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**(2007) 05 CAL CK 0018**

**In the Calcutta High Court**

**Case No :** APOT No. 88 of 2007 and WP No. 2052 of 2006

Gangadhar Dutta

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 08-05-2007

**Acts Referred:**

**Citation :** (2008) 1 CHN 41

**Hon'ble Judges :** Sengupta, J;Arun Bhattacharya, J

**Bench :** Division Bench

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## **Judgement**

1. The appellant being a third party has impugned the judgment and order dated 26th December, passed by the learned Single Judge in a writ petition being described as Tender No. 607 of 2006.

2. On plain reading of the judgment impugned it appears to be an order which is not supportable under any circumstances as the impact of the order is a final result of the writ petition as if it had been heard out finally. We accordingly set out the text of the order of the impugned judgment and order:

The Court: After having considered the facts and circumstances of the case, there will be an interim order in terms of prayer (f) of the petition.

Since the validity of the present licence, I am told, is to expire of 31st December, 2006 the petitioner would be at liberty to apply for renewal of his validity licence.

Since the validity of the present licence is to expire and since the petitioner has been sufficiently protected by the above interim order, the writ petition is disposed of as above.

Since no affidavit-in-opposition has been called for from the respondents concerned, the allegations made in the writ petition are not to be taken to be admitted.

3. We also set out the prayer (e) of the writ petition:

f) An interim order directing the District Controller, Food and Supplies, Howrah, to allot kerosene and to tag ration cards with the petitioner's kerosene dealership licence No. 14/MPG/2006 within its validity period.

4. If one looks at prayers (a) and (b) of the writ petition and reads prayer (f) in juxtaposition, it would be clear that the effect of passing interim order in terms of prayer (f) is the final result of the writ petition at the ad interim stage. By the order impugned, the writ petition was disposed of on the very first day and as such, there was no scope for anyone to come before this Court to ventilate their grievances. The appellant, in the impugned order, has specifically stated how his right is affected by the aforesaid impugned order. The writ petitioners/respondents who obtained the order are said to have been granted a licence for dealership and despite licence being granted, the supply was not effected by the respondent concerned. The Learned Counsel for the State, Mr. Sarkar submits today that he had appeared from 22nd December, 2006 but his submission is not recorded nor it has been recorded that State does not wish either to oppose or to support the writ petition. It is also not recorded by the learned Trial Judge that the State Government did not wish to file any opposition.

5. Under such circumstances, we are of the view that the writ petition ought not to have been disposed of finally on 26th December, 2006. No one can question the authority of the Court regarding passing of interim order even at the ad interim stage in a fit case but if the Court passes any order effect whereof would result in the finality of the lis itself then the Court as a matter of course should not dispose of the matter and must keep the matter pending. It is settled law that interim order being in the nature of a mandate of Court must not be made operative for an indefinite period or on permanent basis and this results into a serious prejudice and affection of many a unknown persons. The Court sometime-without having proper assistance unmindfully passes such orders, which have got serious impact and implication in the society as a whole. Court, therefore, in its wisdom should itself impose restriction to avoid passing of such kind of order. The Apex Court has cautioned many a times in the matter of passing ad interim order of a mandatory nature. Unfortunately, sometime the Court forgets this caution and is misdirected by the litigants to pass such an order.

6. We, therefore, accept the contention of Mr. Kalyan Bandhopadhyay, leading Mr. Sukumar Bhattacharya that the order cannot be sustainable though State respondent has not preferred any appeal. The Learned Counsel for the writ petitioners submits that the appellant has no stake nor any right of affectation in the subject-matter of the writ petition on which the said interim order was passed. We are not deciding this issue finally. We are, prima facie, satisfied that the appellant's right is affected by the impugned order. More so, in the body of the writ petition, there has been mention of the appellant regarding running of his dealership. Thus we set aside the impugned order and direct that the writ petition should be heard afresh by the learned Trial Judge.

7. Interim order passed on the writ petition in terms of prayer (f), however, will

continue for a period of eight weeks after reopening of summer vacation.

8. We are told that Mr. Bandhopadhyay's client namely the appellant has challenged the grant of licence in favour of the writ petitioner/respondents and this writ petition challenging such licence is pending before the learned Trial Judge. We, therefore, direct that both the writ petitions should be heard analogously. We request the learned Trial Judge to hear out both the writ petitions analogously as early as possible. Mr. Bandhopadhyay's client is, therefore, added as a party respondent to the writ petition on which the impugned order was passed.

9. Appropriate affidavit-in-opposition may be filed before the learned Trial Judge within one week after summer vacation; reply may be filed thereafter but before the matter is taken up by the learned Trial Judge. We desire that both the matters should be heard in terms of the above direction within four weeks after summer vacation.

10. We make it clear that this interim order in terms of prayer (f) granted by this Court for a limited period will not create any right or equity in favour of the writ petitioners/respondents. If for any reason both the matters are not heard out and the interim order is required to be extended then it would be open for the writ petitioners/respondents to apply before the learned Trial Judge and again it would be absolute discretion and power of the learned Trial Judge either to grant extension or to refuse the same on the facts and circumstances of this case as would deem fit and proper to the learned Trial Judge.

Thus the appeal is disposed of by the aforesaid order without any order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

Sengupta and A.K. Bhattacharya, JJ.