

20.03.2023

WPST 28 of 2023

Court : 04
Item : 68
Matter : WPST
Status : DISMISSED
Bench Id : 266048
Transcriber : NANDY

Mahadeb Sarkar
Vs.
The State of West Bengal & Ors.

Mr. Indradeep Pal, Advocate
Mr. Mustafizur Rahaman, Advocate
Mr. Saugato Pal, Advocate

.....for the Petitioner

Mr. Biswabrata Basu Mallick, Advocate

.....for the State/Respondent

The instant writ-petition is filed challenging the order dated 16.01.2023 passed by the Administrative Member of the West Bengal Administrative Tribunal in OA 1026 of 2017 whereby and whereunder on consent of the Counsels, the matter was referred to a Bench comprising of two Members (Judicial and Administrative) for hearing.

It is no doubt true that by virtue of an General Circular or Special Order issued by the Chairman of the Administrative Tribunal, such class of cases indicated therein can be taken up by the Single Bench. The first paragraph of the order would reveal that there was an order, if the Tribunal finds that the point involved in the case requires hearing by a Division Bench comprising of one Judicial Member and one Administrative Member, it can refer the matter to such Bench for disposal. It appears from the impugned order that the Single Bench initially took up the matter but it was submitted by the Counsel appearing for both the sides that intricate question of law is involved which needs the decision of the Division Bench comprising of one Administrative Member and one Judicial Member. The petitioner submits that he has not given such consent and, therefore, such recording is erroneous and not based upon true facts.

The higher forum should not interfere with the order recording what happened before the Tribunal below nor the statements made therein can be contradicted by filing a judicial proceeding. It would not be proper on the part of the higher forum to interfere with such order simply because that the events recorded therein are not the true and correct state of affairs and such practice has been deprecated by the Supreme Court in case of *State of Maharashtra Vs. Ramdas Nayek* reported in **(1982) 2 SCC 463**. It has been highlighted in the said judgment that the proper course in this regard to approach the same Judge and invite his attention that the recording of the event is not true.

In view of the law expounded in the above-noted decision, we decline to interfere with the impugned order.

Accordingly the writ-petition being **WPST 28 of 2023** is **dismissed**.

However, the dismissal of the writ-petition shall not preclude the petitioner to take recourse under law in view of the above-noted decision of the Supreme Court and if such approach is made, the learned Member of the Tribunal would consider the same on merit.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

