

17.10.2023
Item Nos.09&10
Court No.11
Avijit Mitra

MAT 1204 of 2023
with
IA No.CAN 1 of 2023
The West Bengal Zoo Authority & ors.
-versus-
Sri Gourango Chattaraj & ors.
with
MAT 1910 of 2023
with
IA No.CAN 1 of 2023
with
IA No.CAN 2 of 2023

The West Bengal Zoo Authority & ors.
-versus-
Sri Gourango Chattaraj & ors.

Mr. Kishore Datta, Sr. Adv.,
Mr. Vivekananda Bose,
Mr. Ratikanta Pal
...for the appellants
Mr. Sirsanyo Bandyopadhyay,
Mr. Arka Kumar Nag,
...for the State
Mr. Abhrotosh Majumder, Sr. Adv.,
Mr. Sayan Sinha,
Mr. Kausheyo Roy
...for the respondents/writ petitioners

The appeal being MAT 1204 of 2023 and the appeal being MAT 1910 of 2023 have been preferred challenging orders dated 19th May, 2023 and 26th July, 2023 respectively passed by the learned Single Judge in a writ petition being WPA 11723 of 2023. As both the appeals arise out of orders passed in the same writ petition, the same are taken up for hearing together.

By the order dated 19th May, 2023, the learned Single Judge exercised discretion in favour of the writ petitioner on a conjoint reading of Regulation 9(2)(b) of the Regulations relating to West Bengal Zoo Authority (in short, WBZA) and the minutes of the meeting dated 11th

July, 2014 of the Governing Body pertaining to Agenda 7(10)(b).

Mr. Datta, learned senior advocate appearing for the appellants submits that the transfer is an incident of service. The writ petitioner has been transferred from Zoological Garden, Alipore by the order dated 3rd May, 2023 for better management of Harinalaya Mini Zoo, New Town. The order does not in any manner put the writ petitioner in a disadvantageous position. In the interest of administration, the order of transfer has been passed and in the absence of any ground of *malafide* or violation of any statutory rule, the learned Single Judge ought not to have exercised discretion in favour of the writ petitioner. In support of such contention reliance has been placed upon a judgment delivered in the case of *Union of India Vs. S.L. Abbas*, reported in (1993) 4 SCC 357.

Mr. Datta argues that even if the decision of the Governing Body of WBZA pertaining to Agenda 7(10)(b) stands, the writ petitioner does not acquire any indefeasible right. In the absence of infringement of any legal right, the learned Single Judge ought not to have entertained the writ petition. In support of such contention reliance has been placed upon the judgment delivered in the case of *Shilpi Bose Vs. State of Bihar*, reported in 1991 Supp (2) SCC 659.

Mr. Majumder, learned senior advocate appearing for the writ petitioner/respondent no.1 herein submits

that initially, the interim order was passed on 19th May, 2023 till 31st July, 2023 and the parties were granted liberty to exchange their affidavits and the matter was made returnable in the monthly list of July, 2023. Subsequently, the earlier interim order was extended by an order dated 26th July, 2023 till the end of November, 2023. The writ petition is still pending.

Drawing our attention to the provisions of Regulations 4 and 5, Mr. Majumder argues that top Government officials are the members of the Governing Body. Convening a meeting on 11th July, 2014 the said Governing Body took a conscious decision under Agenda 7(10(b) that the officers and staffs who joined the Zoo prior to the establishment of the WBZA shall only be transferred on request, complaint and punishment. While issuing the transfer order the authorities themselves acted contrary to their own decision.

He argues that the applicability and legality of the said regulations and minutes are issues to be considered at the time of final hearing upon exchange of affidavits and till such final decision is arrived at, the learned Single Judge rightly granted an interim protection. In support of the arguments advanced reliance has been placed upon the judgment delivered in the case of *Deoraj Vs. State of Maharashtra & Ors.*, reported in (2004) 4 SCC 697 and *B.M. Minhas Vs. Indian Statistical Institute & ors.*, reported in (1983) 4 SCC 582.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

The regulations of WBZA, the minutes and the decision taken by the Governing Body need to be considered together and not in isolation. A particular clause cannot be taken up and highlighted. The writ petitioner joined the Zoo prior to establishment of WBZA and *prima facie* from Agenda 7(10)(b) it appears that the officers and staffs, who joined the Zoo prior to establishment of WBZA, can only be transferred on request, complaint and punishment. The issues as to whether the said decision has any statutory force or as to whether even if the said clause exists, the writ petitioner/respondent no.1 does not acquire any legal right, are issues to be considered at the time of final hearing and for such purpose the writ petition has been kept pending granting liberty to the parties to exchange their affidavit. The learned Single Judge has exercised discretion specifying the reasons and we do not find any infirmity in such decision.

Accordingly, the appeals and the connected applications are dismissed.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Siddhartha Roy Chowdhury,J.) (Tapabrata Chakraborty,J.)