

01.03.
2023

Ct. No. 04

Ab

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

WP.CT 127 of 2022

Samir Kumar Bandyopadhyay and others
Vs.
Union of India and others.

Mr. Ujjal Roy.

... for the petitioners.

Mr. D. N. Ray,
Mr. Goutam Sardar,
Mr. Goutam Mallick.

... for the UOI.

The impugned order has two parts, firstly, the claim in relation to the benefits under the MACP and, secondly, wrongful withdrawal of excess amount disbursed to the petitioners granting benefits under the MACP.

The Tribunal found that the withdrawal of the excess amount without finding any fault into the petitioners is impermissible in view of the judgment of the Apex Court rendered in case of **State of Punjab and others vs. Rafiq Masih (White Washer) and others**, reported in **(2015) 4 SCC 334**.

The petitioners cannot be said to be aggrieved by that portion of the order as the reliefs have been granted in their favour by the Tribunal directing the authorities to refund the amount deducted as excess payment. The petitioners have approached this Court challenging the other part of the order by which the benefits under the MACP was not extended to the petitioners.

Our attention is drawn to the findings recorded in the impugned order wherefrom it appears that the Counsel appearing for the petitioners before the Tribunal conceded that in view of the judgment

rendered in case of **Union of India and others vs. M. V. Mahanan Nair**, reported in **(2020) 5 SCC 421**, the petitioners are not entitled to the benefits under the said Scheme. It is sought to be contended that there was no consent given nor any instruction was received from the petitioners by the said Counsel and, therefore, the order needs interference.

Since the events happened before the Tribunal has been reflected in the said order, it would not be proper for us to disbelieve such recording of events without affording an opportunity to the constituents of the Bench of the Tribunal. The aforesaid practice of challenging the order before the higher forum on the score that no consent was ever given has been deprecated by the Apex Court in case of **State of Maharashtra vs. Ramdas Srinivas Nayak and Anr.**, reported in **AIR 1982 Supreme Court 1249** in the following:

“When we drew our attention of the learned Attorney General to the concession made before the High Court, Shri A. K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. “Judgments cannot be treated as mere counters in the game of litigation”. (1) We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in Court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no

one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. (2) That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.”

In view of the above, we are not inclined to interfere with the impugned order.

The writ petition is, thus, dismissed.

However, dismissal of the writ petition shall not preclude the petitioners to ventilate the grievance before the appropriate forum.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

