

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

01 29.8.2023
Sc Ct. no. 2

WPA 1268 OF 2023

with

I.A. No.CAN 1 OF 2023

(Application for stay)

with

I.A. No.CAN 2 OF 2023

(Application for vacating and/or
Modifying the impugned order)

Kalidas Ghosh

Vs.

The State of West Bengal & Ors.

Mr. Satrajit Sinha Roy
Mr. Arijit Ghosh.

....For the Petitioner

Mr. Hirak Barman
Mr. Momenur Rahman.

....For the Respondent
Nos. 1 to 3

Mr. Swarup Paul
Mr. Deborshi Dhar.

....For the Respondent
Nos.4, 5 and 6

Re : I.A. No.CAN 2 OF 2023

In the matter of : Shri Bama Pada Jana & Anr.

.....Applicants/
Respondent nos.4, 5 and 6

Affidavit-of-service, filed in Court today, is
taken on record.

This is an interlocutory application taken out
in the writ petition at the behest of the respondent
nos. 4, 5 and 6 in the writ petition, *inter alia*,
praying for discharge and/or vacating of the interim

order dated **August 23, 2023, Annexure-P3 at page 16** to this application which was passed *ex parte* as against this vacating applicants.

Mr. Swarup Paul, learned counsel appearing for the applicants submits that, till date the writ petitioner has not filed his affidavit-in-reply in the main writ petition nor any copy has been served upon the applicants. He also submits that, the State respondents in the writ petition has also not filed its affidavit-in-opposition. In the light of this, he submitted that, the writ petition is not at all ready for hearing as the affidavits are not complete.

Referring to the previous order dated **July 11, 2023, Annexure-P1 at page 9 to the application** learned counsel for the applicants submits that, on the main writ petition itself no interim order was passed and affidavits were directed to be filed and exchanged.

The writ petitioner then took out an interlocutory application being **I.A. No. CAN 1 of 2023** which was affirmed on **August 1, 2023**. On such interlocutory application of the petitioner an order was passed on **August 10, 2023, Annexure-P2 at page 13 to the application** when no interim order was passed as prayed for, in view of the observation of the Court dated July 11, 2023 to

the effect that the ***Letter of Award*** issued in favour of the applicants herein shall abide by the result of the writ petition.

Referring to a document being a notice of the learned advocate for the petitioner dated ***August 23, 2023, Annexure-P3 at page 15 to the application***, Mr. Paul submits that, a notice was served upon the applicants informing that, the writ petition was mentioned and was fixed at ***3-00p.m. on August 23, 2023*** for further consideration.

Mr. Paul then submitted that, suddenly on ***August 23, 2023*** the writ petitioner mentioned the matter in the morning without any notice being served upon the applicants being the respondent nos. 4 to 6 in the writ petition. The petitioner ultimately obtained an interim order dated ***August 23, 2023***. Through this application the applicants seek vacating of the said order dated ***August 23, 2023***.

In these factual matrix, the *ex parte* interim order was passed.

Mr. Momenur Rahaman, learned counsel for the respondent nos. 1 to 3 in the main writ petition submits that, his client has also not filed any affidavit-in-opposition till date and an extension was granted for filing such affidavit and the said

extended period has not expired yet. He also submits that, while obtaining the order dated **August 23, 2023, Annexure-P3 at page 16 to the application**, no notice was served upon the State, though the State counsel was present when the interim order was passed.

Yesterday, this application was mentioned before this Court for inclusion in the list and upon such mentioning this Court directed the matter to appear today under the heading “**Application**”. The application appears as such in today’s list.

When the application was taken up for consideration Mr. Satrajit Sinha Roy, learned counsel for the petitioner who was present in **virtual mode** prayed for an accommodation for today as he wishes to appear physically before this Court to make his submissions.

Considering above, for the ends of justice to grant the writ petitioner a meaningful opportunity to oppose this application, the application shall appear for further consideration on **September 4, 2023** under the heading “**Application**”.

(Aniruddha Roy, J.)