

Item No. 3

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 04.07.2022

DELIVERED ON: 04.07.2022

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA 1546 of 2022

**Kol. Nikhil Pareek.
VERSUS**

The Union of India & Ors.

Appearance:-

Mr. Kumar Shantanu

.....for the Petitioner

Mr. Sudipta Kumar Mazumdar, Ld. A.S.G.,

Mr. Ajoy Kumar Singhania

.. for the Union of India.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. The petitioner filed this writ petition for issuance of a writ prohibiting the respondents from giving any effect to the order dated June 23, 2022 and the further order dated June 29, 2022 until a decision is taken by the Armed Forces Tribunal, Kolkata Bench.

2. The learned Advocate for the petitioner draws the attention of the Court to a letter dated June 23, 2022 annexed

at page 51 of the writ petition and submits that the petitioner was directed to be physically present on July 4, 2022 in connection with further investigation. On a query made by this Court, learned Advocate for the petitioner submitted that the petitioner is physically present before the concerned authority today, i.e. on July 4, 2022 pursuant to the said letter dated June 23, 2022.

3. The grievance of the petitioner is that the Armed Forces Tribunal is not regularly functioning and as such, the petitioner has approached this Hon'ble Court under Article 226 of the Constitution of India as, according to the petitioner, he can avail of the extraordinary writ jurisdiction of this Court as the Tribunal has not taken up the Original Application filed by him and the Tribunal is also not functioning.

4. The Assistant Solicitor General represents the Union of India and draws the attention of the Court to the order dated June 14, 2022 passed by the Hon'ble Division Bench of this Court on an appeal being M.A.T. No.19 of 2021 filed by the petitioner challenging an order of a co-ordinate Bench directing the petitioner to avail the statutory remedy by filing an application before the Armed Forces Tribunal. The

Learned Advocate submits that the Hon'ble Division Bench did not interfere with the order of the Single Bench. The learned Advocate thus submits that the petitioner is trying to bypass the statutory remedy by filing the instant writ petition.

5. Heard the Learned Advocates for the parties and considered the materials on record.

6. It is evident from the order dated June 14, 2022 passed by the Hon'ble Division Bench in M.A.T. No.19 of 2021 that the Hon'ble Division Bench held that there is no material to hold that the Kolkata Regional Bench, Armed Forces Tribunal is not functioning. The Hon'ble Division Bench while refusing to interfere with the order passed by the Learned Single Bench refusing to exercise the discretion by entertaining the writ petition on the ground of existence of statutory alternative remedy limited the interim order for a period of a fortnight from the date of passing of this order.

7. It is important to note that the said interim order passed by the Hon'ble Division Bench expired on or about June 28, 2022 and the instant writ petition was filed immediately thereafter, i.e. on July 1, 2022 on the self same allegation that the Tribunal is not functioning.

8. The petitioner claims to have approached the Tribunal by filing an Original Application on June 27, 2022 with a prayer for quashing of proceedings of Court of inquiry tentative charge sheet, summary of evidence and the notice of conduct of General Court martial. Some of the reliefs which the petitioner is seeking in this writ petition is identical with the reliefs claim in the Original Application as would be evident for the reliefs claimed in this writ petition. Other reliefs are more or less in the nature of interim reliefs arising out of the issues raised before the Tribunal.

9. The learned Advocate for the petitioner now submits that the petitioner has approached this Court as the Tribunal is not entertaining the prayer of the petitioner for any interim relief. Such grievance can, however, be redressed by passing the following order.

10. W.P.A. No.1546 of 2022 is disposed of by requesting the Kolkata Regional Bench, Armed Forces Tribunal to take up the prayer for interim relief, if any, made before such Tribunal and decide the same in accordance with law.

11. There shall be no order as to costs.

12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

Naren, AR(Ct.)