
(2014) 02 CAL CK 0123
In the Calcutta High Court
Case No : Writ Petition No. 7672 (W) of 2012

Bharat Das

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 19-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Panchayat Act, 1973 — Section 153, 212

Citation : (2014) 3 CHN 153

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Chitta Ranjan Chakraborty and Bikash Ranjan Bhattacharya,
Advocate for the Appellant; Sadhan Kumar Haider, Advocate for the Respondent

Judgement

Biswanath Somadder, J.—This matter appears as "To Be Mentioned" at the instance of the State. By consent of the parties, let this matter be treated as on day"s list as a matter for Final Disposal. When the petitioner initially moved this application he was the Sabhadhipati of North-24-Parganas Zilla Parishad. The subject-matter of challenge in the instant writ petition is an order dated 26th March, 2012, issued by the Principal Secretary, Government of West Bengal Panchayat & Rural Development Department, in exercise of powers conferred in terms of section 212 of the West Bengal Panchayat Act, 1973. At the time of initial hearing of the matter, a preliminary point of maintainability was taken by the State. It was contended before this Court that the impugned order was passed under the provision of section 212 of the West Bengal Panchayat Act, 1973. The said provision of law does not contemplate issuance of any specific instruction or direction to be given to the Sabhadhipati of the Zilla Parishad by the State Government. As such, the Sabhadhipati of North 24-Parganas Zilla Parishad cannot be said to be an "aggrieved person" for the purpose of approaching this Court under Article 226 of the Constitution of India. The preliminary point, as raised by the State, was upheld by this Court in terms of a judgment and order dated 20th February, 2013. An appeal was preferred

therefrom by the writ petitioner before a Division Bench of this Court, which was pleased to pass a judgment and order on 18th March, 2013 in MAT 331 of 2013 with CAN 2444 of 2013, allowing the appeal by setting aside the judgment and order dated 20th February, 2013, with a direction upon this Bench to decide the writ petition on its merit. The State, thereafter preferred a Special Leave to Appeal before the Hon''ble Supreme Court. However, when the matter was taken up for consideration by the Hon''ble Supreme Court on 22nd April, 2013, the counsel for the State sought leave to withdraw the matter. The Hon''ble Supreme Court, while granting such leave, observed to the effect that its order dated 22nd April, 2013, would not prevent the writ petitioner from arguing the matter on merits before this Bench pursuant to the judgment and order passed by the Division Bench or placing reliance upon the provisions of the West Bengal Panchayat Act, 1973. Consequently, the matter reverted to this Bench for the purpose of deciding it on merits. The State prayed for listing of the matter as "To Be Mentioned". It is submitted by the learned advocate appearing for the State that by efflux of time this writ petition has been rendered in fructuous since the writ petitioner is no more the Sabhadhipati of North 24 Parganas Zilla Parishad. On the other hand, it is submitted by the learned advocate for the petitioner that although it may be academic, the Court ought to decide the matter on merits, in terms of the observation made by the Supreme Court, since the arbitrary action of the State was under challenge.

2. It is noticed that the State Government issued the impugned order under section 212 of the West Bengal Panchayat Act, 1973, seeking to empower the District Magistrate, North 24 Parganas, being the Executive Officer of North 24 Parganas Zilla Parishad to "execute and implement on behalf of the Zilla Parishad all the schemes out of the Central and State Government funds...." Undisputedly, the petitioner was the head of the North 24 Parganas Zilla Parishad at that material point of time, being its Sabhadhipati. Although, the impugned order does not appear to have usurped the statutory powers of the Zilla Parishad in its entirety--as provided under section 153 of the West Bengal Panchayat Act, 1973--at the same time, it cannot be held that the rights of the writ petitioner--in his capacity as the Sabhadhipati of the Zilla Parishad--were not affected. By virtue of the impugned order, the State Government took-away some of the functions which have been statutorily bestowed upon the Zilla Parishad, which, at that material point of time, was headed by the writ petitioner as its Sabhadhipati. Such action of the State, without affording an opportunity of hearing to the Sabhadhipati, cannot stand the test of the well-established principles of reasonableness of statutory action and can certainly be held to be arbitrary in nature. However, this question is not germane any more since it is the admitted position that as of date the petitioner is no more the Sabhadhipati of North-24-Parganas Zilla Parishad. As such, there is no scope for the Writ Court to issue such mandatory directions as prayed for when the matter was initially moved. As rightly submitted by the learned advocate for the State, the Writ Petition has become infructuous by efflux of time and, therefore, stands disposed of in terms

of the observations made hereinabove.