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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 36768 of 2013

Utpal Kumar Biswas
Vs.
Union of India & Ors.

Mr. Achin Kumar Majumder
... For the petitioner.

Ms. Aparna Banerjee
... For the respondents.

Records reveal that by an order dated 19th February, 2014, this Hon'ble Court was pleased to pass an interim order. The relevant portion of the order is setout hereunder:-

"In view of the perceived mala fide conduct in the original charge-sheet being dropped and a modified charge-sheet being filed to bypass an order of court, there will be a complete stay of further proceedings against the petitioner".

The aforesaid order was carried in appeal and the Hon'ble Division Bench of this Court did not interfere with the aforesaid interim order.

During the pendency of the aforesaid writ application, the enquiry officer issued a notice dated 25th January, 2019, calling upon the petitioner to appear before him on 5th March, 2019.

Since the respondents were attempted to proceed with the inquiry, despite the interim order, the matter was

listed on mentioning, when it appeared that the Senior Divisional Security Commissioner, RPF, Eastern Railway, Howrah had issued the aforesaid notice by referring to a judgment delivered by the Hon'ble Supreme Court in the case of **Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. Vs Central Bureau of Investigation**, reported in **AIR 2018 S.C.2039**, and by treating the interim order passed by this Court, was deemed to be limited in the light of the directions passed by the Hon'ble Supreme Court in the aforesaid judgment.

By an order dated 5th March, 2019, this Hon'ble Court upon taking into consideration the submissions made by the respective parties and the judgment referred to by the respondents, by quoting paragraph 34 of the judgment referred to above was *inter alia* pleased to observe as follows:-

“It appears from the relevant paragraph as quoted hereinabove that the Hon'ble Apex Court thought it appropriate to direct that all pending cases where stay of any civil or criminal proceeding have been granted and was operating, the same would come to an end on the expiry of six months from the date of Their Lordship's order unless similar extension was granted by a speaking order.

Under such circumstances, I am of the prima facie view that the respondents did not correctly interpret the judgment of the Hon'ble Apex Court as quoted hereinabove.

The petitioner is granted liberty to take such steps with regard to the aforementioned communication of the respondent by filing an

appropriate application.

The petitioner will not be expected to attend the hearing before the enquiry officer and accordingly, the operation of the communication of the enquiry officer dated February 26, 2019 is stayed for a period of two weeks from date. The petitioner will be at liberty to take steps for extension of this interim order so passed before the appropriate bench and also file a Supplementary Affidavit bringing the subsequent events on record. Such Supplementary Affidavit should be served upon the learned Advocate for the respondents”.

The aforesaid communication issued by the enquiry officer dated 26th February, 2019 was also stayed for a period of two weeks therefrom. The petitioner has since then taken out an application, being CAN 1 of 2021, *inter alia*, praying for extension of interim order. The aforesaid interim order was extended from time to time and was lastly extended upto 31st December, 2022. Unfortunately, the main writ application could not be heard.

Today, Ms. Banerjee, learned advocate representing the respondents, on instruction, submits that the enquiry has not proceed with and no further step has been taken by the enquiry officer.

In view thereof, let the interim order passed by a coordinate Bench of this Court on 5th March, 2019 which was valid till 31st December, 2022, be re-imposed and the enquiry officer be restrained from taking further steps

pursuant to the notice dated 26th February, 2019 till the end of June, 2023 or until further order whichever is earlier.

Let the writ application appear in the Combined Monthly List of March, 2023 under the heading “Hearing”.

Raja Basu Chowdhury, J.)