
(2019) 12 CAL CK 0107

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 96, 203 Of 2019

Pranab Kumar Adhikary

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 20-12-2019

Acts Referred:

Howrah Municipal Corporation Officers And Employees (Classification, Conduct, Control And Appeal) Regulations, 1996 — Section 7
Prevention Of Corruption Act, 1988 — Section 7
Indian Penal Code, 1860 — Section 498A West Bengal Municipal Employees (Classification, Control, Appeal And Conduct) Rules Of 2010 — Rule 4, 5

Citation : (2019) 12 CAL CK 0107

Hon'ble Judges : Rajasekhar Mantha, J

Bench : Single Bench

Advocate : Anjan Bhattacharya, Anita Shaw

Judgement

Rajasekhar Mantha, J

The Court : The writ petitioner is a Sub-Assistant Engineer in the Howrah Municipal Corporation. Prior thereto he was an employee of the Bally Municipality which has since merged into Howrah Municipal Corporation. Pursuant to a Criminal Proceedings lodged by the Officer-in-Charge, Anti-Corruption Bureau being PS case no.148/ACB PS 04/2015 dated 20th August, 2015, the petitioner was in custody for a period exceeding 48 hours and came to be suspended from service by order dated 25th August, 2015. He was in prolonged suspension, until he filed WP No.96 of 2019 challenging the same, without any disciplinary proceedings.

The sum and substance of the charge against the petitioner alleged under the Prevention of Corruption Act was that he was caught red-handed taking a bribe of Rs.1 lakh from a promoter and upon raids being conducted at his residence, a sum of Rs.20 crores was found in cash and other articles were also seized.

The employer invoked Section 7 of the Howrah Municipal Corporation Officers

and Employees (Classification, Conduct, Control and Appeal) Regulations, 1996 which are *pari materia* to Rules 4 and 5 of the West Bengal Municipal Employees (Classification, Control, Appeal and Conduct) Rules of 2010.

A charge sheet came to be issued against the petitioner in the year 2019 which prompted the petitioner to file WP No.203 of 2019. The Articles of charge appear to be substantially similar to those against the petitioner in the criminal proceedings pending under Section 7 of the PC Act.

The petitioner contends before this Court in WP No.203 of 2019 that the charge sheet issued against him does not refer to any act or omission relating to his service. He, therefore, submits that the Howrah Municipal Corporation could not have initiated any departmental proceedings in respect of his service. In support of such argument, the petitioner relies upon a judgment of a Division Bench of this Court in the case of *Amit Biswas vs. State of West Bengal & Ors.* reported in 2007(2) LLN 852, particularly paragraphs 16 to 24.

This Court has considered the argument of the petitioner in some detail. The judgment of a Division Bench of this Court in the case of *Amit Biswas (supra)* refers to a criminal proceedings against the appellant therein under Section 498A of the Indian Penal Code out of a domestic dispute between the petitioner and his family members. In the instant case, the petitioner has been charged in criminal proceedings under the Prevention of Corruption Act, *inter alia*, for possession of assets and money beyond known sources of income.

Admittedly the petitioner's only source of income was from his employment with the Howrah Municipal Corporation. The petitioner's position as a Sub-Assistant Engineer with the Howrah Municipal Corporation is the reason for which the petitioner may have been offered bribe in the first place. It is nobody's case that the petitioner could have accepted any bribe for any act outside the scope of his employment.

In these circumstances, this Court is of the clear view that the judgment in the case of *Amit Biswas (supra)* has no manner of application in the instance case.

A charge against an employee particularly that of a municipal corporation of corruption under PCRA pre-supposes an act or omission in relation to his employment and hence the Howrah Municipal Corporation was wholly and completely justified in commencing departmental proceedings, *inter alia*, by issuing the charge-sheet in question.

The principal argument 2019 cannot be sustained and petition being WP No.203 of 2019 of the petitioner in WP No.203 of is hereby rejected. The writ stands dismissed.

Re: WP No.96 of 2019:

In view of the decision rendered in WP No.203 of 2019, this writ petition, WP No.96 of 2019, stands dismissed. It is now well-settled that an order of

suspension cannot be kept in operation indefinitely. The suspension of the petitioner for five years without any departmental proceedings or even issuing of charge-sheet is deprecated. However, since by reason of the West Bengal Municipal Employees (Classification, Control, Appeal and Conduct) Rules, 2010, the petitioner is entitled to 50% and 75% and an increased amount thereafter when the suspension continues, the petitioner's grievance is partially ameliorated.

Since the charge-sheet has been issued by the HMC, it is hereby ordered that the departmental enquiry against the petitioner shall be concluded as expeditiously as possible, but not later than a period of six months from the date of communication of a copy of this order.