

Court No. 17
25.01.2024
(AD 4)
(S. Banerjee/BP)

WPA 22150 of 2023

Itisha Soren
Vs.
Union of India & Ors.

Mr. Biswaroop Bhattacharya
Mr. Raju Mondal
Ms. Keya Sutradhar
Mr. Subham Kanti Bhakat
... for the petitioner

Mr. Siddhartha Lahiri
Mr. Pradyat Saha
... for the Union of India

Mr. Kishore Datta, Ld. Advocate General
Mr. B. Basu Mallick
Mr. Biman Halder
... for the State

Mr. Gobinda Chandra Baidya
Ms. Mousumi Arji
... for the respondent no. 10

Mr. Billwadal Bhattacharya, DSGI
Mr. Arijit Majumdar
... for CBI

Mr. U. S. Menon
Mr. Abhirup Chakraborty
... for NTA

Mr. D.N. Maiti
Mr. A. Singh
Mr. A. Santra
..for the respondent no.8

Mr. Narayan Chandra Bhandari
Mr. Somen Bose
... for the respondent nos. 16, 55, 56 and 59

Mr. Barun Kumar Samanta
... for the respondent nos. 12, 18, 19, 21-23, 29-
30, 33, 36, 44, 49 and 54

Mr. Sunil Gupta
Mr. Shuvojeet Gupta
... for the respondent no. 28

Mr. Sirsanya Bandopadhyay
Mr. Arka Kumar Nag
Ms. Deboleena Ghosh
... for the WBMCC

PART-I

The order passed by this court in the matter on 24.01.2024 has been stayed by the Division Bench comprising Justice Soumen Sen and Justice Uday Kumar. It is clear from the order of the Division Bench that when it was stayed there was neither any memo of appeal nor any impugned order before the court. Today I requested the learned Advocate General to show me the rules as to how without the impugned order an order of stay can be passed thereon by a Division Bench and how an order be passed when there was no memo of appeal. Learned Advocate General made three submissions in this respect:-

1. This is an extraordinary power of the appeal court and in the case of urgency the appeal court can exercise such power.
2. He is not liable to reply this question to this Single Bench being a Lower Court comparing to the Division Bench.
3. He is not prepared fully in respect of this question.

No rule has been shown to me that an appeal can be preferred and the order can be passed thereon in this High Court without the impugned order and without the memorandum of appeal.

Today I have been handed over a memorandum of appeal.

Now I have to do something which is though unusual but unless I do this I think I will fail in my duty to hold the sanctity of judiciary in general and this court in particular.

It is fully in respect of His Lordship the Hon'ble Justice Soumen Sen.

I was told some days back by Justice Amrita Sinha that Justice Soumen Sen called her in Justice Sen's chamber on the last day before vacation and like a political leader he dictated Justice Sinha three things:-

- i) Mr. Avishek Banerjee has a political future, he should not be disturbed.
- ii) Live-streaming shall be stopped in Justice Amrita Sinha's court.
- iii) The two writ petitions before Justice Amrita Sinha, where the name of Mr. Avishek Banerjee is involved, are to be dismissed.

Justice Sinha intimated this to me over telephone in vacation. Subsequently, Justice Sinha reported it to the Hon'ble the Chief Justice of this High Court and I was told that the Hon'ble the Chief Justice of this court has communicated this to the Hon'ble the Chief Justice of India.

Thus, Justice Sen is acting clearly for some political party in this State and, therefore, the orders passed in the matters involving State, are required to be relooked if the Hon'ble Supreme Court thinks so.

Not only that, by passing an order without the impugned order and without the memorandum of appeal, the said Division Bench has given a very wrong signal that without the impugned order and without the memorandum of appeal, an appeal can be heard and order can be passed.

I wonder whether everybody who want to prefer an appeal will go to the appeal court with the prayer that they do not have the memorandum of appeal or the impugned order but the appeal is to be heard and order thereon is to be passed. I do not know also whether such prayers of any other advocate would be entertained by any Division Bench or not.

In the said order I have not found any recording of any urgency in the matter. What was so urgent? Who is acting as an interested person for one of the political parties in the State?

Today I am told by the Learned Advocates that Justice Sen has quashed the FIR already lodged by CBI and called the Registrar General (Acting), who was Registrar in charge yesterday, to

know how the order of the Single Bench, despite stay order passed by the Division Bench, was communicated to CBI.

In my order there was a clear direction in this regard. What Justice Sen has done today is to advance the cause of his personal interest to save some political party in power in this State. Therefore, his actions clearly tantamount to misconduct.

I do not know how a Judge, being Justice Soumen Sen, who is under an order of transfer for last more than two years, is acting here as a Judge defying the Supreme Court Collegium's recommendation (dated 16th September, 2021) from this court to Odisha High Court. Who are the persons behind him, who are saving him from such transfer whereby the order of the Supreme Court Collegium can be ignored while the other Hon'ble Judges have been transferred by the same recommendation?

I want to request the Hon'ble the Chief Justice of India to look into this matter also including the matter as recorded above, i.e., calling one Judge in his chamber and to dictate her something which is nothing but interference with the course of justice and also passing the order by

the Division Bench without any memorandum of appeal and impugned order.

I direct the Registrar General to send copy of this order to the Hon'ble the Chief Justice of India forthwith and I also direct him/her to give a copy of this order to the Hon'ble the Chief Justice of this court.

I am of the view that the order passed by Justice Sen's Division Bench quashing the FIR today is not a valid order because it is a continuation of an appeal void ab initio and he has acted against the law with his own interest as has been indicated above. In the order passed by the Division Bench, I repeat, there is no recording as to the urgency of the matter. I do not know whether sky was falling upon some persons by order of CBI enquiry.

Therefore, the FIR should remain intact because Justice Sen's Division Bench's order is wholly illegal and has to be ignored. CBI should start acting by investigating into the matter.

PART-II

Learned advocate for the petitioner showing the order passed by the Division Bench on 24.01.2024 showing paragraph 12, has submitted that it was his prayer before the Division Bench to accommodate the petitioner against the resultant

vacancies caused due to the production of fake certificates.

As the order of the appeal court dated 24.01.2024 is not recognized by me as a valid order, I do not take note of it.

Today in respect of accommodating the petitioner in any of the government colleges on the basis of her rank, I wanted to know from the learned advocate for the West Bengal Medical Counseling Committee ('WBMCC', for short) to accommodate the petitioner in any vacancy, when learned advocate for the WBMCC has stated that above the petitioner there are at least 115 candidates who are of the same category, i.e., Scheduled Tribe who are Domicile of West Bengal.

I think that by rank jumping the petitioner cannot be accommodated in any government Medical College. But as I have ignored for the reasons as aforesaid the stay order passed by the Division Bench and consequential order of quashing the FIR as continuation of an appeal void ab initio I direct CBI to enquire whether all the persons named in the list handed over to me by the learned advocate for the WBMCC have the proper and correct reserved category certificate. This document is to be countersigned in each page by the Assistant Court Officer of this court which will

be handed over to the learned advocate appearing for CBI immediately. After completion of such investigation by CBI and after a report from CBI by two months from date, the matter will appear in the list and will be heard further. As of now, the matter will go out of list.

The memorandum of appeal handed over to me by the learned Advocate General today showing that it was ultimately filed later, is kept on record. It is nothing but an attempt to cover up the illegality in the appeal which is void ab initio.

Learned advocate for CBI has submitted that today in the morning not only the FIR has been quashed, the party added as respondent, being CBI, has also been expunged from the copy of the writ application – that is what he understood from the dictation of the Hon'ble Judge in open court.

I have no other option but to ignore the order of the said Division Bench as the order has been passed in continuation of the illegal appeal void ab initio. I have ignored the said illegal order passed by the said Division Bench for the reasons as has been stated above including the ground of 'interested person Hon'ble Justice Soumen Sen'. I direct that the name of CBI shall be there in the array of parties as party added as respondent and the FIR

shall also remain untouched and CBI shall start investigation in this matter immediately.

The Registrar General is directed to send this part of the order to CBI immediately.

(Abhijit Gangopadhyay, J.)