
(2012) 08 CAL CK 0094
In the Calcutta High Court
Case No : Writ Petition No. 18510 (W) of 2012

Sri Amiya Patra and Another

APPELLANT

Vs

District Magistrate, Bankura and Others

RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

West Bengal Municipal Act, 1993 — Section 21B, 21B(7)

Citation : (2013) 1 WBLR 611

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Arunava Ghosh, Anant Kumar Shaw, Ravi Kumar Dubey and Puspall Chakraborty, for the Appellant; Pradip Kumar Dutta and Amritlal Chatterjee for the State and Subrata Mukhopadhyay and Mainak Ganguly, for the Respondent Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J.—Though earlier this writ petition was considered along with the writ petition being W.P. No. 17907(W) of 2012 analogously, but in course of hearing of these two writ petitions, this Court finds that for the sake of convenience of trial of these two writ petitions, these two writ petitions should be dealt with separately as the cause of action of the aforesaid two writ petitions are different and different reliefs were also claimed in these two writ petitions. Accordingly, these two writ petitions are heard separately one after another. This writ petition is filed by one Amiya Patra, the Secretary of Bankura District Committee of the Communist Party of India (Marxist), Bankura challenging an order passed by the Sub-Divisional Officer, Bishnupur, Bankura on 27th July, 2012 appearing at page 47 of the writ petition.

2. Mr. Amiya Patra is the petitioner No. 1 and Communist Party of India (Marxist), District Committee, Bankura is the petitioner No. 2.

3. It is contended by the petitioners that the petitioner No. 1 submitted an application before the competent authority for declaring the respondent No. 3 as

disqualified as she, after being elected as Councillor of Ward No. 5 in Sonamukhi Municipality, Bankura on the symbol of C.P.I.(M) party, joined another political party viz., Trinamool Congress after six months after her election and the petitioner's said application was rejected by the competent authority without giving him any opportunity of hearing. On perusal of the impugned order, this Court finds that in fact, 27th July, 2012 was the date fixed for consideration of another application filed by the leader of the House for declaring the said respondent No. 3 as disqualified almost on identical ground and while dealing with the same, the competent authority abruptly rejected the petitioner's said application without giving any opportunity of hearing to the petitioner.

4. It is contended by the petitioners that since the petitioner No. 1 has submitted an independent application of his own, he should have been heard before disposing of his application. Thus, violation of principle of natural justice is complained of so far as the rejection of the said application of the petitioner No. 1 is concerned by the concerned authority.

5. On perusal of the impugned order, this Court finds that the petitioner No. 1 was never heard by the competent authority. In fact, no notice of hearing was ever served upon him. He was not given any opportunity to represent himself in connection with the proceeding which was initiated on the basis of his complaint. Thus apparently, this Court finds that in the facts of the instant case principle of natural justice was violated so far as the petitioner No. 1 is concerned.

6. Let me now consider as to whether the aforesaid finding itself is sufficient enough to interfere with the impugned order which was passed on the said application of the petitioner No. 1.

7. To answer the said question, this Court is, first of all, required to consider the objection regarding maintainability of the said application for want of locus of the petitioner who, according to the respondents, was not competent to invite the competent authority to initiate such a proceeding for disqualification of a councillor under the West Bengal Municipal Act, 1993.

8. Let me now consider as to how far the petitioner No. 1 had the locus to submit such a complaint and/or application before the concerned authority.

9. Such consideration is necessary as if it is ultimately found that the petitioner No. 1 had the locus to maintain such a complaint before the competent authority, then, no doubt, the rejection of the petitioner's said application cannot be maintained because the said order was passed without giving any opportunity of hearing to the petitioner No. 1.

10. On the contrary, if it is found that the petitioner No. 1 had no locus to maintain such a proceeding, then, of course, the order of rejection on the petitioner's said application need not be interfered with, as he cannot be, in any way, affected by the said order passed on an application which is not maintainable in law.

11. Provisions relating to the disqualification proceeding are dealt with in Section 21B of the West Bengal Municipal Act, 1993. The said provision authorises only the Leader viz., either the Leader of the House or the Leader of the Opposition to initiate such a proceeding as per the provisions contained in Section 21B(7) of the said Act. The said provision does not authorise the Secretary of the District Committee of a political party who is neither the Leader of the House nor the Leader of the Opposition nor even a Councillor, to initiate such a proceeding for disqualification of a Councillor.

12. As such, this Court is of the view that the petitioner No. 1 had no locus to submit his application for initiation of a proceeding for disqualification of a Councillor of the Municipality, and if such an application is rejected by the competent authority even without following the principle of natural justice, the party whose application was so rejected cannot be aggrieved by such an order, as rejection of such a non-maintainable application was inevitable.

13. Since the petitioner No. 1 had no locus to submit such an application, he cannot be aggrieved by the decision which has been arrived at by the concerned authority. As such, this Court holds that even though the principle of natural justice was violated by the competent authority while rejecting his application, he cannot be aggrieved by the said order. Thus, this Court holds that the petitioner No. 1 cannot maintain the writ petition as a party affected by the impugned order. The writ petition thus stands rejected.