

08 28.04.23

WPLRT 172 of 2022

Ct. No. 04

Akd

**M/s. Skyline Vanijya Private Limited & Anr.
Vs.
The State of West Bengal & Ors.**

**Mr. S. N. Mitra,
Mr. Arindam Banerjee,
Mr. Saptarshi Datta,
Ms. Srinjita Ghosh,
Ms. Pourush Kanti Pal.**

... for the petitioners.

**Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag.**

... for the State.

**Mr. Arijit Bardhan,
Mr. Rishabh Dutta Gupta.**

... for the respondent no. 9.

**Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta.**

... for the respondents.

Though the order impugned in the instant writ petition does not appear from a bare reading thereof to have been indicated a thing which is perceived by the writ petitioners at the time of hearing on the said date, the order dated 14th November, 2022 is clear, explicit and unambiguous that the application filed by the petitioners was directed to be listed for hearing on 15th June, 2023 and an opportunity to file affidavit-in-reply was given to them.

However, Mr. Mitra, learned Senior Advocate, appearing for the writ petitioners submits that on the said date there was a dissent amongst the respective Counsels as to whether the application for condonation of delay in filing of an application under Section 19 of the Administrative Tribunal Act would be heard first or an application for substitution or addition in place and stead of some of the deceased respondents should be heard first. According to him, the application for substitution/addition is required to

be heard first, as the proceeding cannot be allowed to continue against some of the dead persons and, therefore, the record is required to be corrected in this regard.

The learned Advocate appearing for the respondent nos. 3, 4, 5A-5F, 11A-11C, 12, 22A-22C, 24A-24C, 24-26, 27, 28A-28C, 32, 33, 35-42, 43, 44-48 and 49 submits that the moment the main proceeding is filed impleading the persons who are dead, such proceeding is invalid on the face of it, which cannot be cured either by seeking substitution or addition.

On the other hand, Mr. Bardhan, learned Advocate, appearing for the respondent no. 9 submits that it is a paramount duty of the Tribunal to consider whether the substitution is a proper course or addition or both cannot be taken recourse to, which requires to be decided first before the Court continue to hear the application for condonation of delay.

In support of the aforesaid contentions of the petitioners the supplementary affidavit is filed today, which is kept on record.

Be that as it may, in view of the categorical stand of the respective Counsels even though the impugned order does not reflect so, the question, which appears before the Tribunal, was whether an application for substitution/addition or an application for condonation of delay is required to be heard first.

Obviously the proceeding against a dead person cannot be allowed to continue. If the application for substitution/addition has been taken out, such application has to be decided first in the perspective of an application for condonation of delay at the first hand and depending upon the fate of the said application for condonation of delay proper course

would be to bring the heir of some of the deceased respondents in the main application.

We do not find any quarrel to the above, as in the event the application for condonation of delay is taken up first, any order that would be passed shall be passed against some of the respondents, who are already dead unless the heir are brought on record. It is, therefore, necessary that the application seeking substitution/addition is required to be taken up first and we trust and hope that the said application shall be taken up on 15th June, 2023 already fixed for hearing by the Tribunal.

We do not find that the aforesaid understanding from the impugned order admits any ambiguity nor there may be any confusion in the mind of the appearing Counsels in this regard.

With these observations the writ petition is disposed of.

We trust and hope that the Tribunal shall take up the said application on the date so fixed and endeavour shall be made to dispose of the same within two weeks therefrom.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

