

04 24.04.23

WP.ST. 68 of 2018

Ct. No. 04

akd

**The State of West Bengal & Ors
Vs.
Usha Shaw & Ors.**

**Mr. Tapan Kumar Mukherjee,
Mr. Pinaki Dhole,
Mr. Avishek Prasad.**

... for the petitioners.

**Mr. Biswaroop Bhattacharya,
Mr. Golam Mohiuddin,
Ms. Puja Mondal.**

... for the respondents.

The seminal point involved in the instant writ petition is whether the Tribunal can pass a direction upon the authorities to do certain things in terms of an order, which was not signed by the Member, and impliedly recalled by a subsequent order.

By the impugned order the Tribunal directed the respondent no. 3, Joint Secretary, Public Works Department, to take a decision afresh, as the earlier order dated 9th December, 2015 passed by the said authority was set aside by an order dated 16th August, 2016.

This raises the above issue whether the order dated 16th August, 2016 is in existence having not signed by the Members and the direction can be passed upon the authority to act on the basis of such order. At the time of admission of the instant writ petition the predecessor Bench noticed the aforesaid fact, but on the prayer of the respondents the writ petition was kept alive as other two writ petitions, being WPST 1688 of 2008 and WPST 1689 of 2008 are pending. This Bench had an occasion to consider the aforesaid writ petitions being WPST 1688 of 2008 and WPST 1689 of 2008 and did not find such point to have been involved and disposed of the same on the

basis of the merit involved therein. The instant writ petition was segregated for the simple reason that the point taken herein is distinct, separate and different to those writ petitions.

As indicated above, though the order was passed by the Tribunal on August 16, 2016, but the said order was not signed and on the following day, i.e. August 17, 2016 the Tribunal recorded that the said order was not signed and will not be considered to be in existence in the eye of law.

The factum of non-signing of the said order is further reiterated in the subsequent order dated November 3, 2016 written in handwriting by one of the Members of the Tribunal with clear stipulation that no action to be taken by the authorities to implement the order dated August 16, 2016.

The order becomes final and operative in law the moment it is signed by the Tribunal or the Court. The order, which has not been signed, does not have a legal recognition nor to be implemented. There is no quarrel to the proposition that the Court or Tribunal passing an order in open Court may recall the said order before it is signed. This appears to be so in the instant case, which would be evident from the later order dated August 17, 2016. The moment the order has been recalled or remain on paper without having any legal efficacy or binding cannot be directed to be implemented by the authority by the subsequent order passed by the Tribunal.

We thus find that the impugned order is invalid, illegal and cannot sustain in the eye of law. The same is hereby set aside.

The matter is remitted to the Tribunal for hearing the tribunal application afresh and endeavour shall be made to dispose of the same on merit by recording

proper reasons in accordance with law within three months from the date of the communication of this order.

The writ petition is thus disposed of.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)