

D/L. 6.
October 6, 2023.
MNS.

WPA No. 4896 of 2016
+
CAN 2 of 2023
&
CAN 3 of 2023
&
CAN 4 of 2023

Abdul Hai
Vs.
State of West Bengal and others

Mr. Gausul Alam

...for the writ petitioner.

Mr. Golam Mostafa,
Mr. Subir Sabud

...for the applicant in
CAN 2 of 2023.

Mr. Surajit Samanta,
Mr. Habibur Rahaman,
Ms. Jasika Alam,
Mr. Archishman Singh

... for the applicant in
CAN 3 of 2023
and
CAN 4 of 2023.

Mr. Debjit Mukherjee,
Ms. Kalpita Paul

...for the State.

1. Learned counsel for the petitioner and the proposed added parties argue that the order under recall dated December 15, 2022, was passed on an erroneous assumption.

2. It is submitted that a learned Single Judge of this Court had set aside a panel, whereby Md. Inamul Hoque, the respondent/applicant, had been selected for the post of Muslim Marriage Registrar (MMR).
3. Subsequently, an appeal was preferred against the order of the learned Single Judge, in which on June 20, 2012 a *status quo* order had been passed.
4. It is submitted that although the panel was set aside, Md. Inamul Hoque had been continuing as the MMR, being appointed in due course of law previously.
5. However, in the meantime, on June 18, 2012, pursuant to the order of the learned Single Judge, which was challenged in appeal, a fresh panel was prepared, where Abdul Hai, the original writ petitioner, was the first named candidate.
6. Subsequently, the appeal was decided and the order of the learned Single Judge dated April 18, 2012 was set aside remanding the matter to the writ court. The writ petition was ultimately dismissed as infructuous on April 27, 2017 in view of an arrangement and

resolution having taken place in connection with the dispute raised in the writ petition.

7. On November 8, 2016, the Domkal Police Station area was separated into two parts, being Domkal-I and Domkal-II.
8. Md. Inamul Hoque was appointed as the MMR in respect of one of said areas and Mustafa Kamal, the added party herein, as the other.
9. Abdul Hai came into picture later. By way of the writ petition, being WPA No. 4896 of 2016, Abdul Hai sought an implementation of the panel dated June 18, 2012, which had been rendered infructuous in the meantime, since the order of the learned Single Judge, which was the genesis of the same, has already been set aside by the Division Bench.
10. Hence, it is argued that the order under recall could not have been passed, if the said facts were pointed out to the court at that juncture.
11. Learned counsel appearing for the writ petitioner, namely, Abdul Hai, contends that the allegations of suppression of material facts made against Abdul Hai are erroneous, since he did not have any way of knowing the said facts at the relevant juncture. It is submitted that only a deliberate suppression can be

termed as “suppression” for the purpose of recalling an order. Abdul Hai having not suppressed any order, the prayer for recall is required to be refused.

12. Learned counsel for Abdul Hai further submits that there were irregularities in the subsequent appointments given to Md. Inamul Hoque and Mustafa Kamal, in respect of Domkal-I and Domkal-II.

13. In reply, learned counsel for the applicant and the added parties refutes the alleged irregularities in their appointments.

14. Upon comprehensive perusal of the materials annexed to the pleadings, it is evident that when the order dated December 15, 2022 was passed, the court was not aware of the circumstances as narrated above. In view of a Division Bench having set aside the order of the learned Single Judge by virtue of which the panel dated June 18, 2012 had been prepared and in view of subsequent appointments of Md. Inamul Hoque and Mustafa Kamal in respect of the newly formed Domkal-I and Domkal-II police stations areas on November 8, 2016, the order under review could not have been passed, since the panel

which was directed to be implemented in favour of Abdul Hai had lost its legal force prior to the said date.

15. Hence, there is no option but to recall the said order. However, there is substance in the contention of learned counsel appearing for the Abdul Hai that benefit of doubt ought to be given to him since there is nothing on record to implicate him for deliberate suppression, since Abdul Hai might not have been aware of the facts when moving the writ petition.

16. Accordingly, CAN 2 of 2023 is allowed, thereby recalling the order dated December 15, 2022 passed in WPA No. 4896 of 2016.

17. However, it is made clear that nothing in this order shall preclude the writ petitioner, namely, Abdul Hai, from preferring any challenge to the subsequent appointments of Md. Inamul Hoque and Mustafa Kamal as MMRs' for Domkal-I and Domkal-II, if the writ petitioner is aggrieved by such appointments.

18. If such challenge is made, the same shall be decided independently without being prejudiced in any manner by any of the observations made herein by the appropriate authority.

19. Needless to say, in view of the above order,
WPA No. 4896 of 2016 and other connected
applications stand disposed of.

20. There will be no order as to costs.

21. Urgent photostat certified copies of this order,
if applied for, be made available to the parties
upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)