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2023
Ct. No. 04

Ab

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

WP.ST 71 of 2023

The State of West Bengal and others
Vs.
Shubhendu Bhattacharjya and another.

Mr. Arjun Roy Mukherjee,
Ms. Debapriya Mitra,
Mr. Joyjeev Medhi.

... for the petitioners.

Mr. D. N. Roy,
Mr. S. Ghosh,
Mr. M. N. Roy,
Mr. B. Nandy.

... for the respondent no. 1.

Taking aid of the interpretative skills, the State is sought to interpret the order passed by the Tribunal in an earlier round of litigation in such a manner, which would frustrate and stultify the tenet and import a man of normal prudence would gather. Challenging the disciplinary proceeding, the Tribunal was approached, but the Tribunal did not find that the disciplinary proceeding should be quashed or set aside at the nebulous stage but found that there has been a procrastination of the proceeding at the behest of the State and further directed the proceeding to be concluded within six months and take a final decision by way of passing a speaking and reasoned order as per the rules and communicate the same from the date of receipt of the order.

Being conscious that the proceeding may be lingered, a default clause was incorporated in the order that if the proceeding is not concluded within six

months, the entire proceeding shall be vitiated. Pursuant to the said direction, the disciplinary proceeding continued and it is not in dispute that the respondent participated therein yet the final decision was not taken for a pretty long time. Ultimately, the tribunal application was taken out alleging that despite the time limit indicated in the earlier order and in view of the default clause, the disciplinary proceeding becomes non est, which was duly admitted in the month of August 2021. Immediately thereafter, i.e. on 19th August 2021, the petitioners received the purported order dated 12th May 2021 through e-mail and Whatsapp.

The Tribunal found that an attempt is sought to be made to wriggle out from the default clause having been incorporated in the order passed in the earlier writ petition and quashed and set aside the said final order.

Learned Advocate for the State vociferously submits before us that the order dated 11th December 2020 passed earlier has to be read in a manner that would not render the decision vitiated in terms of the said order. According to him, the word “and” has to be read disjunctively and not conjunctively so as to uphold the decision of the disciplinary authority. According to him, if the authority has understood and perceived the order sensing that the word “and” has been used disjunctively, the decision of the disciplinary authority cannot be rendered infructuous.

We are afraid whether such impression can be gathered upon a meaningful reading of the language used in the order dated 11th December 2020. The Tribunal did not use the complex or flowery words, which may not be understood and perceived by a man of normal prudence, as it is capable of having more than one meaning. The language is explicit, clear and does not create any kind of perceived notion into a man that the

Tribunal intended the disciplinary proceeding to be concluded by passing a final order within the time limit indicated therein.

It is sought to be contended that the sentence “to conclude the departmental proceeding within a period of six months” has to be read as a conclusion of the hearing by the respective parties for the reason that the further sentence “to take a final decision by passing a speaking and reasoned order” has to be segregated and cannot be imbibed within the word ‘conclude’ as appearing in the said order.

We are not accepting the aforesaid interpretation, as the conclusion of the proceeding can only be done by passing a final order otherwise the language would have been different. A proceeding is concluded by passing a final order as any other interpretation would frustrate the very purpose and encourages the unscrupulous litigant to interpret differently to avoid the default clause incorporated therein. The word ‘and’ is always considered to be in conjunction with something indicated before it and has to be read in wholesome to gather an impression and/or intention of the maker of the said order.

It is improbable and inconceivable that upon affording an opportunity of hearing to the respective parties would be construed as the proceeding being concluded when the final order is not passed keeping the fate of the litigation in lurch or in suspended animation for all time to come. The Tribunal has found that the proceeding was not concluded within the timeframe and in order to overcome the strict consequence provided by inserting the default clause, the order was passed predating the same, but the communication was made through the electronic medium much thereafter.

Our attention is drawn by the respondent no. 1 that the authority subsequently accepted the order of the

Tribunal and issued a further Memorandum dated 28th September 2022 proposing to initiate the enquiry afresh under Rule 10 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. We find from the first paragraph of the said Memorandum dated 28th September 2022 that the authority has accepted that the proceeding could not be concluded within the stipulated time and, therefore, has been quashed. The moment the authority has decided to initiate a de novo disciplinary proceeding having accepted the decision of the Tribunal, the State cannot take a rebound or approbate or reprobate at the same time.

From whatever angle we look at, we do not find any infirmity and/or illegality in the impugned order.

The writ petition is dismissed.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)