

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

D/L. 12.
September 19, 2023
MNS

MAT No. 74 of 2022
+
IA No: CAN 2 of 2022

Sourav Biswas and others
Vs.
The State of West Bengal and others

Mr. Arnab Saha,
Mr. Abhimanyu Banerjee

...for the appellants

Mr. Subir Saha

...for State

Mr. Kunaljit Bhattacharjee,
Mr. Sourv Ganguly,
Mr. Alok Sah

...for the private respondents.

1. On consent of learned counsel for the parties, the appeal itself is taken up for hearing along with the connected application in view of the conspectus of the dispute being short.
2. The learned counsel for the present appellants argues that the learned Trial Judge acted without jurisdiction in passing the impugned order insofar as the writ petition itself was bad for non-joinder of the present appellants.
3. The appellants, it is submitted, had turned out to be unsuccessful in the process of appointment and had challenged the same in a separate writ petition. In connection with the said writ petition, a direction was

given to file a report and allegedly certain irregularities had been discovered in the appointment process.

4. However, the said stand is opposed by the State in its affidavit-in-opposition.
5. Be that as it may, it is argued that since the process of appointment itself stands challenged in the other writ petition, filed by the present appellants, the direction in the present impugned order for the same process to be concluded directly affects the right of the appellants.
6. As such, the writ petition, bearing WPA 1242 of 2022 was bad for non-joinder for the present appellants.
7. Learned counsel appearing for the writ petitioners in WPA 1242 of 2022, being respondents in the present appeal, controverts the allegations made by the appellants.
8. It is argued that the appellants, only after becoming unsuccessful, had challenged the said process.
9. Moreover, it is argued that there was no restraint order passed in the said writ petition regarding the appointment process.
10. Upon hearing learned counsel for the parties, even without going into the merits of the allegations and counter allegations pertaining to the appointment process, we are of the opinion that the present appellants were undoubtedly necessary parties in WPA 1242 of 2022, since the outcome of the said writ petition directly affects the fate of the appellants' writ

petition in which the appointment process itself was challenged.

11. In such view of the matter, we are of the opinion that the order dated August 10, 2022 ought to be set aside, since WPA 1242 of 2022 was bad for non-joinder of necessary parties.

12. Accordingly, MAT 74 of 2022 is allowed, thereby setting aside the order dated August 10, 2022 passed in WPA No. 1242 of 2022 and sending the matter on remand to be re-heard by the learned Single Judge having determination along with AST 1 of 2021.

13. CAN 2 of 2022 is disposed of accordingly.

14. There will be no order as to costs.

15. It is expected that both the writ petitions shall be disposed of at the earliest by the said Bench.

16. The office is directed to allot a permanent number to AST 1 of 2021 at the earliest, preferably before the next Circuit.

17. Liberty to the parties to mention the writ petitions for inclusion before the appropriate Bench having determination in the next Circuit.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)