

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

**The Hon'ble Justice Ranjit Kumar Bag  
& The Hon'ble Dr. Subesh Kumar Das**

**Case No – MA 189 OF 2018 [OA-1154 of 2016]**

**Malay Mukhopadhyay & Others vs The State of West Bengal & Ors.**

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
01 22.11.2018	<p>For the Applicant/Respondent No.2 : Mr. A.L. Basu, Mr. G.P. Banerjee, Learned Advocates.</p> <p>For the Respondents/Applicant of : Sardar Amjad Ali, OA-1154 of 2016 Learned Senior Advocate, Mr. Prabir Chatterjee, Learned Advocate.</p> <p>The applicant/respondent no. 2 has prayed for recalling order dated October 4, 2018, November 14, 2018 and November 15, 2018 passed by this Tribunal in OA-1154 of 2016 by keeping the hearing of the original application in abeyance till the disposal of the review application pending before the Hon'ble High Court or alternatively for granting permission to the applicant to file reply in the original application.</p> <p>Mr. Basu, Learned Counsel for the applicant/respondent no. 2, contends that the Hon'ble High Court remanded the matter to the Tribunal with the sole object of filing reply and rejoinder by the parties, so that all materials can be placed before the Tribunal for consideration of the issues to be decided as per direction of the Hon'ble High Court. Mr. Basu has pointed out from letter dated November 15, 2018 addressed to him by one Siddhartha Ghosh, Learned Advocate of the Hon'ble High Court that the state respondents have filed CAN No. 8729 of 2018 and RVW No. 159 of 2018 in connection with WPST No.</p>	

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45 of 2017 for the purpose of extension of time for exchange of reply and rejoinder by the parties in modification of the time schedule already fixed by the Hon'ble High Court. On our specific query, Mr. Basu submits that the draft of the reply has not been prepared till date. He further submits that he is not in a position to communicate to the Court when the result of the CAN and review application will be available for placing the same before the Tribunal, as one of the Hon'ble Judges who delivered judgment in WPST No. 45 of 2017 is in Port Blair and His Lordship will be back to Kolkata on November 27, 2018.

Mr. Ali, Learned Senior Counsel representing the applicants of the original application, contends that his client is not in a position to file the reply due to paucity of time as the date of hearing of the miscellaneous application is fixed immediately on the next working day after filing of the said application. Mr. Ali has branded the present miscellaneous application as fictitious mainly on two grounds : first, the Senior Law Officer and Ex-Officio Assistant Secretary of the Government of West Bengal, Department of Finance who has verified the miscellaneous application, has not been authorised by the applicant/respondent no. 2 for making the verification, and secondly, the number of review application has not been disclosed in the miscellaneous application and the copy of the review application has not yet been served on the Advocate on record for the applicants of the original application. The specific

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submission of Mr. Ali is that the filing of the miscellaneous application is a mere ploy to delay the hearing of the original application and ultimately the decision of the Tribunal thereon. He further submits that granting of further time to the applicant/respondent no. 2 for filing reply in violation of the time-schedule fixed by the Hon'ble High Court cannot be done by this Tribunal. He emphatically argues that no application has yet been filed before the Hon'ble High Court for extension of time-schedule fixed by the Hon'ble High Court for exchange of reply and rejoinder.

Having heard Learned Counsel representing both parties and on consideration of the materials on record and prayer of the applicant/respondent no. 2, we find that the argument advanced by Mr. Basu are mere repetition of his previous submission made before the Tribunal. We have already observed in our previous orders that we cannot extend the time-schedule fixed by the Hon'ble High Court for exchange of reply and rejoinder in the judgment dated August 31, 2018 in WPST No. 45 of 2017 and in this regard we fully agree with the submission made by Mr. Ali. We would like to observe that the applicant who happens to be the state respondent No. 2 of the original application did not avail of the opportunity given by the Hon'ble High Court by filing the reply before the Tribunal within the time-schedule fixed by the Hon'ble High Court. Nor do we find much bonafide in the submission made on behalf of the

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applicant/respondent no. 2 that the said applicant is willing to bring on record the materials for proper adjudication of the issues to be decided by the Tribunal as per direction of the Hon'ble High Court, as the state respondents are not ready with the draft reply till today. However, since the numbers of CAN and review application have been disclosed in the letter dated November 15, 2018 addressed to Mr. Basu by Learned Advocate of the Hon'ble High Court, we would like to wait for a reasonable period of time before delivery of judgment, though the argument on behalf of both sides is concluded. In this regard, we are unable to accept the contention made in the miscellaneous application that Mr. Basu has not placed his argument in full and at length, particularly when Mr. Basu has made the submission in detail by relying on three decisions of the Hon'ble Supreme Court which are on record.

In view of our above findings, prayer for recalling order dated October 4, 2018, November 14, 2018 and November 15, 2018 passed in OA-1154 of 2016 is rejected. We would like to fix the matter on **6<sup>th</sup> December, 2018** with request to Learned Counsel for the applicant/respondent no. 2 to apprise the Bench of the result of CAN/review application pending before the Hon'ble High Court.

With the above observation, the Miscellaneous Application No. 189 of 2018 stands **disposed of**.

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Sanjib	List the Original Application No. 1154 of 2016 under the heading "for apprising the Bench of the result of review/CAN application" pending before the Hon'ble High Court.  ( S.K. DAS ) MEMBER(A)	( R. K. BAG ) MEMBER (J)
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