

GAHC010037922024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/543/2024

PRADIP KR. BASUMATARY
S/O- NAMAL CH. BASUMATARY, R/O- VILL.- TULSHIBIL, P.S. GOSSAIGAON,
P.O. TULSHIBIL, DIST. KOKRAJHAR, BTC, ASSAM, PIN- 783337.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, FOREST DEPARTMENT, DISPUR, GUWAHATI-
781006.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF
FOREST FORCE
ASSAM
PANJABARI
GUWAHATI-781037.

3:THE CHIEF CONSERVATOR OF FOREST-CUM-COUNCIL
HEAD OF DEPARTMENT
BTC
KOKRAJHAR
ASSAM-783370.

4:THE SECRETARY

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
DIST. KOKRAJHAR
PIN- 783370.

5:THE DEPUTY COMMISSIONER
DIST. KOKRAJHAR

ASSAM-783370.

6:THE DIVISIONAL FOREST OFFICER

PARBATJHORA DIVISION
SUPARIGHAT
DIST. KOKRAJHAR
ASSAM-783339.

7:THE ASSISTANT LABOUR COMMISSIONER

DHUBRI
DIST. DHUBRI
ASSAM
PIN- 783301.

8:HASANUZZAMAN SHEIKH

S/O- LATE KHADEMUL ISLAM SHEIKH
R/O- VILL.- BAGHDOKRA
P.O. KAMANDANGA
P.S. TAMARIHAT
DIST. KOKRAJHAR
ASSA

Advocate for the Petitioner : MR. J AHMED

Advocate for the Respondent : MR. T J MAHANTA

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 20.04.2024

Heard Mr. J. Ahmed, learned counsel for the applicant. Also heard Mr. R. R. Gogoi, learned standing counsel of the Forest Department appearing for the respondent nos.1 and 2; Ms. R. M. Barooah, learned counsel appearing on behalf of Mr. P. Nayak, learned standing counsel for the BTC representing the opposite party nos.3, 4 and 6; Ms. U. Das, learned Govt. Advocate of appearing

opposite party nos.5 and 7; and Mr. T. J. Mahanta, learned senior counsel assisted by Mr. S. Alam, learned counsel for the opposite party no.8, who is the writ petitioner in the connected writ petition.

2. This interlocutory application has been filed under Article 226(3) of the Constitution of India, whereby the applicant, who is the respondent no.8 in the connected writ petition has prayed for vacating the interim order dated 01.06.2023, passed in WP(C) No.3044/2023.

3. The learned counsel for the applicant has submitted that this interlocutory application was filed on 22.02.2024 for vacating of the *ex parte* order obtained by the opposite party no.8 in the connected writ petition. It is submitted that the matter was listed at his instance on 06.03.2024. Accordingly, it is submitted that by operation of the provisions of Article 226(3) of the Constitution of India, the *ex parte* interim order passed on 01.06.2023 in the connected WP(C) No.3044/2023 stands automatically vacated after 2 weeks of filing of this application. In support of his submissions, reliance is placed on the case of *High Court Bar Association, Allahabad vs State of U.P. & Ors., Criminal Appeal No.3589/2023* decided by the Four Judges Bench of the Supreme Court of India on 29.02.2024.

4. Paragraph nos. 34 to 36 thereof is quoted below-

“34. At the same time, we cannot ignore that once the High Court stays a trial, it takes a very long time for the High Court to decide the main case. To avoid any prejudice to the opposite parties, while granting ex-parte ad-interim relief without hearing the affected parties, the High Courts should normally grant ad-interim relief for a limited duration. After hearing

the contesting parties, the Court may or may not confirm the earlier ad-interim order. Ad-interim relief, once granted, can be vacated or affirmed only after application of mind by the concerned Court. Hence, the Courts must give necessary priority to the hearing of the prayer for interim relief where ad interim relief has been granted. Though the High Court is not expected to record detailed reasons while dealing with the prayer for the grant of stay or interim relief, the order must give sufficient indication of the application of mind to the relevant factors.

35. An interim order passed after hearing the contesting parties cannot be vacated by the High Court without giving sufficient opportunity of being heard to the party whose prayer for interim relief has been granted. Even if interim relief is granted after hearing both sides, as observed earlier, the aggrieved party is not precluded from applying for vacating the same on the available grounds. In such a case, the High Court must give necessary priority to the hearing of applications for vacating the stay, if the main case cannot be immediately taken Page 43 of 47 Criminal Appeal No.3589 of 2023 etc. up for hearing. Applications for vacating interim reliefs cannot be kept pending for an inordinately long time. The High Court's cannot take recourse to the easy option of directing that the same should be heard along with the main case. The same principles will apply where ad-interim relief is granted. If an ad-interim order continues for a long time, the affected party can always apply for vacating ad-interim relief. The High Court is expected to take up even such applications on a priority basis. If an application for vacating ex-parte ad interim relief is filed on the ground of suppression of facts, the same must be taken up at the earliest.

D. CONCLUSIONS

36. Hence, with greatest respect to the Bench which decided the case, we are unable to concur with the directions issued in paragraphs 36 and 37 of the decision in the case of Asian Resurfacing¹. We hold that there cannot be automatic vacation of stay granted by the High Court. We do not approve the direction issued to decide all the cases in which an interim stay has been granted on a day-to-day basis within a time frame. We hold that such blanket directions cannot be issued in the exercise of the jurisdiction under Article 142 of the Constitution of India. We answer both the questions framed in paragraph 5 above in the negative."

5. The learned senior counsel for the opposite party no.8 has submitted that notwithstanding that this interlocutory application was filed on 22.02.2024, this interlocutory application was thereafter listed before the Court on 06.03.2024 and on the said date, the matter was deferred to be listed on 21.03.2024, allowing the opposite party no.8 to file objection affidavit and the interim order was extended. It is submitted that the matter was thereafter listed before the Court on 21.03.2024 and 04.04.2024, but the matter was adjourned on the prayer made by the learned standing counsel for the BTC. However, interim order passed earlier in the writ petition was extended. Thereafter the matter was listed on 19.04.2024 and he was in midst of hearing of a part heard matter, on his prayer the matter was deferred and taken up today and reluctantly the interim order was extended till today. Hence, it is submitted that on 06.03.2024, 21.03.2024, 04.04.2024 and 19.04.2024, when the interim orders were extended, those were order passed *intra-parte*. Accordingly, it is submitted that the provision of Clause-3 of Article 226 of the Constitution of India would have

no application in the present case as the interim order was extended from time to time.

6. The learned counsel appearing on behalf of standing counsel for BTC was asked produced the record, but it is submitted that the standing counsel for the BTC is out of station and though the records are available with him, but it cannot be produced before the Court today. She prays that the matter is taken up on next working day i.e. 22.04.2024.

7. Be that as it may, as the learned counsel for the applicant has pressed for vacating the interim order in light of the provisions of Article 226(3) of the Constitution of India, the said prayer has to be considered and therefore the matter has been heard on the prayer for vacating the interim order.

8. Heard the submissions made by the learned counsel for the applicant and the senior counsel for the opposite party no.8.

9. It is projected by the learned senior counsel for the opposite party no.8 that from the documents appended to this interlocutory application, the tender of the applicant also suffers that from three anomalies because the documents annexed does not reflect that any photograph of the applicant has been submitted with the tender documents, the solvency certificate relied on by the applicant is issued on 31.01.2022, whereas the tender was opened on 27.01.2022. Accordingly, it is submitted that a document which is prepared after the opening of tender was taken into consideration by the concerned tendering authority. It is also submitted that the annexed documents do not reflect that Court fee of rupees 8.25 was affixed to the tender submitted by the applicant.

10. In so far as the deficiencies in the tender submitted by the opposite party

no.8 is concerned, the learned senior counsel for the opposite party no.8 has submitted that along with the tender document, a non-renewed labour license was submitted, but before the comparative statement was prepared and/or accepted the renewed labour license was produced before the authorities, which was not considered. It is further submitted that the requirement of the tender documents was that documents relating to previous experience be annexed, if any, and in this regard it is explained that the words "if any" would show that the requirement is not mandatory and as the petitioner had no experience, he did not annex any document, which also accounts for the non submissions of turn-over the documents.

11. According to the learned counsel for the applicant, absence of turn-over document and renewed labour license is a major defect for which the tender of the applicant was rightly not considered.

12. In light of the nature of dispute raised by the learned counsel for the applicant and the senior counsel for the opposite party no.8, it was required that the original records be inspected to find out the correctness of the allegations and the counter allegations. However, as the records are not available, the records could not be inspected by the Court.

13. Under such circumstances, the vacating of the interim order appears to be iniquitous.

14. In the present case in hand, by operation of the provisions of Article 226(3) of the Constitution of India, the interim *ex parte* order stands vacated. Nonetheless, we find that interim order passed in was extended subsequently by orders passed on 06.03.2024, 21.03.2024 and 04.04.2024. There is no

mention in the orders dated 06.03.2024, 21.03.2024 and 04.04.2024 that the prayer made in this interlocutory application was pressed. Moreover, it cannot be said that the Court while extending the interim order had not applied its mind.

15. Therefore, it was a conscious decision of the Court to extend the interim order from time to time and therefore, as the interim orders were extended in the presence of the learned counsel of all side, the extension of the interim order cannot be undone as the interim order was extended by order dated 06.03.2024, 21.03.2024, 04.04.2024 as well as on 19.04.2024.

16. The said issue is answered accordingly by holding that in view of the subsequent orders dated 06.03.2024, 21.03.2024, 04.04.2024 and 19.04.2024, the said interim order dated 01.06.2023 in WP(C) No.3044/2023 cannot be vacated.

17. As the tender records are not available, the matter stands adjourned today.

18. Interim order passed earlier stands extended till the next date of listing.

19. Accordingly, this interlocutory application stands disposed of.

JUDGE

Comparing Assistant