

JPD-15
Ct No.01
20.09.2023
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

MAT 163 of 2023
IA No: CAN 1 of 2023

Kalidas Ghosh
Vs
The State of West Bengal and others

Mr. Satrajit Sinha Roy,
Mr. Arijit Ghosh

.... for the appellant

Mr. Subir Kumar Saha,
Mr. Momenur Rahaman

.... for the State

Mr. Swarup Paul,
Mr. Deborshi Dhar

.... for the private respondents

- 1.** Learned counsel for the appellant contends that the present challenge has been preferred against an order whereby a vacating application filed by the private respondents in the writ petition was allowed and costs of Rs.50,000/- were imposed on the present appellant, on the observation that the appellant had not come with clean hands before the writ court.
- 2.** Heard learned counsel for the parties. The context of the present challenge is as below:
- 3.** Initially the writ petition was filed by the present appellant challenging a process of issuance of letter

of award for the purpose of providing service for establishment, operation, maintenance and management of mechanized laundry facility at the North Bengal Medical College and Hospital, West Bengal.

4. Initially, when the writ petition was moved, the learned Single Judge had passed an order *inter alia* observing that the letter of award issued in favour of the private respondents, being the subsequent vacating applicants, shall abide by the result of the writ petition. That apart, no further interim order was passed. Subsequently on an interlocutory application being moved by the writ petitioner/present appellant, the learned Single Judge took up the matter on August 10, 2023 when it was reiterated that since the court had recorded that the impugned letter of award issued in favour of the private respondents shall abide by the result of the writ petition, no further order was required to be passed in the said interlocutory application filed by the writ petitioner.
5. Noteworthy, no appeal was preferred against either of the said orders. Subsequently, although affidavits had not been completed in the matter, the same was mentioned before a different learned Single Judge by the writ petitioner.

- 6.** It was also recorded in the impugned order that the said writ petition was taken up by the learned Single Judge at 3.00 p.m. on the said date, that is, on August 23, 2023. However, a short service of notice was effected upon the private respondents, such notice having been served only at or about 1.20 p.m. on the said date. Hence, when the matter was called on for hearing at 3.00 p.m., apparently adjournment was sought on behalf of the private respondents, but the private respondents failed to effectively contest the proceeding.
- 7.** The learned Single Judge, vide order dated August 23, 2023, without adverting to, in any manner, the previous two orders passed on the interim prayers of the writ petitioner, went on to pass an order recording that affidavits were complete and that for the then coming thirty days no further effect shall be given to the letter dated 11.11.2022 issued by the Secretary, PPP Family Welfare Department and no effect shall be given to the letter dated 13.07.2022.
- 8.** The premise of the order impugned herein was that the writ petitioner's interim prayer for injunction, which was initially refused twice by the learned Single Judge, was granted by the order dated August 23, 2023, without, however, in any manner either adverting to the previous orders or specifically modifying or vacating those within the

contemplation of the principles of Order XXXIX Rule 4 of the Code of Civil Procedure.

- 9.** In fact, no mention whatsoever of the previous two orders was made by the learned Single Judge while passing the order dated August 23, 2023.
- 10.** The learned Single Judge, in the impugned vacating order, specifically observed that no meaningful opportunity of hearing was given on August 23, 2023 to the private respondents in the writ petition, since the notice was served only at 1.20 p.m. on the said date and the matter was taken up at 3.00 p.m.
- 11.** While considering the vacating application, the entire narrative, as indicated above, was reflected in the order impugned herein. On such premise, the learned Single Judge, in the impugned order, went on to hold that the writ petitioner had not come with clean hands in obtaining the order dated August 23, 2023. In such perspective, costs of Rs.50,000/- were awarded and the order dated August 23, 2023 was vacated.
- 12.** Upon hearing learned counsel for the parties, we do not find any palpable illegality or irregularity in the impugned order whatsoever. The learned Trial Judge has considered all aspects of the matter and, being fully conscious of the exact narrative which took place prior to the order sought to be vacated was passed, came to the conclusion that the writ

petitioner had obtained the said order without displaying clean hands. In such context only, the cost of Rs. 50,000/- was awarded. Thus, the order dated August 23, 2023 was vacated quite correctly, in view of the discussions made above and in the order impugned herein.

- 13.** Hence, we do not find any reason or scope of interfering with the said order, either on the count of the vacating application being allowed or the observations of the learned Single Judge that the writ petitioner came with unclean hands and awarding costs of Rs.50,000/-.
- 14.** Hence, MAT 163 of 2023 along with the connected application, bearing IA No: CAN 1 of 2023, are dismissed without any order, however, as to further costs.
- 15.** Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)