

10.04.2024
SI No.1
Court No.8
(gc)

**FMA 459 of 2023
CAN 1 of 2023**

**KAB Food Agency & Anr.
Vs.
State of West Bengal & Ors.**

Mr. Ashok Kr. Banerjee, Sr. Adv.,
Mr. Ramesh Dhara,
Miss Mousumi Chowdhury
.....for the Appellants.
Mr. Anirban Ray, Ld. G.P.,
Ms. Munmun Ganguly,
Ms. Sanchayita De
...for the State Respondents.

1. We have heard the learned Government Pleader. The learned Government Pleader has submitted that their decision in ***Shiba Prosad Banerjee Vs. The Union of India & Ors. (MAT 1251 of 2023 with I.A. No.CAN 1 of 2023) decided on 17th August, 2023*** by the Hon'ble the Chief Justice would not be relevant as in the writ petition, a tender process was challenged whereas in the instant case, the declaration of vacancy under Control Order of 2013 is a subject-matter of challenge. It is submitted that in view of the fact that the notification published in the website and the vacancy notification dated 29th July, 2022 having been superseded, the appellants may not have any grievance

with regard to the said notification. The learned Government Pleader has submitted that a new notification has been issued on 1st March, 2024.

2. Mr. Ashok Kr. Banerjee, learned Senior Counsel appearing on behalf of the appellants has submitted that there are findings by the learned Single Judge in the impugned order with regard to certain interpretation of certain clauses of the notification and in the event the similar terms are mentioned in the new notification and a challenge is thrown to the said notification containing the same, similar or identical terms, it may be clarified that it shall not operate as *res judicata*.
3. In view of the fact that a fresh notification has now been published and in the event the petitioner is aggrieved by the said notification, it would be open for the writ petitioner to challenge the said notification in accordance with law and the judgment of the learned Single Judge shall not operate as *res judicata*.
4. In view of the fact that the notification of 2022 has been withdrawn, there is no need

for this Court to decide the issues raised in the appeal.

5. The appeal and the application, accordingly, stand disposed of.
6. However, there shall be no order as to costs.
7. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Soumen Sen, J.)

(Uday Kumar, J.)