

08.05.2023

WPST 78 of 2023

Court : 04
Item : 05
Matter : WPST
Status : DO
Bench ID :266048
Transcriber: NANDY

Noreen Barlow

Vs.

The State of West Bengal & Ors.

Mr. Khairul Alam, Advocate

.....for the Petitioner

Mr. Tapan Kumar Mukherjee, Learned AGP

Ms. Saheli Mukherjee, Advocate

.....for the Respondent

The order dated 08.02.2023 is the subject matter of challenge in the instant writ-petition. The said order is passed on an Miscellaneous Application being MA 105 of 2022 filed in CCP 72 of 2014 which had already been disposed of by an order dated 29.06.2022. The aforesaid miscellaneous application is taken out to recall the said order on the ground that the High Court in exercise of the writ-jurisdiction, set aside the order of the Tribunal dated 16.08.2022 passed in OA 87 of 2010 and, therefore, the order passed by the Tribunal in a contempt application becomes infructuous and need to be recalled and the contempt application to be heard afresh.

Though the Tribunal has declined to accede to the said prayer such order dated 29.06.2022 disposing of and/or dropping the contempt proceeding passed by the Division Bench of the Tribunal and, therefore, cannot be recalled by a Single Bench which cannot be said to be infirm or illegal.

However, bearing in mind the reality that only one single Administrative Member is discharging the duties and functions of the Bench as till date no appointment has made to the other Members as well as the Chairperson, we permitted the Counsel appearing for the parties to address the issues raised in the instant writ-petition on merit.

The record would reveal that alleging that the said

order passed in OA 1409 of 2012 had been violated and/or not complied with, the contempt application being CCP 72 of 2014 was filed. In the meantime, the order disposing of the original application was assailed before the High Court and the High Court quashed and set aside the said order and remitted the matter to the Tribunal to hear the matter afresh. The moment the original order is quashed and set aside, the question of its implementation through contempt proceeding does not arise. The contempt based upon an order passed by the Tribunal which was interfered by the higher forum receives its natural death and, therefore, there is no necessity for resurrecting and/or reviving the said contempt application on an independent, distinct and separate orders passed subsequently by the Tribunal.

It is a misconception in the minds of the petitioner that the contempt would continue despite the order complained of, has been quashed and set aside as it is substituted by a subsequent order passed by the Tribunal. The foundation of the initiation of the contempt proceeding is a willful and deliberate violation of an order being conscious of the consequences provided therefor and if the said order is set aside and quashed, it cannot be presumed or perceived that the subsequent independent order would further be violated and/or defiance shall be shown thereto.

If the further conduct of the respondent authority justify the notion that the subsequent order has also been violated, it gives a new cause of action for initiation of the proceeding but it is inconceivable and improbable that the earlier contempt proceeding shall be resuscitated and will be allowed to continue on the basis of the pleadings made therein.

There is no question of recalling of the order disposing of the contempt proceeding in view of the fact

that the order complained of was quashed and set aside and, therefore, the findings made therein would not have any impact nor shall be recognized in a judicial parlance.

With these observations, **WPST 78 of 2023** is **disposed of**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)