

82 **27.03.
2023**
Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WP.ST 45 of 2023

Noor Mohammad
Vs.

The State of West Bengal and others.

Mr. Kallol Basu,
Mr. Suman Banerjee.

... for the petitioner.

Mr. Raja Saha,
Mr. Biswabrata Basu Mullick.

... for the State.

With the legal acumen having been projected at one place has been excelled at the higher forum and the challenge is founded on recording of the orders perceiving to be wrong and seeking a blessing of the Court to pass an order, be it interim or final.

The conduct of the parties to the proceedings is one of the relevant factors for passing an interim order. The interim order cannot be passed on a mere drop of hat or the parties have approached the Court or the Tribunal but to be decided on a well-known legal parameters, which includes whether there exists any emergent situation, which cannot be reversed in the event any subsequent event happened.

The Tribunal was approached and the matter was taken up on 16th December 2022. The order reflects that the Counsels appearing for the respective parties consented for the matter to be taken up by the Single Bench and thereafter the Single Bench fixed the matter for admission hearing on 8th March 2023. Obviously, if the interim order is inevitable at the serious approach

and/or the injury would be caused if the same is not passed on the day when it is prayed for, the party should have taken a prompt and showed alacrity in seeking justice. Rather the petitioner waited till 8th March 2023, the next date fixed for admission hearing and we are told that because the said matter could not be taken up on 8th March 2023, the same is posted on 9th March 2023.

The order passed on 9th March 2023 is also annexed to the writ petition, which would reveal that both the Counsels appearing for the parties prayed for an adjournment and on that score the Tribunal has adjourned the admission hearing of the matter and fixed the next date on 8th May 2023. Had it been a case that there is minimum intervention required by the Court by interdicting the action of the authorities, as it would cause serious and irreparable injury, the adjournment should not have been asked even there appears to be a plausible clause. After taking an adjournment on the next date, it is not open to the litigant to fallback on the earlier order and contend before the higher Court perceiving to be a case of refusal to pass an interim order and invite the attention of the higher forum to decide the prayer for interim order.

The Court does not pass any interim order unless it is satisfied that the facts and circumstances pleaded therein warrants so. The conduct of the parties and the prevarication at the different stages of the proceedings can also be one of the factors where the Court may refuse to pass interim order.

It is no longer *res integra* that passing an order of restraint is on the sound principles of law and in exercise of discretion, which should be judicious and reasonable to the circumstances as opposed to capricious and arbitrary exercise of powers. There was no fetter on the part of the petitioner to pray for listing of the matter at

the short interval as the right of the parties shall be highly affected and in the event the Tribunal has fixed a longer date, the approach could have been made to the higher forum making an innocuous prayer for preponing the date but not in a manner as has been done in the instant case that the challenge is made to a previous order when on the next date the petitioner himself asked for adjournment.

The rhetoric of the learned Advocate for the petitioner and eloquence which he possessed cannot deter the Court in dispensing justice, which is paramount and bedrock of the river of justice, which flows in its course and follow the path destined.

However, liberty is granted to the petitioner to approach the Tribunal to pray for preponment of the date and if such approach is made, the Tribunal shall consider the same in a pragmatic manner and also bearing in mind the tenure of service available to the petitioner.

With these observations, the writ petition is disposed of.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

