

(2016) 07 CAL CK 0041

In the Calcutta High Court

Case No : M.A.T. No. 768 of 2016 With CAN 4949 of 2016

Birbhum District Primary School Council

APPELLANT

Vs

Golam Murtoza

RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14, 15, 16

Citation : (2016) 3 CalHCN 609 : (2016) 3 CalLT 462

Hon'ble Judges : Soumitra Pal and Mir Dara Sheko, JJ.

Bench : Division Bench

Advocate : Mr. L.K. Gupta, Ld. Addl. Advocate Gen, Mr. Subir Sanyal, and Mr. Sumita Sen, Advocates, for the Applicants/Appellants; Mr. Asish Sanyal, Mr. Bikash Ranjan Bhattacharya, Senior Advocate, Mr. Pratik Dhar, Senior Advocate, Mr. Sanjib Bandopdhyay, Mr. Subhasi

Final Decision : Disposed Off

Judgement

Soumitra Pal, J—This appeal has been preferred by the Birbhum District Primary School Council against the judgement and order dated 12th April, 2016 passed in W.P. 26528 (W) of 2015 (Golam Murtoza and others v. The State of West Bengal and others) whereby the learned Single Judge while allowing the writ petitions held, inter alia, as under:-

"The issue, therefore, falling for consideration in these writ petitions have to be answered in the affirmative and in favour of the petitioners.

All District Primary School Councils in the State of West Bengal undertaking the 2006 selection process will revisit the panel out of which appointments of primary teachers have been granted in the 2006 selection process. Such District Primary School Councils will award appropriate marks in terms of Rule 9(2)(d) of the Recruitment Rules, 2001 to every candidate possessing requisite training certificate for the years prior to 2005. The District Primary School Councils will prepare a fresh panel on such basis. District Primary School Council thereafter will proceed to give appointments to the persons in the panel in accordance with

merit for the 2006 vacancies.

It is expected that the District Primary School Councils complete the entire exercise within a period of six weeks from the date of the communication of this order. The District Primary School Councils will undertake the exercise for all the candidates participating in the selection process of 2006. It will not limit the exercise to the petitioners only. On completion of such exercise the District Primary School Council will proceed to appoint the candidates in accordance with merit. The authorities will grant approval to such appointments in accordance with law.

These 284 writ petitions are disposed of accordingly. No order as to costs."

2. The issue which requires to be considered is whether the learned Single Judge was justified in directing all District Primary School Councils in the State of West Bengal, who had undertaken the 2006 selection process, for recruitment of primary teachers to revisit the panel out of which appointments of primary teachers were made. It is evident while disposing of the writ petition, being W.P. 26528 (W) of 2015, 284 writ petitions on similar issue were disposed of. Though facts, in general, and the question of law in all the writ petitions were similar, for the sake of brevity and clarity, the prayers in W.P. No. 26528 (W) of 2015 are referred to. The relevant prayers in the said writ petition were as under:-

"(a) A writ in the nature of Mandamus commanding the respondents and/or their men and agents to treat the certificates of the petitioners obtained on Primary Teachers' Training during the period 2004-05 valid and to allot 22 marks to each of them in the light of the Judgment of the Hon'ble Supreme Court and to provide all of them employment in Primary School as teachers immediately;

(b) A writ in the nature of Mandamus commanding the respondents and/or their men and agents to set aside the panel, if any, prepared by the respondents;"

3. Mr. L. K. Gupta, learned Additional Advocate General appearing on behalf of the appellants relying on the grounds contained in the memorandum of appeal submitted that the National Council for Teacher Education Act, 1993 (1993 Act for short) governs the teacher education system in the country. The 1993 Act does not contain any provision for relaxation of any condition regarding grant of affiliation to an institution by the regional body of the National Council for Teacher Education (for short "NCTE"). Under section 14 of the 1993 Act every institution to impart teacher education has to apply for recognition to the regional body. Parameters therein, which are not mere formalities, have to be fulfilled. Recognition granted or refused to an institution by NCTE shall be notified in the Official Gazette. Section 15 speaks of recognised institutions to impart training and course is determined by Regulations. Section 16 stipulates that no examining body shall be granted affiliation by the State unless the institution is recognised by the regional body of the NCTE. Submission was unless norms are there in the statute for relaxing the conditions for grant of recognition to an institution, recognition has to be in accordance with sections 14, 15 and 16.

Referring to these statutory provisions, it was submitted that relaxation granted under Clause 10 of Appendix 5 to give time to the states, having one year teacher education course up to 2004- 2005, to switch over their programmes for bringing them in conformity with NCTE norms and standards, was with regard to the eligibility/duration of Course and had nothing to do with the recognition of an institution. According to him candidates obtaining training certificates from institutions not recognised by NCTE are not entitled to marks for training as even under the relaxed standard of Course, recognition of an institution which under sections 14, 15 and 16 is mandatory as held in paragraphs 97,98 and 99 in the judgment delivered on 1st October, 2008 in *Tulsi Baksi v. State of West Bengal*: 2008(4) CHN 789. Submission was the judgement delivered on 26th February, 2010 in *Hiranmoy Bhowmick v. State of West Bengal*: 2010(2) CLJ (Cal) 69 or the judgement delivered on 12th April, 2011 in MAT No. 1268 of 2010 *Sampa Pradhan v. State of West Bengal* neither considers the law laid down in paragraph 92, 97,98 and 99 in *Tulsi Baksi* (supra) nor considers the statutory provisions in sections 14, 15 and 16 of the 1993 Act. It is evident from the judgment delivered on 29th June, 2010 in WP. 2580 (W) of 2010 *Tumpa Roy v. The State of West Bengal* explaining the judgment in *Hiranmoy Bhowmik* (supra), that the stand of the State is consistent. As the 2006 selection process for appointment of primary teachers came to an end by giving appointments in mid February, 2010 treating all candidates as untrained was in consonance with 1993 Act when the judgment in *Tulsi Baksi* (supra) was prevailing and as subsequent interpretation in *Hiranmoy Bhowmick* (supra) and in *Sampa Pradhan* (supra) of the judgment in *Tulsi Baksi* (supra) cannot make the appointments made in mid February 2010 bad in law as nothing has been shown on behalf of the respondents that those were illegal or irregular, the impugned judgment be set aside. For the same reason the respondents cannot have the benefit of the Bridge Course introduced by notification dated 10th May, 2010 subsequent to the judgement in *Tulsi Baksi* (supra) through NCTE recognised PTTIs. Referring to the appointment given pursuant to the judgment of the Division Bench in *Arpita Roy v. State of West Bengal* : 2012 SCC Online Cal 2258 submission was as it was not in accordance with principles of law laid down in *Tulsi Baksi* (supra) it did not lay the correct proposition of law. Referring to the prayers in the writ petition, being W.P 26528 (W) of 2015, submission was that the learned Single Judge erred in directing all the District Primary School Councils to revisit the 2006 panel as any order directing cancellation of appointments will be in breach of the principles of natural justice as the appointees, about 28000 -the necessary parties, are not parties to these proceedings. Assuming appointments made were illegal and those are cancelled, in that event panel cannot be revisited on the basis of the 2006 Rules regarding appointment as recruitment rules prevailing on the date of cancellation shall have to be followed. With regard to the order dated 19th August, 2015 passed by the Supreme Court submission was the appointments made in mid February, 2010 and the subsequent change of criteria for appointment for primary teachers had led the Supreme Court in disposing of the SLPs as nothing was left to decide on the said petitions.

4. Mr. Subir Sanyal, learned advocate appearing for the Birbhum District Primary School Council, adopting the submission of Mr. L. K. Gupta submitted that in *Tulsi Baksi* (supra) it was found that out of 138 training institutes only twenty were recognised by NCTE. Since a candidate passing out from an unrecognised institution is not eligible for the grant of 22 marks for training, State took a decision to treat all candidates sponsored by the Employment Exchange as untrained. Thereafter selection process was undertaken which resulted in giving appointments in mid February, 2010. In support of their submission, Mr. Gupta and Mr. Sanyal had relied on the following judgments:- 1) *Prabodh Verma v. State of Uttar Pradesh*: AIR 1985 SC 167; 2) *State of U.P. v. Synthetics and Chemicals Ltd*: (1991) 4 SCC 136; 3) *State of Maharashtra v. Manohar*, AIR 1998 SC 166; 4) *Arun Tewari v. Zila Mansavi Shikshak Sangh*, AIR 1998 SC 331; 5) *Ramrao v. All India Backward Class Bank Employees Welfare Association*: AIR 2004 SC 1459; 6) *A.P. Steel Re-Rolling Mill v. State of Kerala*, (2007) 2 SCC 725; 7) *State of Uttaranchal v. Alok Sharma*, (2009) 7 SCC 647; 8) *G. Srinivas Rao. v. Union of India*, AIR 2011 SC 2756; 9) *Bholanath Marmakar v. Madanmohan Karmakar*, 92 CWN 428 and 10) *Tulsi Roy v. Krishnu Roy*, 2011(2) CHN (Cal) 1021.

5. Mr. Asish Sanyal, learned advocate appearing on behalf of some of the respondents/writ petitioners submitted that the introduction of Bridge Course in May, 2010 by the State in concurrence with NCTE validated the training institutes which were declared invalid by *Tulsi Baksi* (supra). His clients who, form a category by themselves, now at par with the candidates who had passed out from recognised institutes, are entitled to 22 marks, an issue not covered by the judgment in *Tulsi Baksi* (supra). Drawing the attention of the Court to Rule 10 submission was the right conferred by the said rule cannot be taken away in any manner whatsoever as there is no central law negating the claim.

6. Mr. Pratik Dhar, learned Senior Advocate appearing for some of the respondents/writ petitioners submitted that if this Bench differs from the view taken in *Sampa Pradhan* (supra), the matter may be referred to the Hon?ble Chief Justice for constituting a larger Bench. Referring to the judgment in *Tulsi Baksi* (supra) submission was since it is prospective in operation, it does not affect the respondents. The Recruitment Rules, already prevailing, providing marks for training have to be applied. Referring to West Bengal Primary School Teachers Recruitment Rules, 2001, particularly Rules 6(5) and 6(6) thereof it was submitted that in view of the amendment of Rule 10 in 2005 as the respondents were considered as trained candidates, preference has to be given to them. As recruitment Rules prevailing since 1940 have been given legal sanction in *Tulsi Baksi* (supra) followed by *Hiranmoy Bhowmick* (supra) and have been accepted by the State, the rights accrued in favour of the respondents under the earlier Statutes and Rules cannot be wiped out as earlier actions have not been erased and mark sheets granted pursuant to training have not been cancelled. As in *Tulsi Baksi* (supra) even after acknowledging the supremacy of the 1993 Act directions were issued, considering the view of the State in *Hiranmoy Bhowmick*

(supra), State now cannot change its stand and directions might be issued on the District Primary School Councils to rework the panel of 2006 for giving appointments. Though 28000 appointments were made in mid February, 2010, as none of the Courts had considered the issue of affectations of the respondents and if 22 marks are allotted to the candidates on account of training as not more than 1500 candidates already appointed may be affected, the order of the learned Single Judge may be modified accordingly. In support of his submission Mr. Dhar had relied on the following judgments:- 1) Kunhayammed v. State of Kerala, (2000) 6 SCC 359; 2) Central Board of Dawoodi Bohra Community v. State of Maharashtra, (2005) 2 SCC 673; 3) Arpita Roy (Samanta) v. State of West Bengal, 2012 SCC Online Cal 2258; 4) Sandhya Educational Society v. Union of India: (2014) 7 SCC 701; 5) Balwant Rai Saluja v. AIR India Ltd, (2014) 9 SCC 407.

7. Mr. B. R. Bhattacharya, learned Senior Advocate appearing on behalf of some of the respondents/writ petitioners submitted that since the SLPs were withdrawn, the judgments in Tulsi Baksi (supra), Hiranmoy Bhowmick (supra) and in Sampa Pradhan (supra) remain undisturbed. As the principles of law laid down therein have been accepted and as merit has to be given preference, directions might be issued for giving appointments as the State pursuant to the judgement in Arpita Roy (supra) had given an appointment. Since his clients, who are meritorious, have completed the Bridge Course introduced in May, 2010 with the concurrence of NCTE, the direction of the learned Single Judge be not disturbed. According to him the developments subsequent to the judgment in Tulsi Baksi (supra), that is the introduction of the Bridge Course in May, 2010 by the State in consultation with NCTE and the judgments in Hiranmoy Bhowmik (supra) and in Sampa Pradhan (supra) interpreting the judgment in Tulsi Baksi (supra) had led to the disposal of the SLPs on 19th August, 2015. Mr. Bhattacharya had relied on the following judgments:- 1) Durgah Committee v. Hussain Ali, AIR 1961 SC 1402; 2) Union of India v. Chjju Ram, (2003) 5 SCC 568; 3) Union of India v. Major S.P. Sharma, (2014) 6 SCC 351; 4) Hitendra Singh S/o Bhupendra Singh v. Panjabrao Deshmukh Krishi, (2014) 8 SCC 369 and 4) Jal Mahal Resorts Private Limited v. K.P. Sharma, (2014) 8 SCC 866.

8. In reply Mr. L. K. Gupta submitted that sections 14, 15 and 16 of the 1993 Act considered in Tulsi Baksi (supra) were not considered in the subsequent judgments. Since these vital provisions were not considered the subsequent judgments are per incuriam. Since the 1993 Act does not confer any power on the authorities to relax the criteria for recognition of an institute, the question of considering the candidature of a candidate obtaining certificate from a non-recognised institute does not arise. The reasoning in the judgment in Hiranmoy Bhowmik(supra), which is actually in paragraph 11 thereof, neither considered sections 14,15 and 16 of the NCTE Act nor considered paragraphs 92, 96 to 101 of the judgment in Tulsi Baksi (supra).

9. Learned counsel for the parties had also relied on/referred to the judgements

in Tulsi Baksi (supra), Hiranmoy Bhowmik (supra), Sampa Pradhan (supra), Arpita Roy (supra) and Tumpa Roy (supra) in support of their respective submission.

10. In order to answer the issues raised it is appropriate to set out the prayers in Tulsi Baksi (supra) which are as under:-

"(i) The recognition granted by the West Bengal Board of Primary Education to the respondent Primary Teachers Training Institutes are not in accordance with law;

(ii) The respondent No.1 (State of West Bengal) and the respondent No.2 [the Director of School Education (PE) West Bengal] should ensure that no candidate is appointed as an Assistant Teacher in any Primary School in the State of West Bengal possessing training certificate issued by the West Bengal Board of Primary Education in relation to a person who has been trained in one of the respondents Primary Teachers? Training Institute. iii) The State respondent and the respondent Director be directed to terminate the services of those incumbents who have already been appointed as primary school teachers based on pursuing of course of study in Teacher Education in any of the respondents Primary Teaching Institute."

11. Tulsi Baksi a public interest litigation, was allowed by holding, inter alia, as under:-

"92. After considering all these aspects of the matter, we are unable to accept the submissions made on behalf of the respondents and in our considered opinion, we find that the National Council for Teachers? Education Act deals with the ?teacher education system? in the country. It has been specifically stated in the preamble and in the provision of the said Act that it deals with the programmes of education, research or training or persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools which also includes non-formal education, part-time education, adult education and correspondence education. Therefore, we do not have any hesitation to hold that the NCTE Act would prevail in the State which is dealing with teachers? education to teach at pre-primary, primary and other levels. We do not have any hesitation to accept the contention of the petitioner that without the recognition from the NCTE no Regional Board or Authority can have a right to function as a Board. Under section 16 it has been specifically stated that it is the right of the NCTE to grant affiliation to the institution or to hold examination by examination body. No institute, without having an authority/recognition from the Regional Committee, under section 14 or obtaining permission under section 15, can undertake to grant any diploma, degree or etc. to the persons without having an affiliation from the Regional Committee under the said NCTE Act."

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96. Therefore, we hold that the Parliament cannot be debarred to enact the said law, i.e., NCTE Act and the said Act should prevail.

97. In these circumstances, we hold that there is a breach on the part of the Board in granting affiliation to those institutions in patent violation of the provisions of section 16 of the NCTE Act and, therefore, we are convinced that the petitioners are acting bona fide and have sufficient interest in prosecuting this public interest litigation and as such they would have a locus standi to approach this Court to help the students. We are also convinced that this writ petition has not been filed for personal gain or private profit or political motive or any oblique consideration.

98. On these grounds, this petition deserves to be allowed and we declared that all the respondent institutions which are not recognised by the NCTE could not be given affiliation by the Board. The Institutions, which have not followed the provisions of the NCTE Act and are not recognised by the NCTE Authority, had not right to admit students in the said training programme.

99. Accordingly, we direct that unless these institutions are recognised, they shall not have any authority to admit any student in their institutions. It is clear from the facts that these institutions have acted in flagrant disregard of the provisions of the Act and Rules. All these institutions are bound to be aware of the provisions of the NCTE Act and could not have merely on the basis of the affiliation granted by the Board admitted the poor students. We are aware that the students are now going to lose one year which is very precious in their young lives. But the law must prevail and, accordingly, we direct all these unrecognized institutions to return all the fees to each and every student.

100. Before we part we also make it clear those Institutions who are already recognised under the NCTE Act, there are no impediments for them to run their Institutions. We further direct the State Authorities to render all assistance to the said Institutions.

101. For the reason stated herein above, this application is allowed."

The "substantive relief" prayed for in Hiranmoy Bhowmik (supra) is as under:-

"(a) A writ in the nature of mandamus commanding the respondents to cancel the appointments of the primary teachers who have been appointed from the year 1998-2005 on the basis of the marks awarded for the Primary Teachers Training Certificates and minus the marks of training qualification they could never come in the zone of selection process too forthwith."

The relevant portion of the judgement in Hiranmoy Bhowmik (supra) is set out herein below:-

"11. Having heard the learned Counsel for the parties, we find considerable substance in the submissions made by the learned Advocate General that this

public interest litigation seeking cancellation of appointment of primary teachers made between 1998-05 suffers from gross delay, laches and acquiescence. Moreover having regard to the stand of the NCTE as reflected in Regulation Clause 10 thereof clearly providing for relaxation and granting time to the States up to the end of the Academic Session 2004-05 to switch over their programme for bringing them in conformity with the NCTE norms and standards, we have no hesitation in holding that this petition for the prayer as set out in para 2 of this judgment is misconceived and deserves to be dismissed."

12. It is to be noted that from the judgement in *Tulsi Baksi* (supra), in the year 2009 State and the unrecognised institutions had filed Special Leave Petitions before the Supreme Court which were disposed of on 19th August, 2015 by an order which is as follows:-

"Both sides would agree that in view of the subsequent development that has taken place during the pendency of the special leave petitions, in our view, nothing survive in these special leave petitions for our consideration and decision and, therefore, the special leave petitions are disposed of as having become unnecessary.

As a sequel to the above, all pending interlocutory applications are also disposed of."

13. It is clear from facts that the dispute is with regard to the selection process of 2006 for the recruitment of primary teachers. The said selection process was completed by mid February, 2010 when appointments were given to about 28000 candidates sponsored by the Employment Exchange treating all as untrained candidates.

14. In these appeals the question which requires to be considered is whether the selection process completed could be reworked by revisiting the panel as directed by the learned Single Judge.

15. We find appointments were made in mid February, 2010 when the judgement in *Tulsi Baksi* (supra), which had considered the provisions of the 1993 Act, in this regard was the only authority on law relating to the appointment of primary teachers. The judgments in *Hiranmoy Bhowmik* (supra) or in *Sampa Pradhan* (supra) were subsequent to the appointments. Therefore, the judgment in *Tulsi Baksi* (supra) was covering the field. Keeping the judgment of *Tulsi Baksi* (supra) in mind appointments were made. During argument it was not even remotely contended on behalf of the respondents that the appointments made were vitiated by irregularities in the selection process or there was manipulation in preparing the panel. The principles of law in *Hitendra Singh* (supra) relied on behalf of the respondents are not applicable to the facts of this case as therein an enquiry committee had gone into the allegation of illegalities and irregularities in the appointment process of senior and junior research assistants which was found to be correct. Since appointments were made treating all candidates sponsored by the Employment Exchange as untrained candidates when the law

laid down in *Tulsi Baksi* (supra) was governing the legal arena, appointments cannot now be reworked by revisiting the panel. The argument on behalf of the respondents that the Bridge Course introduced by the State in consultation with NCTE putting the unsuccessful candidates at par with the successful candidates and the candidature of the said candidates have to be considered by revisiting the panel cannot be accepted as it was introduced after the issuance of notification in May, 2010 when appointments had already been made. That apart, the law laid down in *Tulsi Baksi* (supra) recognising a training certificate from a recognised institution under sections 14, 15 and 16 of the 1993 Act has not been diluted even in the subsequent judgments in *Hiranmoy Bhowmik* (supra) or in *Sampa Pradhan* (supra). Therefore, law acknowledges a recognised institution under 1993 Act and a training certificate obtained therefrom and not from an unrecognised institution. Besides what has been held hereinbefore there is another aspect in these appeals. Admittedly about 28000 candidates, who have been appointed as primary teachers in mid February, 2010, were not parties to the writ petitions. They are necessary parties. Any order passed without giving such appointees an opportunity of hearing and that too after a period of more than six years after their appointments would be in breach of the principles of natural justice. In this regard it is appropriate to refer to the law laid down in *Prabodh Verma* (supra) wherein it was held that "the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties." (paragraph 28). Moreover as reworking of the panel will disturb the appointments of thousands of primary teachers, it will not be conducive in public interest as held in paragraph 10 of the judgment in *G. Srinivas Rao* (supra). Similar view was expressed in paragraph 12 in *Arun Tewari* (supra) wherein while reiterating the principle of law in *Prabodh Verma* (supra) it was also held that inviting applications through Employment Exchange in the context of the said case was a special procedure which was not unfair. A few appointments made pursuant to the directions made in the judgment in *Arpita Roy* (supra) and another matter do not further the case of the respondents as it was in breach of law and illegal as the appointment process was completed in mid February, 2010 and the respondents, relying on the said judgement or orders and consequent appointment cannot claim negative equality as correctly contended by the learned Additional Advocate General. That apart, since on completion of the 2006 selection process appointments were given and candidates had joined, if the 2006 panel is revisited and in the process even if some appointments are cancelled, in that event selection process has to be conducted afresh under the new Rules and not under the old Rules as held by the Full Bench of this Court in *Tulsi Roy* (supra).

16. So far as the order dated 19th August, 2015 passed by the Supreme Court on the SLPs filed in 2009 and subsequently are concerned, though the learned

advocates for the parties had put forward their respective submissions as to what constituted "subsequent development", fact remains that there was no order of restraint on the District Primary School Councils from giving such appointments. Accordingly the Councils had gone ahead with the selection process and had given appointments in mid February, 2010 for which they cannot be faulted. Though it has not been contended that the appointments given were irregular or illegal, if the submission of the respondents/writ petitioners is accepted and the panel prepared and given effect to in mid February, 2010 is now revisited as directed by the learned Single Judge, then it will lead to a situation when no panel validly prepared on the basis of the law prevailing on the date of its preparation would be final as future litigation may again lead to revisiting the same panel. In this regard it may not be out of place to mention that though in *Tulsi Baksi* (supra) and in *Hiranmoy Bhowmik* (supra) prayers were made to cancel or terminate the appointments of primary teachers, however, the Court refrained from acceding to such prayers.

17. Therefore, as the 2006 selection process for appointment of primary teachers culminated with the appointments being made in mid February, 2010 by treating all candidates as untrained when the judgment in *Tulsi Baksi* (supra) was governing the field and as no allegation was made by the respondents that such appointments were illegal and irregular and as the judgments in *Hiranmoy Bhowmik* (supra) and in *Sampa Pradhan* (supra) and the introduction of the Bridge Course were subsequent to the appointments and as the appointees, about 28000 primary teachers,- the necessary parties - were not parties to the writ petitions and the appointments made are virtually challenged after about six years, the learned Single Judge erred in passing the judgment under appeal. Hence, the judgment and order dated 12th April, 2016 are set aside and quashed. The appeal is allowed. Accordingly the application is also allowed.

18. No order as to costs.

19. Urgent photostat certified copy of this judgment, if applied for, be furnished to the appearing parties on priority basis.

Mir Dara Sheko. J. - I agree.

Appeal allowed.

Later-

20. After the judgment is delivered Mr. Mr. Sanjib Bandopdhay, learned advocate for the respondent/writ petitioner prays for stay of the operation of the judgment and order. Prayer is considered and refused.