

22.05.2024
Item No.8
gd/ssd

MAT/1024/2024
IA NO: CAN/1/2024
BHARATIYA JANATA PARTY
VS
ALL INDIA TRINAMOOOL CONGRESS AND ORS.

Mr. Jayanta Kr. Mitra, ld. Senior Advocate,
Mr. Soumya Majumder
Mr. Billwadal Bhattacharya,
Mr. Srijib Chakraborty,
Mr. Lokenath Chatterjee,
Mr. Anish Mukherjee,
Mr. Satyaki Mukherjee,
Mr. Aditya Mondal
..for the Appellant.

Mr. Jishnu Saha, ld. Senior Advocate,
Mr. Jishnu Chowdhury,
Mr. Soumen Mohanty,
Mr. Ayan Poddar,
Mr. Agnish Basu,
Mr. Sohan Dutta,
Ms. Riddhi Jain,
Ms. Syed Kishwar,
Mr. Andolan Sarkar
..for the Respondent No.1.

Mr. Lakshmi Kumar Gupta, ld. Senior Advocate,
Mr. Anuran Samanta
..for ECI.

Mr. Ratnanko Banerji, ld. Senior Advocate,
Mr. Saumabho Ghosh,
Ms. Ashika Daga,
Mr. Kanishk Kejriwal,
Mr. Tirthankar Das,
Mr. Raunak Das Sharma
..for the Respondent No.3.

1. We have heard the learned advocates for
either of the parties.

2. This intra court appeal by the second
respondent in the writ petition is directed against an

interim order dated 20.05.2024 in WPA 14161 of 2024 passed by the learned Single Bench.

3. We have elaborately heard the submissions by the learned senior advocate appearing for the appellant and the learned senior advocate appearing for the respondent/writ petitioner and the learned senior advocate appearing for the Election Commission of India.

4. We are not inclined to entertain this appeal for more than one reason. Firstly, the plea raised by the appellant before us is that the appellant was not served, the appellant was not heard and in its absence an order has been passed by the learned Single Bench and the appellant should be entitled to place its submissions in the form of an affidavit or otherwise and the matter has to be heard on contest and thereafter the matter ought to be disposed of and in the absence of such procedure being followed, the order impugned is liable to be set aside. Secondly, it is contended that the writ petition was not maintainable since the writ petitioner had submitted representations to the Election Commission of India and having moved the appropriate authority and the appropriate authority having issued a show cause notice to the appellant/political party, ought not to have approached the court for such a relief as sought for by them.

5. In our view, we can test the correctness of the impugned order in an intra court appeal on the submissions which were made before the learned Single Bench as to whether the submissions were dealt with and whether the conclusion arrived at was just and proper, fair and reasonable.

6. We cannot be called upon to test the correctness of the order on the submissions which were never placed before the learned Single Bench as it has been submitted that the appellant was not heard in the matter.

7. Therefore, the appellant is not remediless. If they are so advised, they can approach the learned Single Bench for review of the order or for modification or recalling the observations etc.

8. Therefore, at this juncture, we are not inclined to entertain this appeal.

9. Accordingly, the appeal is dismissed.

10. We make it clear that we have not gone into any of the contentions raised by the appellant.

11. It is well open to the appellant to avail the appropriate remedies available under law.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)