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WPCT 10 of 2023

Court : 04
Item : 02
Matter : WPCT
Status : DO
Bench Id : 266048
Transcriber : NANDY

Praveen Kumar Thakur
Vs.
The Union of India & Ors.

Mr. Surojit Samanta, Advocate
Mr. Biswajit Samanta, Advocate
Ms. Anindita Roy, Advocate

.....for the Petitioner

Mr. Aurobindo Sen, Advocate
Mr. Rahul Sarkar, Advocate
Ms. Dipika Sarkar, Advocate
Mr. Siddhant Srivastava, Advocate

.....for the Union of India

Pursuant to the order dated April 12, 2023, the Registrar as well as the Deputy Registrar of the Central Administrative Tribunal, Kolkata Bench, is personally present before us.

A serious question is raised on the earlier occasion in relation to the procedure adopted by the Central Administrative Tribunal, Kolkata Bench pertaining to the institution of the proceedings and the manner of listing the same before the respective Benches. It was vociferously submitted by the learned Advocate for the petitioner that the procedure which was prevalent since the advent of the said Tribunal had been surreptitiously disrupted and/or discontinued causing immense inconvenience not only to the litigant but also the members of the Bar who are always regarded as responsible officer assisting the Tribunal or the Court in arriving at the correct decision.

The President of the Central Administrative Tribunal has also volunteered during the interaction with the Registrar and the Deputy Registrar and supported the stand of the learned Advocate for the petitioner on the mannerism and the mode accepting the filing of the tribunal application. Recently a procedure has been adopted that if the service

has been effected before tendering of the tribunal application, there is a reluctance on the part of the Registrar to accept the same. A further innovative procedure has been adopted to list the matter for the purpose of admission and issuance of service of notice upon the contesting respondents which occasioned the delay in disposal of the case.

The necessity of prior notice before the institution of the proceeding was felt several decades ago when the Rules relating to an application under Section 226 of the Constitution of India which were filed before the High Court wherein a 48-hours notice is required to be served upon the respondents who are primarily the State or the Statutory Authorities so as to expedite the disposal of the case. The procedure which is now being adopted by the Tribunal that no notice could be served upon the respondents unless the admission is made, appears to be unreasonable, irrational and in our opinion encourage the belated disposal of the case. Such procedures not only intended to mount the heap of the pendency in the Tribunal but are opposed to the constitutional ethos for which the provision in the form of Article 323A of the Constitution of India was introduced by way of an amendment. The primary object sublime the incorporation of Article 323A of the Constitution is to ease out the burden of the High Court in tackling a specified category of cases and to secure speedy disposal thereof through a mechanism of the institution specifically established in this regard. The manner in which the procedure has been adopted recently would not achieve the primary object behind the incorporation of the said provision by way of amendment as in some cases, if the notices are given to the contesting respondents, on the date of first listing, the matter could have been disposed of.

We, therefore, do not ascribed to the procedure recently introduced by the Tribunal and in exercise of power conferred under Article 227 of the Constitution of India, we direct the Tribunal to list the tribunal applications on being filed upon service of prior notice to the respondents unless an extraordinary and exceptional case is made out for an immediate and urgent relief which cannot wait for such service and in this regard the dispensation can be made as the Tribunal may deem fit. We do not countenance to the procedure that the moment the service has been effected upon the respondents, the filing would not be allowed nor the matter be listed for the first time after its institution for the purpose of its admission and the direction for service of the copy of the tribunal application upon the respondents. We, therefore, direct the Tribunal to act accordingly.

In view of the directions passed hereinabove, there is no necessity of further appearance of the Registrar and the Deputy Registrar of the Central Administrative Tribunal, Kolkata Bench.

We have taken up the main writ-petition challenging the order dated December 23, 2022 in OA 2039 of 2022 whereby and whereunder the Miscellaneous Application No. MA 885 of 2022 is dismissed. Astonishingly, the reason assigned for disposal of the said miscellaneous application is unknown in legal parlance. We have given to understand that the said application was taken out in OA 2039 of 2022 for an appropriate order which according to the Bench is liable to be dismissed as an order effecting the service of the said Original Application had already been directed by the Bench.

We do not ascribe the view expressed by the Tribunal in securing the disposal of the miscellaneous application

filed in connection with the main proceeding. The miscellaneous applications are filed for an interim order/direction pending adjudication of the final cause as shown therein and cannot be dismissed solely on the ground that the moment the service of the original application has been directed such miscellaneous application is liable to be dismissed.

There is a complete lack of judicial mind in dispensation of justice which is the hallmark of the constitutional provision. The aforesaid miscellaneous application is dismissed by a stroke of pen without recording any reason on merit. A litigant has to know the reason for dismissal of his/her application which has a fundamental principle behind the incorporation of a healthy judicial system. The reason is the heart and soul of an order without which it cannot remain alive nor can be seen. The necessity of providing a reason can also be visualized simplicitor on this score, the moment the challenge is made to a higher forum, the higher Court would be in a position to understand the reason for dismissal thereof and decide the cause on a legal parameter. In a writ-jurisdiction, more particularly, in exercise of power of judicial review, the High Court is not concerned with the decision or the order but the decision-making process which can only be conceptualize on a findings or the reasons provided in the order under challenge. Time and again the Supreme Court has deprecated the disposal of the applications without recording any reason and have directed all the authorities including the Tribunal, Courts to assign reason in an adversarial system of adjudication so that both the parties would be in a position to know the fate of their litigation and the further course to be adopted in this regard.

We thus do not agree with the manner in which the

MA 885 of 2022 is dismissed. The portion of the said order is set aside. MA 885 of 2022 is restored to its original file and number.

The Tribunal is directed to consider the said application on merit independent of the fact that the service has been effected upon the respondent in the original proceedings.

With these observations, the writ-petition being **WPCT 10 of 2023** is **disposed of**.

No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)