

07.04.2026
Item No.02
Court No.11
KCP

**FMA 40 of 2026
with
IA No. CAN 1 of 2026**

**Apurba Roy
- Versus -
State of West Bengal & Ors.**

Mr. Debabrata Saha Roy, Sr. Adv.
Mr. Pingal Bhattacharyya
Mr. Subhankar Das
Mr. Neil Basu
Mr. Sankha Biswas
Mr. Avidipta Paul
Ms. Oindrilla Sarkar

...for the appellant

Mr. Suman Sengupta
Ms. Tapati Samanta

.... For the State respondents

The present appeal has been preferred challenging an order dated 19th November, 2025 passed by the learned single Judge in the writ petition being WPA 11507 of 2025 which was preferred by the appellant herein primarily challenging the orders dated 3rd October, 2024 and 20th March, 2025 passed by the respondent no.3. By the order impugned the learned single Judge disposed of the writ petition with liberty to the appellant to prefer an appeal under the appropriate provisions of law within 15 days from the date of the order.

Records reveal that when the matter was last taken up for hearing on 31st March, 2026, an adjournment was sought for on behalf of the respondents to avail necessary instruction and as such, the matter was made returnable today with a

direction that no coercive steps shall be taken against the appellant in the meantime.

Drawing our attention to the order dated 3rd October, 2024 passed by the respondent no.3, Mr. Saha Roy, learned senior advocate appearing for the appellant argues that before granting appropriate opportunity of hearing to the earlier show cause notice issued by the said respondent on 7th August, 2024, the suspension order could not have been issued. As a consequence thereof, the appellant has been deprived of an opportunity to meet the allegations contained in the show cause notice and such action smacks of violation of the principles of natural justice.

He contends that a perusal of the show cause notice dated 7th August, 2024 would reveal that the same was said to have been issued in terms of the provisions of West Bengal Public Distribution System (Maintenance & Control) Order, 2013 (in short, 2013 Control Order) which stood repealed with the promulgation of the West Bengal Targeted Public Distribution System (Maintenance & Control) Order, 2024 (in short, 2024 Control Order) *vide* notification dated 1st August, 2024. A show cause notice issued on the basis of a repealed Control Order is not sustainable in law. In view of promulgation of the 2024 Control Order, the self-same respondent chose to issue the order of suspension on 3rd October, 2024

placing reliance upon the provisions of 2024 Control Order. The entire proceeding has been jumbled up and the authority has directed itself in taking a perverse decision contrary to the statutory provisions.

He argues that an order of suspension is not an order of punishment and such an order is co-terminus with the proceeding initiated. Having deprived the appellant of his opportunity to reply to the show cause, penalty could not have been imposed by the order dated 20th March, 2025 moreso in connection with a proceeding limited to the order of suspension. Such issues, as urged, were glossed over by the learned single Judge and no finding was returned on the same.

Mr. Sengupta, learned advocate appearing for the State respondents denies and disputes the contention of Mr. Saha Roy and submits that the issues urged by Mr. Saha Roy were taken into consideration in the earlier rounds of litigation and the matter was relegated to the appellate authority for consideration of the appellant's claim and pursuant to such direction, the appellate authority took a decision on 7th January, 2025 directing that the respondent no.3 in the capacity of the licensing authority shall hear the appeal and resolve the matter within 15 days adhering to the guidelines to the 2024 Control Order. The said order was not

challenged by the appellant and pursuant to such direction the order dated 20th March, 2025 was passed by the respondent no.3 stating that an appeal against the said order would be appealable in terms of Para 56 of the 2024 Control Order. The said order involves factual issues and the writ court cannot decide the same. In view thereof, the writ petition was rightly disposed of with liberty to the appellant to prefer a statutory appeal.

Drawing our attention to the order dated 20th March, 2025, Mr. Saha Roy, in reply, contends that the respondent no.3 had treated the proceedings as an appellate authority inasmuch as there were specific remarks to the effect that the appellant was heard and that the appeal was disposed of. The respondent no.3, thus, misdirected himself in considering the appellant's claim as an appellate forum and as a consequence thereof, the appellant had been subjected to a loss of forum.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the order passed by the respondent no.2 dated 7th January, 2025 was not challenged by the appellant and as per the directions contained in the same, the appellant appeared before the respondent no.3 and upon considering his claim the respondent no.3 has taken a final decision as

contained in the order dated 20th March, 2025. In the said order dated 20th March, 2025, the writ petitioner has been addressed as the appellant and it has also been stated that the appeal has been disposed of. In view of such erroneous reference in the order dated 20th March, 2025, it cannot be construed that the respondent no.3 has usurped the jurisdiction of an appellate authority. The said order has been passed strictly complying with the order of the appellate authority relegating the matter to the respondent no.3 for consideration upon granting an opportunity of hearing.

It is true that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of an alternative remedy the writ court may exercise its writ jurisdiction. In the event the writ petitioner seeks enforcement of any fundamental right or where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction, the writ Court may interfere. The facts and circumstances of the present case do not attract the applicability of the above three contingencies.

In view thereof, the learned single Judge, in our opinion, has rightly disposed of the writ petition granting liberty to the appellant to prefer a statutory

appeal and we do not find any infirmity in the said decision warranting interference in appeal.

As the time towards preference of the statutory appeal has already expired, the appellant would be at liberty to file such statutory appeal within a period of seven days from date urging all the points argued before us and the appellate authority shall consider the same and take a decision, in accordance with law.

We make it clear that the appellate authority shall consider the said appeal, if filed, without being influenced by any of the observations made by us in the present order.

With the above observations and directions, the appeal and the connected application are disposed of. In view of such disposal, the direction contained in the order dated 31st March, 2026 does not survive.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)