

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 374 of 2022

With

CAN 1 of 2022

And

CAN 2 of 2022

Reserved on: 31.03.2022

Pronounced on: 18.04.2022

Anindya Sundar Das

...Appellant

-Vs-

West Bengal Taxation Tribunal Bar Association and Others

...Respondents

Present:-

Mr. Billwadal Bhattacharyya,
Mr. Anish Kumar Mukherjee,
Mr. Suryaneel Das,
Mr. Amrit Sinha,
Mr. Surojit Saha, Advocates

... for the appellant

Mr. S.N. Mookherjee, Ld. AG
Mr. Anirban Ray, Ld. GP
Mr. T.M. Siddiqui, Sr. Adv.
Mr. Raja Saha,
Mr. Debasish Ghosh, Advocates

... for the State

Ms. Reshmi Ghosh, Advocate

... for the High Court Administration

Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Avra Mazumder,
Mr. Jaweid Ahmed Khan,
Ms. Sweta Mukherjee,
Mr. T. Ahmed Khan,
Mr. Sandip Choraria,
Mr. Anil Dugar,
Mr. D. Basu Thakur, Advocates

... for the respondent no. 1

Mr. S.N. Ganguli,
Mr. Sukalpa Seal, Advocates

... for the respondent

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Prakash Shrivastava, CJ:

1. This appeal is directed against the interlocutory order of the learned Single Judge dated 4th October, 2021 passed in WPA No. 16203 of 2021 whereby the tenure of the existing Technical Member of the West Bengal Taxation Tribunal has been extended until formal appointment of Technical Member by the Government.

2. Appellant was not a party before the learned Single Judge, therefore, CAN No. 1 of 2022 has been filed seeking leave to appeal against the impugned order. This application has been opposed by the respondent nos. 1 and 2 (writ petitioners). Having examined the record, it is noticed that appellant, a practicing advocate, who in application seeking leave, has stated that he conducts his cases in all fields of law, being a person aggrieved with the order impugned, is entitled for leave. The writ petition itself was at the instance of the Tax Bar Association and one of the advocate member, hence, both, appellant and respondents (writ petitioners) fall in the same category and stand on the same footing who are questioning the locus of each other, therefore, it would not be proper to dismiss the appeal as not maintainable when writ petition at the instance of respondent Nos. 1 and 2 herein has been entertained by learned Single Judge and when an important legal issue has been raised in this appeal. Hence, CAN 1 of 2022 is allowed and leave to file this appeal is granted.

3. Respondent nos. 1 and 2 (writ petitioners) had approached the learned Single Judge with the plea that the tenure of the Technical

Member of the West Bengal Taxation Tribunal had expired and the fresh appointment was not made, therefore, the prayer made in the writ petition was to allow the incumbent Technical Member to continue and direct the respondents to expeditiously initiate and complete the process of appointment.

4. Learned Counsel for the appellant has submitted that the writ petition itself was not maintainable because it has been filed at the instance of the society without authorization and Section 19 of the West Bengal Societies Registration Act, 1961 is attracted and that the provisions of West Bengal Taxation Tribunal, 1987 (for short, 'Act of 1987') do not permit continuation of appointment after the expiry of tenure, hence, learned Single Judge, on the basis of the consent which was contrary to law, could not have passed the order ignoring the provisions of the Act. Further submission has been made that the impugned order has been passed in absence of the High Court Administration. It is also submitted by the learned Counsel for the appellant that the impugned order does not take into consideration any fact and legal position and does not even indicate if the petition has been kept pending and no next date has been given, hence, otherwise also it cannot be sustained.

5. Learned Counsel for the respondents (writ petitioners) have submitted that it was second round of litigation and by the earlier order dated 2nd August, 2021, the tenure of the Technical Member was extended for three months by the learned Single Judge and that if the Technical Member retires, then the Tribunal will become defunct and that the impugned order has been passed with consent and the Technical Member has not reached the outer limit of 65 years and the tenure of Chairman is also upto 2nd April, 2022, therefore, the order of the learned Single Judge does not suffer from any error.

6. Learned Counsel for the State has also supported the impugned order and submitted that the impugned order only provides for a stopgap arrangement.

7. We have heard learned Counsel for the parties and perused the record.

8. On the perusal of the impugned order, we find that no facts, legal provisions, existence of any ground for issuance of interim direction has been noted and in one sentence, without giving any further date in the matter, the stay has been granted. The impugned order reads as under:-

“By consent of the parties, the tenure of the existing technical member of the West Bengal Taxation Tribunal shall stand extended until formal appointment of a technical member by the Government.

(Rajasekhar Mantha, J.)

9. Though, consent of the parties has been mentioned in the impugned order but the learned Counsel for the High Court Administration was not present when the order was passed. Even otherwise, a strong submission has been raised before this Court that consent given against the provision of law is of no consequence and on the basis of such a consent, an order contrary to law could not have been passed. In this regard, the judgment of the Hon'ble Supreme Court in the matter of **Veer Kunwar Singh University Ad Hoc Teachers Association and Others vs. Bihar State University (C.C.) Service Commission and Others** reported in **(2009) 17 SCC 184** has been relied upon, wherein it is held that:

“33. In *B.S. Bajwa v. State of Punjab* to which our attention was drawn by Mr Misra, this Court held : (SCC pp. 525-26, para 6)

“6. Obviously on this conclusion alone the writ petition should have been dismissed by setting aside the judgment of the Single Judge allowing the LPA without any caveat. However, the Division Bench, after reaching

the above conclusion, proceeded to grant the benefit of a much earlier date, namely, 6-4-1964 as the date of appointment on the basis of a concession of the Additional Advocate General made therein without considering the effect of the same or of taking into account the inconsistency with its earlier finding. We have no doubt that the concession on this point, being one of law, it cannot bind the State and, therefore, it was open to the State to withdraw as it has been done by filing a review petition in the High Court itself.”

10. It is also noticed that Section 3 of the Act of 1987 provides for establishment, composition and functions of the Tribunal. Section 3(2)(b) of the Act of 1987 relates to the appointment of Technical Member and reads as under:

“3(2)(b) A Technical Member shall be appointed by the Governor on the recommendation of the Selection Committee of three members constituted by the Governor, of which the Chairman shall be a sitting Judge of the High Court nominated as such by the Chief Justice and two other Members nominated by the State Government.”

11. Sub-section 5 of Section 3 provides for tenure and reappointment of Technical Member and reads as under:

“3(5) A Judicial member or a Technical Member shall hold office as such for a term of five years from the date on which he enters upon his office, but he shall be eligible for reappointment for another term of five years:

Provided that no Judicial Member or Technical Member shall hold office as such after he has attained the age of sixty-five years:”

12. In the Act, there is no provision for continuation after expiry of the tenure of five years unless the reappointment is made.

13. Attention of this Court has also been drawn to the order of the Hon’ble Supreme Court dated 31st May, 2021 in Writ Petition (Civil) No. 510 of 2021 in the matter of National Company Law Tribunal and Appellate Tribunal Bar Association through its Secretary vs. Ministry of Corporate Affairs wherein the similar issue of filling up the vacancies of

Chairman of NCLAT and President of NCLAT came up. Though, the Hon'ble Supreme Court had wide powers under Article 142 of the Constitution, yet, the Hon'ble Court, after taking note of the fact that the Government had already initiated the process of reappointment, had only expressed trust and hope that the process will be completed expeditiously.

14. That apart, the issue of maintainability of writ petition itself has been raised by the appellant referring to Section 19 of the West Bengal Societies Registration Act, 1961 which provides for authorization by the governing body to the President, Secretary or any office bearer for suing on behalf of the society. It has been submitted that no such authorization was filed with the writ petition, hence, the petition itself was not maintainable.

15. Learned Counsel for the appellant has also placed reliance upon paragraph 10 of the judgment of the Hon'ble Supreme Court in the matter of **Kerala Solvent Extractions Ltd. vs. Unnikrishnan and Another** reported in **(2006) 13 SCC 619** which reads as under:

“10. We are inclined to agree with these submissions. In recent times, there is an increasing evidence of this, perhaps well meant but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability”

16. We find that none of the above aspects have been taken into consideration by the learned Single Judge while passing the impugned interlocutory order, hence, we are unable to sustain it. Therefore, the impugned order passed by the learned Single Judge is set aside, however by making it clear that if a fresh prayer for stay is made before the learned Single Judge, then the same will be duly considered in accordance with law and appropriate order will be passed taking into account the aforesaid relevant aspects of the matter.

17. The Administrative Member of the Tribunal has continued by virtue of interim order of learned Single Judge, therefore, the orders passed by him in the meanwhile are saved from challenge on the ground of his continuance as such.

18. Having regard to the nature of controversy related in the matter, the learned Single Judge is expected to take up the petition expeditiously and decide it finally in accordance with law.

19. Since it is pointed out that due to non-appointment of the Technical Member, the work of the Tribunal is suffering, therefore, we direct the State Government to take expeditious steps for appointment of the Technical Member in the Tribunal.

20. Appeal is accordingly, disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
18.04.2022

PA(RB)

(A.F.R. / N.A.F.R.)