

MC 208/2015
BEFORE
HON'BLE MR. JUSTICE A.K. GOSWAMI

Heard Mr. S. Dutta, learned counsel for the applicants and Mr. A. Ganguly, learned counsel for the writ petitioners.

By filing this application, the applicants/respondent nos.5 and 6 pray for modification/alteration of the interim order dated 22.10.2014 in WP(C) No.5385/2014.

The writ petitioners were former Ward Commissioners of Tezpur Municipal Board (for short, the Board).

Taking note of the pleadings and the submissions of the learned counsel for the petitioners to the effect that the Resolution No.2 was surreptitiously included in the meeting of the Board dated 22.08.2014, after hearing the learned counsel for the petitioners and the learned State Counsel, who appeared for respondent nos.1 to 4, this court vide order dated 22.10.2014 stayed the Resolution No.2 of the meeting dated 22.08.2014 and the appointment orders of the respondent nos.5, 6 and 7 dated 11.09.2014, providing further that the respondents may apply for modification of the interim order, if so advised.

A copy of the application for vacation of the interim order was furnished to Mr. Ganguly, learned counsel for the petitioners on 28.01.2015. The date of filing of the application was stamped by the Registry on 31.01.2015 and the said application is registered as Misc. Case No.208/2015.

The Misc. Case was posted for consideration on 04.02.2015 and on that date on the prayer of the learned counsel for the petitioners, the court passed the following order:-

Heard Mr. S. Dutta, learned counsel for the applicants. Also heard Mr. A. Ganguly, learned counsel for the respondents.

Mr. Ganguly prays for a short time so as to enable him to file objection to the misc. case being MC No.237/2015 and listing the matter on 18.2.2015 for consideration of the misc. case.

Prayer is allowed at the risk of respondents suffering from the operation of Article 226 (3).

It appears that M.C. No.208/2015 was wrongly noted as M.C. No.237/2015 in the said order.

A perusal of Article 226 of the Constitution of India shows that when the interest of justice demands, the High Court may pass an interim order ex-parte, whether by way of injunction or stay or in any other manner. In cases in which an interim order is made ex-parte, the party against whom such order was made may make an application to the High Court for the vacation of such order and furnish a copy of such application to the party in whose favour such order has been made or to the counsel of such party. It is provided that the High Court shall dispose of such application within a period of two weeks from the date on which it was received or from the date on which the copy of such application is so furnished to the party in whose favour such order has been made, whichever is later.

There is no dispute that the interim order was passed ex-parte against the respondent nos.5 and 6/applicants and in the instant case, application for vacating the interim order was listed before the court within a period of two weeks counting from 31.01.2015 enabling the court to dispose of the said application. The writ petitioners, despite clear indication of the court that the petitioners may be visited with operation of Article 226(3) of the Constitution of India, prayed for listing of the matter on 18.02.2015, beyond the period of two weeks with the result that the application for vacation of the interim order was not disposed

of on 04.02.2015 or within a period of two weeks from 31.01.2015.

In the facts of the case, Article 226(3) of the Constitution of India is clearly attracted and this court, therefore, only records that the interim order dated 22.10.2014 stood vacated on 16.02.2015, 14.02.2015 and 14.02.2015 being holidays .

The Misc. Case stands disposed of.