IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL

BIKASH BHAVAN, SALT LAKE CITY

K O L K A T A - 700 091

Present :-

The Hon'ble Mrs. Urmita Datta (Sen)

MEMBER (J)

-AND-

The Hon'ble Mr. Sayeed Ahmed Baba,

MEMBER(A)

J U D G E M E N T

-of-

Case No. MA-42 of 2021 (OA-578 of 2017)

Sampad Ranjan Patra .....Applicant .

-Versus-

State of West Bengal & Others....Respondents

For the Applicant (State)	:-	Mr. G.P. Banerjee, Mr. S. Ghosh, Learned Advocates
For the State Respondents (Applicant)	:-	Mr. K. Bhattacharya Mrs. S. Agarwal, Learned Advocates.

Judgement delivered on: 02.03.2022

The Judgement of the Tribunal was delivered by:-

Hon'ble Urmita Datta (Sen), Member (J).
Hon'ble Sayeed Ahmed Baba (Member (A)

JUDGEMENT

The instant application has been filed praying for following relief:-

a) "Under the circumstances as aforesaid, your applicant most respectfully pray that your Lordships may be graciously be pleased to review/recall the impugned Order/Judgement dated 06.03.2020 passed by the Hon'ble Urmita Datta (Sen), Member (Judicial) and The Hon'ble P. Ramesh Kumar, Member (Administration) of the Hon'ble West Bengal Administrative Tribunal in OA-578 of 2017 and release the instant matter for proper assignment and hear the matter afresh before the appropriate Bench".

As per the applicant, the original application was heard on several occasions and ultimately reserved for judgement on 14.11.2019 and finally the judgement was delivered by this Tribunal on 06.03.2020. However, uploaded on 17.08.2020 in the website of the Tribunal as in the meantime the Tribunal was closed due to Lockdown. After obtaining the certified copy of the order, the original file was inspected on 05.03.2021 before the Registrar of the Hon'ble Tribunal in the presence of learned counsels for the parties appearing this matter.

According to the applicant, while inspecting the file of the original application, it is found that the judgement dated 06.03.2020 is technically defective in nature and thus, voidable as per the general principles of law. As per the provision laid down in Order 20 Rules 1 (1) of Code of Civil Procedure, 1908, "The Commercial Division or Commercial Appellate Division, as the case may be, shall, within ninety days of the conclusion of arguments, pronounce judgement and copies thereof shall be issued to all parties to the dispute through electronic mail or otherwise." As per Order 20 Rule 1 (3), the judgement may be pronounced by direction in open Court to a shorthand writer if the Judges is specifically empowered by the High Court in this behalf provided that, where the judgement is pronounced by dictation in open Court, the transcript of the judgement so pronounced shall, after making such correction therein as may be necessary, be signed by the judge, bear the date on which it was pronounced, and form a part of the record.

According to the applicant, there is no signature of Hon'ble P. Ramesh Kumar, Member (A) in any page of the order dated 06.03.2020 i.e. beyond three months as admittedly the matter was heard and reserved for judgement on 14.11.2019.

During the course of submission, on making query by this Court, the counsel for the applicant has shown us the copy of the judgement with a covering letter sent from author Member of the judgement i.e. Member (J) to the Member (A), wherein there is signature of the Member (A) writing **"I agree"** in the forwarding letter but the said copy one signature of Author Member (J) is available and visible but not the signature of Member (A).

The counsel for the applicant has further submitted that while inspecting the file, he has only gone through the order wherein the signature of the author Member (J) was only found but not the signature of Member (A). The counsel for the applicant has referred the following judgements in his support :-

a) A.I.R. (1976) SCC 2037 – R.C. Sharma Vs. Union of India.
b) A.I.R. (2000) SCC 775 – Bhagwandas Fatechand Daswani Vs. H.P.A. International.
c) A.I.R. (2003) SCC 689 Kanhaiyalal Vs. Anupkumar.

The counsel for the respondents/applicant of the instant application has, however, at the first instance submitted that while inspecting the file, they found signature of both the Members, wherein some hand written correction was there as well s fresh typed copy of the same order was also there. It has been further submitted by the Respondents/applicants that as per Section 22 of the Administrative Tribunal's Act, 1985, the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principle of natural justice and subject to the provisions of the Act and of any rules made by the Hon'ble Court. Therefore, the issue of ninety days with regard to the pronouncement of judgement has no relevancy or mandatory in the instant case.

During the course of hearing, the counsel for the respondent/applicant has submitted that the case referred above by the counsel for the applicant/respondents has no relevancy with the facts of the instant case as all above cases, three to five years time was taken to deliver the judgement. Therefore, the Apex Court is of the opinion after a long time of so many months and years, the judges may have forgotten the submissions made by the parties. But in the instant case, the judgement was pronounced even much before completion of four months from the date the judgement was

reserved. There is no such allegation on the part of the applicant/respondents in the instant MA that their submission was not considered or recorded properly in the order concerned due to the lapse of such time beyond three months. Moreover, it has been specifically submitted by the counsel for applicant in the original application that she was present at the time of inspecting the record and found signature of both Members.

We have heard both the parties and perused the records. Before going to the point of law related with this case, let us re-appreciate the factual aspect of the case with regard to the review/recall of the order dated 06.03.2020. It is noted that the case was heard and order reserved on 14.11.2019 as in the meantime, the Hon'ble Member (A) had tendered his resignation and due to his absence, though the judgement was almost ready by the author Member of the judgement i.e Member (J), but could not be pronounced and ultimately on 06.03.2020, two cases were listed under heading "Judgement" in a supplementary list dated 06.03.2020, wherein the instant matter was against item No. 1 and another case was listed as item no. 2 (MA-76/2019) Durga Pramanik & 6 Ors. Vs. Secretary, Irrigation & Waterways Deptt. and in case of both the matters, judgements ware pronounced in the open Court in the presence of both the parties and signed in the open Court along with some hand written correction. Further the said judgement with the signature of both the Members is still available with the file. However, as there was some hand written correction in the said judgement, it was directed to type afresh, which was done and the Member (J) signed in all the pages including the final page and the matter was ready for further signature of Member (A).

It is pertinent to mention that prior to passing of any final judgement, as per the direction, said judgement was used to send for the concurrence of another Member with a covering letter. In the event, the another Member could be agreed to the contents of the said judgement, he/she makes "**I agree**" remarks or give some suggestions and thereafter the final copy used to type and pronounced in the open Court. In the instant case also, the judgement was pronounced in the presence of both the parties and both the Members sign in the Open Court, which none of the parties has denied though the judgement was pronounced on 06.03.20320 and that being ultimately the last working day of the Member (A). Further as Member (A) was not available due to his personal reasons including his tendering of resignation, there is some delay in pronouncing the judgement, i.e. delay of 24 (twenty four) days beyond 90 days from the date of reserving the judgement.

Section 22 of the Administrative Tribunal's Act, 1985 stipulates as follows :-

1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether so sit in public or in private. .....

From the above, it is clear that the Tribunal is not bound by the procedure laid down in the Code of Civil Procedure. However, it is desirable to pronounce the judgement within 90 (Ninety) days.

In the case of R.C. Sharma, the Hon'ble Apex Court has observed that in the said case, the High Court had pronounced judgement eight months after reserving the order and there was an allegation that the High Court did not deal with the submissions made by the parties. But in the instant case, there was no such allegation that any of the point raised has not been considered by the Members. Even the judgement was passed with 114 days due to the non availability of the Member (A) for his personal difficulties.

In the case of Bhagwandas Fatechand Daswani, the hearing of the appeal was concluded before the Hon'ble High Court, Madras on 27.03.1989 but the judgement was delivered on 24.01.1994. Therefore, aforementioned judgements are not relevant in the instant case.

In view of the above, the judgement dated 06.03.2020 cannot be treated as void.

It is noted that as per the applicant/resppondent, his counsel had inspected the original file on 05.03.2021 before the Registrar as well as in the presence of other parties, however, they do not find any original judgement, which was signed by both the Members, whereas the counsel for the applicant/respondent has admitted that the judgement was pronounced in the open Court and the original application was listed under heading "Judgement". On query, the counsel for the applicant in the instant application has shown us one freshly typed copy of the original judgement as well as covering letter, which is a forwarding letter from Author Member to another Member for his perusal and concurrence. As there was some corrections made in hand at the time of delivering the judgement, it was directed to type freshly so that a fresh and neat copy may be available on record. Subsequently, the fresh copy was also signed by the author Member of the judgement in each and every pages and sent for signature of Member (A). As the original judgement copy alongwith signature of both the judges is already available in the file till date,

therefore, we fail to understand why the freshly typed copy of the same judgement showing the signature of the Members alongwith the covering letter was supplied to the counsel for the instant application (respondent in the original OA and on the basis of which the instant applicant has tried to make the order voidable. Further after comparing both the copies, we do not find any discrepancies between the two copies of judgements rather some clerical and arithmetical corrections were made without changing the basic structure/merit of the case as per Section 152 of Code of Civil Procedure, 1908.

In view of the above discussion and factual aspect, we do not find any reason to recall the order and in our considered opinion, the judgement is also not void.

Accordingly, the instant MA is dismissed.

Apart from the above, we are constraint to observe as follows :-

a) It is noted that the judgement was listed alongwith another MA-76/2019, which was also disposed on the same day and the judgement was uploaded on 17.03.2020 in the Website. Therefore, there is no dispute with regard to listing of the judgement in the supplementary list dated 06.03.2020 as the other judgement was also pronounced and signed by both the Members in the open Court on the same day. Therefore, there is no dispute with regard to the pronouncement of the judgements with a signature of both the Member in front of both parties.

b) It is noted that the applicant of the instant case was supplied with the copy of the forwarding letter of Member (J), which was the communicating letter to the judgement to Member (A), which is confidential document between the two Members. However, surprisingly, the same was supplied to the applicant by the Registry.

c) On query made by the Court, the counsel for both the parites have ascertained that they were never supplied with such documents in earlier occasions in relation to any of the judgement. Moreover, this is the settled practice that certified copy should be given without the signature of concerned judges so that no mal practice could be done.

But in the instant case, in stead of supplying of original copy of judgement consisting of signature of both the Members, the copy of the fresh typed judgement alongwith signature of Member (J) was supplied to the

applicant which is highly irregular. In this scenario, we request the Hon'ble Chairman to look into the matter and take appropriate steps after finding erring person at whose instance such type of thing has been taken place as these are the only grounds for challenging the order dated 06.03.2020 as void.

It is also noted that one seal cover envelope is in the file though we do not find the original copy as supplied to the applicant, which has been done without intimating the Members, which is also irregular. Let the instant case file be placed before the Hon'ble Chairman for his perusal and necessary action.

SAYEED AHMED BABA
MEMBER (A)

URMITA DATTA(SEN)
MEMBER (J)

I have carefully gone through the order of the Learned Judicial Member. It appears from the record that the Original Application (OA 578/2017) was finally heard on 14.11.2019 when the Tribunal did not fix any date for delivery of the judgement. The order no. 19 says "Order reserved". Thereafter, order no. 20 dated 06.03.2020 indicates that the judgement was delivered and pronounced in open court. The same has been uploaded on the website of WBAT on 16.8.2020, thereafter, the parties have applied for certified copy of the said judgement. However, on scrutiny of the record and website of the Tribunal, I do not find the case (OA – 578 /2017) in the daily cause list dated 06.03.2020.

In the Tribunal, the matters are taken up as per the daily cause list which is displayed on the Notice Board and website of the Tribunal. I do not find any supplementary daily cause list of that date i.e. 6.3.2020 from the cause list published in the website of the Tribunal, and/or, no hard copy of the cause list containing the present case as a listed matter of 06.3.2020 is available in the record. Therefore, there is no doubt that the matter OA 578/2017 was not in the daily cause list of the Second Bench

of the Tribunal dated 06.03.2020. So the question of delivery or pronouncement of judgement on 06.03.2020 could not arise.

It further appears from the record that a communication without date annexed with a draft judgement is lying with the record but no separate judgement is available in the record. A draft judgement is always a draft, so the same cannot be considered to be the final judgement having been pronounced in the open Court by the Division Bench in absence of the matter in the daily cause list or as per calendar.

A draft judgement has no legal entity in the eyes of law, even if, the same is available in the record. Therefore, a draft copy cannot be accepted to be the final judgement of the Tribunal, even if, the draft is approved by the Administrative Member. A Judge is empowered to change his mind or decision before pronouncement of the judgement.

The Hon'ble Supreme Court in Vinod Kumar Singh – Vs- Banaras Hindu University, AIR 1988 SC 371, has held

".....When a judgement is pronounced in open court, parties act on the basis that it is the judgement of the court and that signing is a formality to follow....".

In view of the aforesaid pronouncement of law, it is clear, pronouncement of the judgement in open court is essential, without which, parties cannot act on the basis of such pronouncement.

The Hon'ble Supreme Court has held in Surendra Singh – Vs- State of Uttar Pradesh AIR 1954 SC 194 :-

".....In our opinion, a judgment within the meaning of these sections is the final decisions of the court intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in open Court. It is a judicial act which must be performed in a judicial way. Small irregularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing must be there : that can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainty about its content and matter can be cured; but not the hard core,

namely the formal intimation of the decision and its contents formally declared in a judicial way in open Court. The exact way in which this is done does not matter. In some Courts the Judgment is delivered orally or read out, in some only the operative portion is pronounced, in some the judgment is merely signed after giving notice to the parties and laying the draft on the table for a given number of days for inspection.

An important point therefore, arises. It is evident that the decision which is so pronounced or intimated must be a declaration of mind of the court as it is at the time of pronouncement. We lay stress on the mode or manner of delivery, as that is not of the essence, except to say that it must be done in a judicial way in open Court. But, however, it is done it must be an expression of the mind of the court at the time of delivery. We say this because that is the first judicial act touching the judgement which the court performs after the hearing. Everything else up till then is done out of Court and is not intended to be the operative act which sets all the consequences which follow on the judgement in motion. Judges may, an often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however, heavily and often they may have been signed. The final operative act is that which is formally declared in open Court with the intention of making it the operative decision of the Court. That is what constitutes the "judgment"...."

In the present case, no date was fixed for delivery of judgement vide order dated 14.11.2019 when the argument was concluded. Therefore, no one had any knowledge when the judgement would be pronounced. As it is evident from the record that no one got the knowledge of the judgement before 16.8.2020. Had they aware, in that event, they could have applied for the certified copy of the said judgement immediate after 06.3.2020. But no one did so. The certified copy of the same, in the present case, has been applied after 16.8.2020. The case OA 578/2017 was not in the daily cause list or supplementary cause list dated 06.03.2020, resultantly, the question of pronouncement does not arise. So, the pronouncement of the judgement in open court was also not possible.

Therefore, the essence of the aforesaid judgements of the Hon'ble Supreme Court has not been complied with.

The draft judgment which the learned Judicial Member states to be final judgment of Tribunal bears only signature of the learned judicial Member, so, in view of the foregoing grounds, the said judgment cannot be considered to be judgment of the Tribunal duly pronounced by the Division Bench on 06.03.2020.

It is a matter on record that there is no separate or independent existence of draft and final judgment in the record. Mere existence of judgment signed by the learned Judicial Member only dated 06.03.2020 does not fulfil the essential requirement of law as stated above in pronouncing the same in open Court by the two judges of the Tribunal.

As a result, the said judgment bearing only signature of the learned Judicial Member cannot be considered as the final judgment in deciding OA 578 of 2017 as per Rules 15 and 19 of the West Bengal Administrative Tribunal (Procedure) Rules, 1994 which is nonest in the eyes of law.

Thus, in absence of the finally pronounced judgment or decision by the Division Bench in deciding a case (OA 578/2017), no review is maintainable under section 22 (3) (f) of the Administrative Tribunals Act, 1985. Actually, there is no scope to file review application in this case on the ground stated hereinabove. A Review application lies only against a valid decision / judgment which is pronounced in accordance with law.

Therefore, the review application RA 3 of 2020 is dismissed without cost.

In view of the aforesaid grounds, I respectfully disagree with the findings of the learned Judicial Member.

As the ultimate decision of the learned Judicial Member in dismissing the review application is the same and identical with my decision, so, no reference is required as per section 26 of the Administrative Tribunals Act, 1985.

I agree with the observation of the Learned Judicial Member regarding the conduct of the dealing clerk in supplying the internal note to the parties without any application, so that, in future, the same will not be taken place.

(SAYEED AHMED BABA)
MEMBER(A)
West Bengal Administrative Tribunal.