

Sl. Nos.09
19.02.2025
Suman
Ct. 02

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side

WPA 376 of 2025

Ranicherra Tea Company Limited
VS.
The District Magistrate and Collector and Ors.

Ms. Supriya Singh
Ms. Susmita Ghosh
..for the petitioner

Mr. Joyjit Choudhury, Ld. AAG
Mr. Hirak Barman
Mr. Nabankur Paul
..for the State

Mr. Sudipto Mazumder, DSGI
Mr. Ajoy Kumar Singhanian
Mr. Tridip Saha
..for Union of India

Mr. K. K. Banerjee
Mr. Amares Roy, Sr. Adv.
Mr. S. Basu
Mr. N. Mittal
..for Bar Association, Calcutta High Court
Jalpaiguri Circuit Bench

Mr. Niloy Chakraborty
..for learned Registrar

This writ petition, listed under the heading "New Motion," was taken up for hearing on February 18, 2025. During the proceedings, Mr. Bikramaditya Ghosh, learned advocate, submitted that service upon the answering respondent had not been completed.

Mr. Ghosh further submitted that an administrative notice had been issued by the learned

Registrar of the Circuit Bench of the Calcutta High Court at Jalpaiguri, dated May 17, 2024, followed by another notice dated May 22, 2024. These notices stipulated that a writ petition should not be listed for hearing beyond 48 hours from the time of its filing, irrespective of whether service upon the respondents had been effected. Referring to the postal tracking records, Mr. Ghosh informed the Court that despite the fact that the writ petition had been dispatched via registered post immediately upon filing, service could not be completed within 48 hours from the date of filing.

In light of these circumstances, the writ petitioner raised concerns regarding the propriety of the notifications dated May 17, 2024, and May 22, 2024, particularly in relation to the rules framed by this Court governing applications under Article 226 of the Constitution of India. Given the significance of the issue, this Court requested the learned Additional Advocate General, the learned Deputy Solicitor General, and the President of the Bar Association to appear and provide assistance.

Accordingly, after hearing the submissions of Mr. Bikramaditya Ghosh, learned advocate for the petitioner; Mr. Joyjit Choudhury, learned Additional Advocate General; Mr. Sudipto Mazumder, learned Deputy Solicitor General of India; Mr. K. K. Banerjee,

learned advocate; and Mr. Amales Roy, learned advocate representing the Bar Association, the Circuit Bench of the Calcutta High Court at Jalpaiguri granted leave to the learned advocate on record for the petitioner to implead the Registrar, Circuit Bench at Jalpaiguri, High Court at Calcutta, as a respondent in this writ petition. The matter was accordingly directed to be listed for hearing today.

In an act of professional fairness, Mr. Bikramaditya Ghosh recused himself from further proceedings in this matter, as he regularly represents the Circuit Bench of the Calcutta High Court at Jalpaiguri.

Subsequently, Ms. Supriya Singh, learned advocate for the petitioner, submitted that while the rules governing applications under Article 226 of the Constitution of India do not prescribe a specific outer limit for the listing of a writ petition, the administrative notices dated May 17, 2024, and May 22, 2024, effectively impose such a limit. These notices mandate that a writ petition must be listed within 48 hours of its filing, creating significant practical challenges in ensuring proper service upon the respondents. Given the brevity of this timeline, it is highly improbable that all respondents can be served with the writ petition and its annexures within 48 hours.

Due to the inadequacy of the 48-hour timeline, petitioners are frequently compelled to seek adjournments when matters are listed under "New Motion." Consequently, the petitioner has requested that this Court take judicial notice of the administrative notices dated May 17, 2024, and May 22, 2024, and issue appropriate orders modifying their stipulations. Furthermore, it has been prayed that the provisions of Rule 28 of the Appellate Side Rules, which govern applications under Article 226 of the Constitution of India, be upheld.

Mr. Amales Roy, learned advocate representing the Bar Association, along with Mr. K. K. Banerjee, President of the Bar Association, also contended that the notices are inconsistent with the Rules of the High Court at Calcutta relating to applications under Article 226 of the Constitution of India, as no specific outer limit has been prescribed for listing a matter.

Mr. Roy further argued that a combined reading of the relevant provisions of the writ rules suggests that serving a 48-hour prior notice, along with a copy of the writ petition, upon all respondents is mandatory and constitutes sufficient notice. However, he asserted that it cannot be inferred from these provisions that, upon submission of a writ petition before the filing section, the date for listing the petition before the Bench must be fixed within the 48-hour period. Such

a restriction, he maintained, exceeds the scope of the writ rules.

Supporting Mr. Roy's contention, Mr. Joyjit Choudhury, learned Additional Advocate General, and Mr. Sudipto Mazumder, learned Deputy Solicitor General of India, also argued that the administrative notices are inconsistent with the existing rules.

Mr. Niloy Chakraborty, learned advocate representing the High Court Administration, acknowledged that learned advocates have been instructed to schedule the listing of cases immediately after the expiration of 48 hours from the date of filing, in accordance with the aforementioned administrative notices dated May 17, 2024, and May 22, 2024.

For reference, the notice dated May 17, 2024, issued by the Registrar of the Circuit Bench of the Calcutta High Court at Jalpaiguri, is reproduced below:

“OFFICE ORDER NO.36 OF 2024 DATE:17.05.2024

Pursuant to the directive of Honorable Justice Arindam Mukherjee, after identifying anomalies in the recording of dates on presentation forms, and to correct the current practice, the following orders are issued:

- 1) For Writ Applications filed during Circuit, the matter shall be listed only after a clear interval of 48 working hours, excluding Saturdays, Sundays and holidays. The filing day shall not be included in this calculation.
- 2) Listing a date beyond the specified 48 hours period is not permitted. Any

filings in violation of this condition will not be accepted by the filing section.

- 3) For Writ Applications filed during the off-circuit period, the date of listing shall be in the next available Circuit Session after the completion of the 48 hour notice period as stipulated above.
- 4) The entire presentation form must be in the same handwriting, including the date of listing.

Sd/- illegible
Registrar
Circuit Bench of Calcutta High Court
at Jalpaiguri”

Significantly, paragraph 1 of the subsequent notification dated May 22, 2024, clarifies that **“all Appeals and Applications filed in the filing section of the Hon’ble Circuit Bench of Calcutta High Court at Jalpaiguri shall be listed as per the dates mentioned by the Ld. Advocates on the Presentation Forms.”**

(emphasis is supplied by me)

Paragraph 2 of the aforementioned notification reiterates paragraphs 1, 2, 3, and 4 of the notification dated May 17, 2024, while also requesting learned advocates to adhere to these directives when listing cases in the cause list.

In my view, the parties before this Court are justified in asserting that Clause 2 of the notification dated May 17, 2024, contradicts the Rules of High Court at Calcutta relating to Applications under

Article 226 of the Constitution of India. The relevant portion of the said rule is quoted below:

“26. Save and except as provided in these Rules, all applications for a Rule Nisi shall be made in the first instance before the Court on such day or days and at such time or times as may be fixed by the Court.

An application under Article 226 shall Not be moved and No prayer for interim order shall be entertained in a writ petition under Article 226 of the Constitution without serving copy of such petition alongwith all annexures upon the respondents to be bound by or affected by such interim order and without giving such party a reasonable opportunity to contest the same, without serving 48 hours' prior Notice alongwith a copy of the application under Article 226 of the Constitution, proposed to be moved, on the concerned respondent. Provided where the State Government is a party, service on the Legal Remembrancer /Government Pleader, as appropriate, will be sufficient; where the Central Government/Local Authority/ Body/Corporation or any of its officers is a party service may also be made on the Standing Counsel for the Central Government/Local Authority or Body or Corporation Notified to the Registrar in this behalf:

Provided that the Court may for reasons recorded allow the moving of the application and entertain the prayer for such interim order without such Notice, in which case, a copy of the application alongwith all annexures in support thereof, shall forthwith be served by the petitioner, upon the respondents against whom the interim order has been obtained:

Provided further that an affidavit of service shall be filed showing compliance with these rules before the matter is taken up for hearing.

The Court hearing such an application may issue a Rule Nisi or summarily reject the application or issue Notice or give direction/directions or make such order thereon as it thinks fit.

A Judge, for the reasons recorded, at the hearing or at any subsequent stage of the proceeding may make it returnable before a Division Bench or may while hearing the Rule, refer the same to the Division Bench for hearing.

***Explanation.-* The Judge hearing such application may dispose of the same by issuing Notice and without issuing Formal Rule.”**

...

“28: Every such application filed shall ordinarily be listed before the appropriate bench under the heading "For Admission" after 48 hours. The said period of 48 hours shall be deemed to be sufficient Notice to the respondent-opposite party covered by Rule 26 of these rules to seek instruction. Except in special circumstances No adjournment shall be granted by the Court in such cases for seeking instructions once the case has been so listed for admission.”

Mr. Roy has drawn the attention of this Court to the judgment reported at **AIR 2019 Cal 260** (***Anindya Sundar Das v. Union of India***), which was delivered by a Larger Bench of this Court.

The relevant part of the said judgment is quoted below:

“.....We are of the view that service upon the Government Pleader of the State attached to the High Court does not take away the

obligation of the writ petitioner – who moves an application under Article 226 of the Constitution of India – to serve upon the authorities or officers of the State who are likely to be bound and/or affected by any order likely to be passed by the Court in connection with that writ petition. Similar analogy will apply in case of Central Government and service upon the Standing Counsel for the Central Government or for that matter, the Central Government Advocate, shall be deemed to be additional service only where the Union of India and its authorities and/or officers are parties in a writ petition and does not take away the obligation of the writ petitioner to serve notice together with a copy of the writ petition upon each and every respondent of the Central Government who are likely to be bound and/or affected by any interim order to be passed by the writ Court in connection with that writ petition.”

Rule 28 of the Rules of High Court at Calcutta relating to Applications under Article 226 of The Constitution of India prohibits a writ petition from being listed before the expiration of 48 hours from the time of filing. However, no specific outer limit is prescribed for when the petition must be listed. It appears that, depending on the respondents' addresses and the reasonable time required to ensure valid service, discretion has been granted to the advocates on record to propose an appropriate date for listing the writ petition, taking these factors into consideration.

I find merit in the petitioner's grievance that it is practically impossible to complete service upon all the respondents within the 48-hour notice period, file the writ petition, and submit an affidavit of service within the same timeframe.

I find substance in the petitioner's submission that Clause 2 of the Notification dated May 17, 2024, and Sub-Paragraph 2 of Paragraph 2 of the Notification dated May 22, 2024, may cause unnecessary inconvenience to the writ petitioner and result in an undue waste of judicial time.

Consequently, Clause 2 of the Notification dated May 17, 2024, and Sub-Paragraph 2 of Paragraph 2 of the Notification dated May 22, 2024, issued by the Registrar, Circuit Bench of the Calcutta High Court at Jalpaiguri, is hereby quashed, as it is in violation of the Rules of the High Court at Calcutta relating to Applications under Article 226 of the Constitution of India.

With regard to the primary grievance of the writ petitioner, this Court finds that the petitioner had submitted a representation before the District Magistrate and Collector, Jalpaiguri, for appropriate action under Section 3 and other relevant provisions of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962, alleging encroachment of tea garden lands by unauthorized occupants. Pursuant to

this representation, the Additional District Magistrate (LR), Jalpaiguri, by a communication dated March 20, 2024, referred the matter to the Sub-Divisional Officer, Mal, Jalpaiguri, who serves as the Chairman of the Committee responsible for investigating unauthorised encroachment of tea garden lands, as per the Notification dated March 31, 2022, issued by the District Magistrate.

In light of the above, the writ petition is disposed of with the following directions:

The Sub-Divisional Officer, Mal, Jalpaiguri, is directed to file a report pursuant to the communication dated March 20, 2024, issued by the Additional District Magistrate (LR), Jalpaiguri, before the District Magistrate within a period of two months from the date of this order.

Upon receipt of the report, the District Magistrate shall take the necessary steps in accordance with the law, based on the findings submitted by the Sub-Divisional Officer, Mal, Jalpaiguri.

Accordingly, **WPA 376 of 2025** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)