

S/L 9
19.05.2022
Court. No. 19
GB

WPA 4222 of 2022

Bijoy Chowdhury
VS
The State of West Bengal & Ors.

Mr. Arjun Mookerjee.

...for the Petitioner.

*Mr. Raja Saha,
Mr. Biswabrata Basu Mallik.*

...for the State.

Ms. Sonal Sinha.

...for the State Election Commission.

Mr. Probal Sarkar.

...for the Municipality.

*Mr. Uday Narayan Betal,
Mr. Somnath Adhikary.*

...for the Respondent No.12.

The writ petitioner has challenged the election of the respondent no.12 as a ward councilor of ward no.13 of the Murshidabad municipality. The challenge is on the ground that the respondent no.12 was not qualified to contest the election as he was an existing contractor of the municipality. Reliance has been placed on Section 30(1)(f) of the West Bengal Municipal Elections Act, 1994 read with the circular dated October 21, 2013.

It is the contention of the petitioner that this Court sitting in judicial review can set aside the election of the respondent no.12 on the ground of the same being *void ab initio*. The said respondent was disqualified to contest the election and his election was in violation of the provisions of law. He supports such contention on the basis of the bills, trade licenses and other documents which show that the

municipality had a continuous relationship with the elected member.

Mr. Adhikary, learned advocate appearing on behalf of the respondent no.12 submits that the Hon'ble Apex Court has held in several cases that unpaid bills of the contractor pending before the municipality, would not disqualify the said contractor from contesting the election. It is further submitted that the petitioner's remedy would be to file an election petition in terms of Section 75 of the West Bengal Municipal Elections Act, 1994.

In my view, the writ petition cannot be entertained in view of the alternative remedy. The law has been settled in this regard, in various decisions of the Hon'ble Apex Court, namely, matter of ***N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, 1952 SCR 218 : AIR 1952 SC 64, Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405, and Manda Jaganath v. K.S. Rathnam, (2004) 7 SCC 492.***

In the matter of *Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405*, the Hon'ble Apex Court held as follows:-

"127. In view of our conclusion that the High Court had no jurisdiction to entertain the writ application under Article 226 of the Constitution, it will not be correct for us, in an appeal against the order of the High Court in that proceeding, to enter into any other controversy, on the merits, either on law or on facts, and to pronounce finally on the same. The pre-eminent position conferred by the Constitution on this Court under Article 141 of the Constitution does not envisage that this Court should lay down the law, in an appeal like this, on any matter which is required to be decided by the Election Court on a full trial of the election petition, without the benefit of the opinion of the Punjab and Haryana High

Court which has the exclusive jurisdiction under Section 80-A of the Act to try the election petition. Moreover, a statutory right to appeal to this Court has been provided under Section 116-A, on any question, whether of law or fact, from every order made by the High Court in the dispute.

128. So, in view of the scheme of Part VI of the Act, the Delhi High Court could not have embarked upon an enquiry on any part of the merits of the dispute. Thus it could not have examined the question whether the impugned order was made by the Election Commission in breach of a rule of natural justice. That is a matter relating to the merits of the controversy and it is appropriately for the Election Court to try and decide it after recording any evidence that may be led at the trial. It may be that if we pronounce on the question of the applicability of the rule of natural justice, the High Court will be relieved of its duty to that extent. But it has to be remembered that even for the purpose of deciding that question, the parties may choose to produce evidence, oral or documentary, in the trial court. We therefore refrain from expressing any opinion in this appeal on the question of the violation of any rule of natural justice by the Election Commission in passing the impugned order."

However, Section 31(1) of the 1994 Act permits the party aggrieved to approach the Commission for a declaration that the election of the respondent no.12 was not in accordance with law.

The Hon'ble Supreme Court in the matter of ***State of Goa v. Fouziya Imtiaz Shaikh***, reported in **(2021) 8 SCC 401** has also held that the supreme authority to decide such issue would be the State Election Commission. The Apex Court held that under Article 243-ZA(1), the State Election Commission was in overall charge of the superintendence, direction and control of the preparation of electoral rolls, and the conduct of all municipal elections. If there was a

constitutional or statutory infraction by any authority including the State Government either before or during the election process, the State Election Commission by virtue of its power under Article 243-ZA(1) can set right such infraction.

Under such circumstances, the petitioner's remedy is under Section 31(1) of the West Bengal Municipal Elections Act, 1994, apart from the other remedy to approach the appropriate forum by filing an election petition.

Section 31(1) states as follows:-

“31. (1) Where a person elected to be a member was not eligible for such election on account of any disqualification referred to in section 30 or where a person incurs such disqualification subsequent to his election as member, the election of such person shall be void upon [the Commission making a declaration to that effect by notification].

Provided that no such declaration shall be made if the question of such disqualification was raised in an election petition presented under this Act.”

It is made clear that if the petitioner approaches the Chief Election Commissioner of the West Bengal State Election Commission, in terms of Section 31(1) of the said Act, the authority shall dispose of the matter on the basis of a hearing to be granted to the petitioner, the respondent no.12 representative of West Bengal State Election Commission and any other person, who was connected with or involved in the process of election of the respondent no.12. All the parties shall be entitled to file their written versions and submit documents and decisions in favour of their respective contentions before the authority.

The entire exercise shall be completed within a period of three months from date of receipt of the complaint of the petitioner.

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 basis of the learned advocate's communication.

(Shampa Sarkar, J.)