

(2026) 02 CAL CK 1587
In the Calcutta High Court
Case No : WPA 1798 Of 2026

Pratima Ghosh & Ors

APPELLANT

Vs

State of West Bengal & Ors

RESPONDENT

Date of Decision : 09-02-2026

Acts Referred:

Constitution of India, 1950 — Article 243(U)
West Bengal Municipal Act, 1993 — Section 430, 431(1), 431(2), 431(3)
Bengal Municipal Act, 1932 — Section 553

Citation : (2026) 02 CAL CK 1587

Hon'ble Judges : Raja Basu Chowdhury, J

Bench : Single Bench

Advocate : Billwadal Bhattacharyya, Aditya Mondal, Anirban Saha, Sourav Samanta, Ritam Dutta, Kishore Dutta, Swapan Banerjee, Rajat Dutta, Tuli Sinha

Final Decision : Dismissed

Judgement

Raja Basu Chowdhury, J

1. The present writ petition has been filed, inter alia, praying for quashing of the show-cause notice dated 19th December, 2025 and the order dated 21st January, 2026 passed by the Government of West Bengal in exercise of powers conferred under Section 431(1) and (2) of the West Bengal Municipal Act, 1993 (hereinafter referred to as the "said Act"). The petitioners also seek to challenge the order dated 21st January, 2026 appointing the Sub-Divisional Officer, Kharagpur as Administrator consequent to the dissolution of the Board of Councillors of Kharagpur Municipality and to take over the charge of the municipality in terms of Section 431(3) of the said Act.

2. The petitioners claim to be the elected councillors of Kharagpur Municipality in the district of Paschim Medinipore pursuant to election held in the year 2022. According to the petitioners on 19th December, 2025, a show-cause notice was issued by invoking powers under Section 431(1) of the said Act. Though a response was filed dealing with the points noted in the show-cause, the order

dated 21st January, 2026 was passed, thereby dissolving the Board of Councillors and by a further order of even date an Administrator was also appointed to take charge of the affairs of the municipality.

3. Mr. Bhattacharyya, learned senior advocate appearing for the petitioners in support of the writ petition has drawn attention of this Court to the provisions of Sections 430 and 431 of the said Act and would submit that the aforesaid exercise of powers by the State is not in accordance with the aforesaid provisions of the said Act and the Rules framed thereunder.

4. By placing before this Court Section 430 of the said Act, he has submitted that the State can exercise certain powers, in the event, the State is of the view that the Board of Councillors had made default in performing of duties and in such event, it is the duty of the State to offer opportunity to the Board to remedy the breach by fixing a period for due performance of such duty by the Board. In the instant case, no such opportunity was provided.

5. By drawing attention of this Court to the show-cause notice dated 19th December, 2025, it is submitted that the Government had issued the show-cause based on a mass petition dated 17th December, 2025. According to Mr. Bhattacharyya, though it was incumbent upon the State Government to disclose the mass petition dated 17th December, 2025, purportedly received from the residents of the Kharagpur Municipality, based on which the above show-cause notice was issued, the said document was not disclosed along with the show-cause. This apart, by placing before this Court the provisions of Section 431(1) of the said Act, it is submitted that the State Government did not, in the instant case, form an opinion for initiating proceeding under Section 431(1) of the said Act and in absence of formation of such opinion, no proceedings under Section 431 of the said Act could have been initiated.

6. It is submitted that though the Board had responded to the above show-cause notice in writing dated 23rd December, 2025, the response given by the Board was not adhered to and without considering the same, the impugned order dated 21st January, 2026 was passed.

7. By placing before this Court the order dated 21st January, 2026, it is submitted that the State, while passing of the above order had taken into the consideration the observations made by the District Magistrate, Paschim Medinipore and the observations made by the Sub-Divisional Officer, Kharagpur, Paschim Medinipore in the report dated 14th January, 2026, though such report was not supplied to the petitioners. The aforesaid constitutes violations of the principles of natural justice, apart from the statutory violation as indicated hereinabove.

8. Independent to the above, by drawing attention of this Court to the provisions of Article 243U of the Constitution of India, it is submitted that every municipality unless sooner dissolved under any law for the time being in force shall continue for a period of five years from the date appointed for its first

meeting and no longer, provided that a municipality shall be given reasonable opportunity of being heard before its dissolution. According to him, the basis of providing reasonable opportunity of hearing before dissolution is embodied in the Constitution itself. The action taken by the State in dissolving the Board without adhering to the above is also in violation of Article 243U of the Constitution of India. In support of his above contention, he has placed reliance on the judgment delivered in the case of Sankar Das Paul & Ors. v. State of West Bengal, reported in 1989 SCC OnLine Cal 249.

9. Mr. Banerejee, learned Additional Government Pleader (AGP) representing the State has placed before this Court the provisions of the said Act. According to him, there is justifiable reason for the State to initiate the proceedings. In support of his contention, he intended to rely on several documents. However, while responding to a query from the Court, he had candidly submitted that the aforesaid documents which he intends to rely were never disclosed to the petitioners. According to him, since there is enough material for the State to proceed against the Board, the action taken by the State should not be interfered with. He, however, adds that the response filed by the petitioners to show-cause was duly considered by the State and accordingly it cannot be said that there has been violation of principles of natural justice. As such, no interference is called for.

10. Having heard the learned advocates for the respective parties, I find that admittedly it is not in dispute that the petitioners had been elected as councillors under Kharagpur Municipality in the District Pashim Medinipore pursuant to the elections held in the years 2022. It is also not in dispute that the Board of Councillors was in place prior to passing of the order dated 21st January, 2026. I find from the show-cause dated 19th December, 2025 that the said show-cause was issued under the provisions of Section 431 of the said Act based on a mass petition received by the Department on 17th December, 2025 from the residents of Kharagpur Municipality.

11. In this context, I find that Mr. Bhattacharyya, learned senior advocate representing the petitioners, has attacked the aforesaid notice on the ground that the same is violative of the constitutional provisions as also on the ground that the same has been issued without complying with the principles of natural justice.

12. Independent of the above, it is also submitted that the said notice has not been issued in consonance with the provisions of Sections 430 and 431 of the said Act. As such, to morefully appreciate the same, the relevant provisions are extracted hereinbelow;

“430. Powers of the State Government in case of default. –

(1) If, at any time, it appears to the State Government that the Board of Councillors has made default in performing any duty including the duty in relation to the Municipal Fund, imposed on it by or under this Act or any other

law for the time being in force, the State Government may, by order in writing, fix a period for due performance on such duty.

(2) If such duty is not performed within the period so fixed, the State Government may, in the public interest, by order do, or cause to be done by any officer of the State Government or any authority appointed by it, anything for due performance of such duty notwithstanding anything to the contrary contained elsewhere in this Act or in any other law for the time being force."

"431. Power of the State Government to intervene in case of gross neglect or serious irregularity. –

(1) If, in the opinion of the State Government, the Board of Councillors has shown gross neglect in the performance of the duties imposed upon it by or under this Act or any other law for the time being in force, or has committed serious irregularities in the performance of such duties, the State Government may by order direct the Board of Councillors to show cause within the period specified in the order why it shall not be dissolved on grounds of charges mentioned in this order.

(2) If the Board of Councillors fails to answer the charges within the period specified in the order or within such further time as may be allowed by the State Government, or if the answers do not convince the State Government, or where more than two-thirds of the total number of Councillors holding office for the time being have, for any reason, resigned, the State Government may dissolve the Board of Councillors by an order published in the Official Gazette with effect from the date of the order.

(3) When an order of dissolution has been passed, all the powers and functions vested upon the municipal authorities under this Act or any other law for the time being in force, shall be exercised by such person or persons to be designated as Administrator or Board of Administrators as the State Government may appoint for the purpose.

(4) A general election to the Municipality shall be held within six months of its dissolution for the constitution of a new Board of Councillors immediately thereafter:

Provided that the new Board of Councillors shall continue only for the remainder of the period of which the dissolved Municipality would have continued had it not been so dissolved:

Provided further that when the period for which the Board of Councillors would have continued is less than six months, it shall not be necessary to hold any elections for constituting a new Board of Councillors for such period. ..."

13. As would appear from the above, ordinarily, the power under Section 430 of the said Act is exercised in case of default by the Board of Councillors. However, the power under Section 431 of the said Act is more drastic. In the instant case,

since the State has initiated proceedings directly under Section 431 of the said Act, this Court has examined the said provision in detail.

14. As is apparent from a plain reading of the provisions, such provisions can be invoked only when the State is of the opinion that the Board of Councillors has shown gross negligence in performing of its duties as imposed upon it by the statute. However, by invoking such provisions, the State Government has to, at the first instance, form a prima facie opinion that the Board of Councillors has shown gross negligence in performance of duties. It is the formation of such opinion of the State Government, which is a sine qua non for initiation of proceeding by issuance of a show-cause notice under Section 431(1) of the said Act.

15. Incidentally, from the order dated 21st January, 2026, it would transpire that the District Magistrate, Paschim Medinipore had been requested vide letter dated 19th December, 2025 to cause an enquiry on the allegations of disruption of municipal services in the said municipality and send a report to the Department. As such, on the date of issuance of the notice, there was no material apart from the mass petition available for formation of any opinion by the State, since, the enquiry at that stage was yet to be conducted by the District Magistrate, Paschim Medinipore.

16. Having regard to the subsequent disclosure made by the State in the order dated 21st January, 2026 read with the show-cause notice dated 19th December, 2025 it is difficult to conclude that the State had formed a prima facie opinion, an aspect which is difficult to ignore.

17. This apart, from the show-cause notice, it would transpire that the same had been issued mainly on the grounds which are noted hereinbelow:

“(1) Insufficient supply for last one (1) year and poor quality of drinking water.

(2) Accumulation of garbage due to lack of proper waste disposal by the municipal authority and irregular collection of wastes from households.

(3) Irregular cleaning of drainages causing bad odour and spreading diseases.

(4) Problems of installation of street light as well as maintenance of it.

(5) Non-redressal of the public grievances raised by the residents or even by the concerned councilor.”

18. In this context, it would also be relevant to note that the Board of Councillors had duly responded to the said notice and had categorically provided an explanation thereto. To morefully appreciate the same, the relevant portion of the response filed by the municipality is also extracted hereinbelow:

19. Incidentally, the order impugned records that the enquiry which was directed to be conducted vide notice dated 19th December, 2025, was accordingly

conducted and the enquiry report was submitted by the District Magistrate, Paschim Medinipore on 16th January, 2026. Such report was also taken into consideration by the State and accordingly based on the above report the allegations made in the mass petition dated 17th December, 2025 was sought to be established.

20. Based on the aforesaid report received from the District Magistrate, Paschim Medinipore, the Governor had recorded in the order impugned in the following terms:

"AND WHEREAS considering the submission of the Board of Councillors of the said Municipality and the findings made by the District Magistrate, Paschim Medinipore through enquiry, as mentioned hereinabove, it can be stated that the Board of Councillors of the said Municipality is not in a position to carry out its functions and to provide normal civic services. The State Government is of the opinion that the Board of Councillors of the said Municipality has shown its incompetence in the performance of the duties or in the exercise of the functions imposed on it by or under the said Act and rules made thereunder or any other law for the time being in force.

NOW THEREFORE, in exercise of the powers conferred by Sub-section (2) of Section 431 of the said Act, the Governor is pleased hereby to declare the Board of Councillors of the Kharagpur Municipality to be incompetent to exercise the statutory functions imposed on it and to dissolve the Board of Councillors of the said Municipality with immediate effect."

21. Thus, it is clear from the above that the aforesaid report also formed the basis for taking a decision for dissolving the Board of Councillors. The decision was thus, based on materials which were neither disclosed, nor supplied. In absence of disclosure of the aforesaid material, the Board of Councillors did not get appropriate opportunity to respond and to defend. When the report of the District Magistrate dated 14th January, 2026 was considered by the State, it was the duty of the State to supply the copy of the report, for the Board for Councillors to appropriately respond to the same, especially when the decision to dissolve the Board of Councillors was based on the above report. Admittedly, in this case, the same had not been done. It must be borne in mind that Section 553 of the Bengal Municipal Act of 1932, contained more or less a similar provision as regards supersession of the Commissioner. In such case if in the opinion of the State Government, there has been misappropriation of the municipal fund on account of incompetency, or persistent default in performance of the duties imposed on them by or under the Act or for any other reason noted therein, it could supersede the Commissioners, though such provision unlike the provision of the said Act did not provide for an opportunity of show-cause. A Coordinate Bench of this Court in Sankar Das Paul (supra) had, however, struck down the decision of supersession by holding that it was the mandatory duty of the State Government to give an opportunity of hearing, since, the order impugned had serious civil consequences and had the effect of throwing out of

office the elected Commissioners of the Municipality, as they cannot be condemned unheard.

22. The present case is, however, guided by the said Act which itself provides for an opportunity to show-cause. Admittedly, in this case, there had been no appropriate opportunity to show-cause despite the order having adverse civil consequences.

23. Having regard thereto, I am of the view that in the instant case, there has been violation of principles of natural justice. The order thus, stands vitiated on the ground of violation of the principles of natural justice.

24. Having regard to the above, it is clear that there has been not only statutory infraction in initiating the proceeding under Section 431(1) of the said Act but the final order was also passed de hors the constitutional scheme which mandates that the Municipality shall be given with a reasonable opportunity of being heard before its dissolution. Thus, on the multiple grounds noted above not only the show-cause notice dated 19th December, 2025 but also the order dissolving the Board of the Municipality passed under Section 431(2) of the said Act being the order dated 21st January, 2026, cannot be sustained. The same are accordingly set aside and quashed.

25. Consequentially, the order dated 21st January, 2026 appointing Sub-Divisional Officer, Kharagpur as Administrator with immediate effect, also cannot be sustained and the same is also accordingly quashed. All consequences shall follow.

26. The above order shall not stand in the way of the State from proceeding in accordance with law, if so advised.