order in WP No.13874 (W) of 2016. The said writ petition was disposed of on November 13, 2019 upon setting aside the order of dismissal to have been passed in violation of the principles of natural justice and there is smack of bias. Simultaneously, the liberty was granted to the College authorities to proceed afresh from the stage of appointment of an enquiry officer and such proceeding to be concluded within six months from the said date. It was further observed that such enquiry officer must be an independent person and not connected with the affairs of the College. However, the order of suspension was not interfered with.

The aforesaid judgment and order was carried to in an Intra-Court Mandamus Appeal, being MAT 2002 of 2019, and the same was admitted. While considering the prayer for interim order, the Division Bench categorically observed that the College authorities must make an enquiry as to whether any enquiry officer not connected with the College was appointed in the past. If the answer is affirmative, then the College authorities must comply the direction passed by the Single Bench in this regard without prejudice to the rights and contentions of the respective parties in the appeal. Ultimately, the Division

Bench observed that in the event such precedent is not there, then also the enquiry officer must be appointed according to the Rules applicable in this regard. Ultimately, the Division Bench directed such proceeding to be concluded within six months from the date of the order, i.e., August 26, 2020.

Admittedly, there was no steps taken at the behest of the respondent College nor the proceeding could be concluded within the stipulated time. But the fact remains that the step was taken by appointing a retired judicial officer who had one point of time held the post of Registrar in this High Court as an enquiry officer. Since the appointment was made by the Chairman, Governing Body, RCC Institute of Information Technology, i.e., the College, it leads the writ petitioner to move the writ petition not only on the ground of bias against the said Chairman, but also such exercise has been ensued upon the expiry of the period as stipulated in the order dated August 26, 2020. The impugned order would further reveal that an application for modification of the order was also taken out by the respondent College because of the ambiguity having created in the word “disciplinary authority”. Be that as it may, the said application has not been disposed of as yet and it is undisputed that the time indicated in the order dated August 26, 2020 was not extended.

We do not find from the aforesaid order dated August 26, 2020 wherein the time was stipulated for

completion of the proceeding that any consequence was also provided therein in the event of non-adherence thereto. Fixing a time within which the authorities must act and foreclose the proceeding is one thing and the fact that the time was stipulated with consequences in the event of non-observations thereof. In the former case, the action taken by the authorities even beyond the said stipulated period does not *ipso facto* be rendered invalid; but in the latter case, if the consequences are provided such action should fall on such anvil and the consequences would be the guiding factor. Non-observation of the time fixed in the order may invite other consequences provided in the Contempt of Courts Act but it can never be conceived that such order would be rendered unworkable or invalid or liable to be set aside.

Furthermore, the Single Bench at the threshold proceeded to dismiss the writ petition despite the fact that the serious question of bias was raised by the writ petitioner and that too without calling for affidavits and the disclosure of the relevant materials in support thereof. The plea of bias has a far-reaching consequence and has to be looked upon jealously and scrupulously as every action taken by an authority with the element of bias cannot withstand on legal parameters. It is essentially a mixed question of facts and law and, therefore, stronger evidence is required before the Court proceeded to strike down the action on the plea of bias.

Several judgments have been placed before us by the writ petitioner touching upon the concept of bias which, if decided upon, will make the impugned judgment more lengthy and the issue which has not been touched upon by the Single Bench shall be decided in the instant appeals.

We, thus, refrain from going into such aspect in absence of any counter-affidavit to be filed by the appellants in the instant appeals. Since we do not find that the manner in which the writ petition has been dismissed by the impugned order is legally sustainable, the plea of bias can be eventually decided by the Single Bench before whom we propose to remand the matter.

The order impugned is set aside. The writ petition is restored to its original file and number.

Mr. Chatterjee seeks leave to file a supplementary affidavit disclosing the important and vital documents which owe its existence after the filing of the writ petition.

Such leave is granted. The supplementary affidavit shall be filed before the Single Bench to be affirmed within three days from date. A copy thereof shall be served immediately upon Mr. Chaturvedi and the other respondents, if there be any.

The respondents of the writ petition are directed to file their affidavits-in-opposition both to the writ petition

and the supplementary affidavit within three weeks from date. Reply, if any, shall be filed within a week thereafter.

The Single Bench is requested to hear out the writ petition on merit on the basis of the facts disclosed by the respective parties.

We further make it clear that all points, including the maintainability of the writ petition, are kept open and once taken shall be decided in accordance with law.

Both the appeals and the connected applications are disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)