
(1997) 01 CAL CK 0037
In the Calcutta High Court
Case No : Writ Petition No. 1038 (W) of 1997

Sk. Kausar Ali

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 22-01-1997

Acts Referred:

Constitution of India, 1950 — Article 21, 26
West Bengal Panchayat (Amendment) Act, 1994 — Section 213, 213B
West Bengal Panchayat Act, 1973 — Section 2(5)

Citation : (1997) 2 CALLT 308

Hon'ble Judges : Nripendra Kumar Bhattacharyya, J

Bench : Single Bench

Advocate : Sadananda Ganguli and Prahlad Chandra Ghose, for the Appellant;

Final Decision : Dismissed

Judgement

Nripendra Kumar Bhattacharyya, J.—Heard the submission of the learned Advocate for the petitioner, Mr. Sadananda Ganguli appearing with the learned Advocate, Mr. Prahlad Chandra Ghose. Considered the materials on record.

2. The present writ petition is directed against an order of suspension of the Proddhan of Paranpur Gram Panchayat under Ratua-II in the district of Malda, as in annexure "C to the writ petition, passed by the prescribed authority u/s 243 B of the West Bengal Panchayat (Amendment) Act, 1994, who Is the Sub-divisional Officer (Sadar), Malda.

3. The background of the case is that there were some allegations of misappropriation of money, criminal breach of trust and gross negligence of duties. Thereafter, under the order of the Assistant Director of Panchayat, Government of West Bengal, as was directed by the Memo. No. 195/DP/4-C. 12/95 dated 12.1.96, enquiries were made by the District Panchayat Officer, Malda, in presence of the B.D.O., Ratua-II Block, on 30th May, 1996, 5th May, 1996 and 6th June, 1996. Thereafter, a notice to show cause was served upon the petitioner and the notice is dated 17th September, 1996, being annexure "A"

to the Writ petition. The petitioner showed cause on 23rd October, 1996, annexure "B" to the writ petition, and then the order of suspension was passed. The petitioner preferred an appeal against the order of suspension before the District Magistrate, Malda, on 13th November, 1996, being annexure "D" to the writ petition, and the learned District Magistrate by his initial order dated 26th December, 1996, while admitting the appeal, granted stay. The stay order is at annexure "E" to the writ application. The petitioner was also directed by the said District Magistrate to appear before him on 16th December, 1996 at 11-30 A.M. for the purpose of hearing the appeal. That order is at annexure "F" to the writ petition. Ultimately the appeal was heard by the learned Additional District Magistrate, Malda, on 3rd January, 1997 (Annexure "G" to the writ petition) and the learned Additional District Magistrate confirmed the order of suspension. In this background the present writ petition has been filed.

4. Mr. Ganguli referred to the notification published in the Extraordinary Gazettee (annexure "H" to the writ petition) on 5th August, 1994, wherein the prescribed authorities were delineated and one of them is the District Magistrate who is the appellate authority. According to Mr. Ganguli, as the District Magistrate is the appellate authority, the power of hearing the appeal cannot be delegated to the Additional District Magistrate and that the Additional District Magistrate is not competent to hear the appeal.

5. The only point for consideration is whether the Additional District Magistrate is an appellate authority or not within the meaning of Section 213B of the West Bengal Panchayat Act, 1973 ?

6. Mr. Ganguli invited my attention to sub-section (3) of Section 213B of the aforesaid Act and pointed out therefrom that against an order of suspension of any office bearer or member of the Panchayat the appellate authority will be such as is to be notified by the prescribed authority and that as the Government has already notified the prescribed authority in the official gazette on 5.8.94 prescribing the District Magistrate as the appellate authority, the order of confirmation and the order of suspension by the Additional District Magistrate, while hearing the appeal, is without Jurisdiction.

7. Under-sub-section (5) of Section 2 of the West Bengal Panchayat Act, 1973, "District Magistrate" includes an Additional District Magistrate, a Deputy Commissioner, an Additional Deputy Commissioner and any other Magistrate appointed by the State Government to discharge all or any of the functions of a District Magistrate (underscored by me).

8. So, under the inclusive clause as in sub-section (5) of Section 2 of the aforesaid Act, the District Magistrate means and includes an Additional District Magistrate, Deputy Commissioner, Additional Deputy Commissioner and any other Magistrate appointed by the State Government to discharge all or any of the functions of a District Magistrate. The Gazette to which Mr. Ganguli referred is in annexure "H" to the writ petition, where the appellate authorities are

prescribed as the District Magistrate, Divisional Commissioner and the State Government in the Department of Panchayats. They are the appellate authorities, to dispose of appeals against the orders of the prescribed authorities from whose orders appeals lie. The prescribed authorities are Subdivisional Officer, District Magistrate and Divisional Commissioner.

9. I have already pointed out from sub-section (5) of Section 2 of the West Bengal Panchayat Act, 1973 that the District Magistrate Includes Additional District Magistrate, Deputy Commissioner, Additional Deputy Commissioner and any other Magistrate appointed by the State Government to discharge all or any of the functions of the District Magistrate, while in the notification the appellate authorities are the District Magistrate, Divisional Commissioner and the State Government in the Department of Panchayats. So, within this inclusive clause the District Magistrate includes Additional District Magistrate, a Deputy Commissioner and Additional Deputy Commissioner and any other Magistrate appointed by the State Government to discharge all or any of the functions of a District Magistrate and they are the appellate authorities so far as the order is appealed against from the order of the Subdivisional Officer.

10. This being the position in law, I cannot agree with the submission of Mr. Ganguli that the Additional District Magistrate is not competent and has no jurisdiction to hear the appeal. In that view of the matter, I find no merit in this writ application.

The writ application is, accordingly, dismissed.

There will be no order as to costs.