

25.01.2021
Court No. 19
Item No.24
CP

C.O. 94 of 2021

Dr. Soma Subhra Datta
vs.
Indian Medical Association
Bengal State Branch
(via video conference)

Mr. Loknath Chatterjee
Mr. Sukanta Ghosh

.....for the petitioner.

Affidavit of service filed in court today is taken on record.

None appears on behalf of the opposite parties.

This revisional application is directed against an order dated December 22, 2020, passed by the learned District Judge, Alipore, South 24-Parganas in Misc. Appeal No. 175 of 2020.

The petitioner is aggrieved because the learned lower appellate court refused to pass an ad-interim order of injunction. The grave urgency pleaded by the petitioner was that the election process was continuing without consideration of his candidature although, he fulfilled all the criteria required for being elected in the post of vice-president of the association.

This matter was moved on January 19, 2021. The learned court below while rejecting the prayer for ad-interim injunction was of the opinion that the election process could not be stayed without hearing the contesting parties. This court was also of the

opinion that as the election process had begun, the same should not be stayed and had admitted the revisional application with a direction upon the petitioner to serve copies of the revisional application upon the opposite parties. The matter was made returnable on January 25, 2021 at 2 pm. Keeping in mind the urgency involved, this court had ordered that if none appeared on behalf of the opposite parties on the said returnable date, the matter would be heard ex parte.

The affidavit of service filed before this court today shows that by a letter dated January 20, 2021, the learned advocate-on-record for the petitioner sent a copy of the revisional application along with the order of this court to each of the opposite parties, e-mails were also sent, which were received by all the opposite parties. The postal receipts and the postal track report downloaded from the website of www.indiapost.gov.in reflect that the postal articles have been delivered at the addresses of the opposite parties except the opposite party No.1. Only the track report with regard to the service upon the opposite party no. 7 has not yet come back. However, all their representatives in West Bengal have been served; and that the election is with regard to West Bengal chapter of the Indian Medical Association. It is further informed by Mr. Chatterjee that the opposite parties are trying to frustrate the litigation initiated

by the petitioner by not appearing before this court, whereas it is informed that in the interim period the election results have already been published.

The learned lower appellate court has already fixed the hearing of the appeal along with the application for stay or application for ad-interim order on February 12, 2021. Keeping in mind the urgency involved the learned lower appellate court is directed to hear out the application for stay/injunction filed in connection with Misc. Appeal No. 175 of 2020 within a period of two weeks from the next date fixed upon affording an opportunity to the opposite parties to file their written objection, if not already filed. Although the learned lower appellate court below has fixed the date for SR & AD, in my opinion, the petitioner has already served the copies of the revisional application upon the opposite parties which contain the application for injunction and/or stay as also the memorandum of appeal as annexures E and D respectively and, as such, I do not find any reason as to why the written objection cannot be used by the opposite parties within a period of 10 days from date.

This court has not gone into the merits of the claim of the petitioner and/or his entitlement to participate in the election proceedings. This court has only appreciated the urgency involved and has passed this order directing the learned lower

appellate court to hear out the application for injunction and/or stay, otherwise the whole purpose of the litigation will be frustrated. As the election results have already been published as informed the only protective order that can be passed in favour of the petitioner by this court, is that till the disposal of the application for injunction by the learned lower appellate court, the office bearers if at all elected shall not take any major policy or administrative decision. Only decisions with regard to day-to-day expenses and day-to-day running of the association may be taken. Accounts of the expenses incurred shall be filed before the learned lower appellate court on the next date.

The learned lower appellate court will proceed independently and in accordance with law. This court has not gone into the merits of the case.

The petitioner is directed to serve a copy of the server copy of this order upon the opposite parties within a week from date.

The revisional application is disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)