

S.I. no. 6
22.2.2022
Court. No. 19
sn

WPA 598 of 2022

Badruddin Mia alias Badruddin Miya
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Sabir Ahmed
Mr. Mujib Ali Naskar

... for the Petitioner

Mr. L.M.Mahata
Mr. P.B. Mahata

... for the State.

Mr. Sujay Bandopadhyay
Mr. Jagajyoti Das
Ms. Doyel De

... for the Respondent no.6

The petitioner is a member of Sahabazpur Gram Panchayat. The petitioner was removed from his membership by an order dated October 10, 2021 passed by the prescribed authority under Section 213(A) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act). Thereafter, the petitioner preferred a statutory appeal. The appeal of the petitioner was also dismissed by an order dated December 27, 2021.

The grounds for challenge in this writ petition are two fold.

First, the application under Section 213(A) was endorsed by the President of All India Trinamool Congress, Malda District, whereas the law prescribed

that the said application must be endorsed either by the General Secretary or by the Secretary of the party's District Unit. Second, that the whip was received by the petitioner after the meeting was held and as such the allegations of violation of the whip of the party could not survive.

The orders have been passed on merits and the contention of the petitioner on merits about not receiving the party whip, has been considered. The first point as to whether the application could be endorsed by the President of the All India Trinamool Congress, Malda District, has not been considered.

Mr. Bandopadhyay, learned advocate for the complainant/Dala Neta submits that the Secretary was not available when the application was filed and the same was endorsed by the President. He further submits that as the President is an authority higher than the Secretary, the application cannot be faulted on this ground. He further submits that violation of the party whip was reason enough for disqualification of the petitioner from his membership of the said Gram Panchayat.

Mr. Mahata, learned Senior Government Advocate also submits that the prescribed authority had instructed Mr. Mahata that the application was endorsed by the President, and neither by the General

Secretary nor by the Secretary of All India Trinamool Congress.

This Court is not expressing any opinion on the concurrent finding of the authorities on the merits. However, this Court cannot allow the orders to remain in view of the infraction of law.

Sub-section (7) of Section 213(A) of the said Act provides as follows:-

“ 213A (7) The Leader of any recognized political party referred to in subsection (3) may at any time file a petition endorsed by the General Secretary, or, if there is no General Secretary, the Secretary, of the district unit of such recognized political party to the prescribed authority referred to in sub-section (1), stating that—

- (a) one or more members of such recognized political party have—
 - (i) voluntarily given up his or their membership of such recognized political party, or
 - (ii) have exercised the voting right contrary to the manner of voting of the majority members set up by such recognised political party in the Panchayat, or
- (b) the member referred to in sub-section (4) has voluntarily given up his membership of the recognized political party that set him up, or
- (c) the member referred to in sub-section (5) has joined a recognized political party on the expiry of six months from the date of election, and that such member or members should be declared to be disqualified under sub-section (1) and should be removed from the Panchayat.”

Thus, the complaint brought by the respondent no.6 was not in accordance with the statutory provisions and the same is set aside. The decisions

arrived at by the prescribed authority and appellate authority are also set aside.

The respondent no.6 is granted liberty to file appropriate application in accordance with law. Such liberty is always available under the statute. The allegations against the petitioner and the prayer for his removal shall be decided in the proceeding. This court has not decided the factual aspects.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the learned advocate's communication.

(Shampa Sarkar, J.)