07
ss/jks 30.09.2022

MAT 1531 of 2022
With
CAN 1 of 2022
Red Cow Dairy Pvt. Ltd. & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Sourabh Guhathakurata
Mr. Satyabrata Chakraborty
Ms. Rituparna Ghoha
Mr. Sourav Sardar
Ms. Nilanjana Sarkar
Ms. Prabhleen Bharara
... ... for the appellants
Mr. Tapan Kumar Mukherjee, Sr. Adv.
Ms. Tuli Sinha
... ... for the State

This intra-court appeal is at the instance of the writ petitioners challenging the interlocutory order of the learned Single Judge dated 12th September, 2022 passed in WPA 19530 of 2022 whereby the learned Single Judge has refused to grant interim relief.

Submission of learned counsel for the appellants is that sample of homogenised pasteurised milk was taken from the appellants and in the report of the Public Analyst (Food and Water), West Bengal Public Health Laboratory dated 23rd December, 2019 the sample was found to be substandard under Section 3(1)(zx) of the Food Safety and Standards Act, 2006 and for such substandard sample there is provision of penalty only under Section 51 of the Act. He submits that in appeal the sample was referred to the referral laboratory which can only give opinion under Section 46 of the Act but second report has been given by the referral laboratory

finding the sample to be unfit for human consumption which is punishable under Section 59 of the Act.

In view of the aforesaid he has submitted that there are two contradictory reports, therefore the second report ought to have been stayed by the learned Single Judge.

Learned counsel for the State has opposed the prayer and has submitted that the second report was obtained on 27th August, 2021 and in terms of Rule 2.4.8 of the Food Safety and Standards Rules, 2011 the second report is final. He submits that the appellants have delayed the deposit of cost for referral laboratory, therefore there was some delay but the second report was obtained on 27th August, 2021. Hence, at this stage no case for grant of stay is made out.

Having heard the learned counsel for the parties and on perusal of the records, it is noticed that the learned Single Judge has refused to grant interim order by noting that there is no scope for such an order since the writ petitioners' case is against the order of the Food Safety Officer dated 27th August, 2021 and the writ petition itself has been filed after one year on 25th August, 2022. Even otherwise, it is found that learned Single Judge has granted a week's time after reopening of the Court after Puja vacation to the respondents to file affidavit-in-opposition and a week thereafter for filing of affidavit-in-reply.

Learned counsel for the State has submitted that the affidavit-in-opposition on behalf of the State will be filed within the time granted by the learned Single Judge.

Hence, within the stipulated time the writ petition is likely to be ready for hearing and all the issues which have been raised before this Court can be gone into by the learned Single Judge while hearing the petition finally.

In the circumstances mentioned above, we are no inclined to interfere in the order of the learned Single Judge, however, we express hope that the learned Single Judge will make every endeavour to decide the writ petition either on the next date or as expeditiously as possible, considering the nature of the controversy involved in the writ petition.

The appeal is accordingly disposed of.

Connected application is also disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)