

112 27.07.2021
NB Ct. 13

WPA 11685 of 2021

(Through video Conference)

Shankha Shubhra Mukherjee
Vs.
Ashok Kumar Deb & Ors.

Mr. Ashok Pandey.
...for the petitioner.

Mr. Jishnu Chowdhury Ld. AGP,
Ms. Shabnam Dey,
Mr. Tanweer J. Mandal,
Ms. Somashree Dey.
...for the respondent no.1

The writ petition has been filed challenging the membership of the Legislative Assembly of the respondent no.1.

It is submitted that since the respondent no.1 was Chairman of the Bar Council of West Bengal he was holding an office of Profit and hence could not contest the recent assembly elections in the State. It is alternatively argued that the petitioner ought to be disqualified from such membership in terms of Articles 191 and 192 of the Constitution of India.

Counsel for the respondent no.1, raises demurrer. It is submitted that the writ petition should not be entertained in view of the provisions of Articles 191 and 192 of the Constitution of India. Article 191 provides that a person shall be disqualified from contesting as a member of the Legislative Assembly or even continuing as such if he inter alia holds any office of profit for the Government of India or the Government of the State or as specified thereunder. It is further submitted that in terms of Article 192, the question of such

disqualification of a member of the State Legislature, must be referred for decision of the Governor of the State. The Governor himself is required to obtain and act in terms of, the opinion of the Election Commission. It is argued by Mr. Chowdhury for the respondent no.1 that the petitioner was already the Chairman of the Bar Council of West Bengal when he contended the election. Hence the petitioner should have first approached the High Court under Section 81 of the Representation of the People Act, 1951 within 45 days from the 2nd of May, 2021, which is date on which the petitioner was declared as having being elected.

Mr. Pandey, learned Counsel for the writ petitioner relies on Articles 133 and 136 of the Constitution of India and submits that where substantial question of law arises in a writ petition, the matter ought to be referred by certificate to the Hon'ble Supreme Court or should be referred by the Hon'ble Chief Justice to a division Bench of the Court.

This Court notices a falacy in the argument of the Counsel of the writ petitioner. In terms of the Writ Rules of the Calcutta High Court, writ petitions are admitted and heard only by a single Bench. It is only an intra Court appeal under the Letters Patent that lies to a division Bench of this Court. In other High Courts, writ petitions under Articles 226 and 227 of the constitution are filed before a Division Bench. Once the Division Bench admits the same, the matter is sent for hearing to a single Bench. As to whether an appeal would lie from the order of a single Bench of the Court to the Division Bench would depend on the nature of the proceeding i.e. if under

Article 226 an intra Court appeal under the Letters Patent would lie to a Division Bench. If the proceeding is under Article 227 of the Constitution of India, no further appeal would lie to any Division Bench.

This Court sees absolutely no relevance of the arguments under Articles 133 to 136 of the Constitution made by the Counsel for the petitioner. Admittedly, a plea of disqualification of an elected member of the legislature is required to be filed before the Governor of the State and the procedure prescribed under Article 192 is required to be followed.

Reference in this regard is made to a Five-Judge Bench decision of the Hon'ble Supreme Court in the Case of ***Brudaban Nayak Vs. Election Commission of India & Another*** reported in AIR 1965 SC 1892. A paragraph 16 of the said decision is stated as follows:-

“.....In regard to complaints made against the election of members to the Legislative Assembly, the jurisdiction to decide such complaints is left with the Election Tribunal under the relevant provisions of the Act. That means that all allegations made challenging the validity of the election of any member, have to be tried by the Election Tribunals constituted by the Election Commission. Similarly, all complaints in respect of disqualifications subsequently incurred by members who have been validly elected, have, in substance, to be tried by the Election Commission, though the decision in form has to be pronounced by the Governor. If this scheme of Article 192(1) and

(2) is borne in mind, there would be no difficulty in rejecting Mr. Setalvad's contention that the enquiry must be held by the Governor. It is the opinion of the Election Commission which is in substance decisive and it is legitimate to assume that when the complaint is received by the Governor, and he forwards it to the Election Commission the Election Commission should proceed to try the complaint before it gives its opinion. Therefore, we are satisfied that Respondent 1 acted within its jurisdiction when it served a notice on the appellant calling upon him to file his statement and produce his evidence in support thereof."

In view of the above, this Court is of the view that given the mandate of the Consitution of India itslef i.e. under Articles 191 and 192, the writ petition cannot be entertained.

Counsel for the Respondent No. 1 submits that the post which his client holds, of Chairman of Bar Council, West Bengal is not an office of Profit, as he does not receive any remuneration. It is also argued that such post is also not an office of profit under the State or the Central Government. Hence, the qeuestion of any disqualification of the petitioner does not arise. The aforesaid question need not be gone into since this Court is of the view that the writ petition cannot be entertained. The nature and tenor of the arguments of the petitioner indicates that the writ petition is misconceived, motivated and has been filed for collateral purposes.

WPA 11685 of 2021 must fail and is hereby dismissed.

There will be no order as to costs.

All parties are directed to act on a server copy of this order on usual undertakings.

(Rajasekhar Mantha, J.)