

IN THE HIGH COURT AT CALCUTTA

**Civil Appellate Jurisdiction
(Appellate Side)**

**M.A.T. 1939 Of 2022
With
I.A. No. CAN 1 of 2022**

**Shila Chatterjee
Vs.**

The State of West Bengal & Ors.

**Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray**

For the Appellant	: Mr. Pratik Dhar, Sr. Adv. Mr. Koustav Bagchi, Adv. Mr. Debayan Ghosh, Adv. Ms. Priti Kar, Adv. Ms. Cardina Roy, Adv.
For the State	: Mr. Anirban Ray, Ld. GP. Mr. Raja Saha, Adv. : Mr. Debraj Sahu, Adv. Mr. Arka Kr. Nag, Adv.
For the vice-Chairman	: Mr. Suman Sengupta, Adv. Mr. Dip Jyoti Chakraborty, Adv.
For Respondent No.13	: Mr. Phiroze Edulji, Adv.
Heard on	: 13.12.2022, 21.12.2022 & 22.12.2022
CAV On	: 22.12.2022
Judgment On	: 23.12.2022

Arijit Banerjee, J. :-

1. The judgment and order dated November 23, 2022, whereby the appellant's writ petition being W.P.A. 24995 of 2022 was disposed of, is assailed in this appeal.

2. The appellant is a Councillor of Jhalda Municipality. The leader of the Board of Councillors of Jhalda Municipality addressed a representation to the Sub-Divisional Officer, Jhalda Sub-Division, District Purulia (being the Competent Authority), dated November 14, 2022, seeking disqualification of the appellant as a Councillor of the Municipality in terms of the provisions of the West Bengal Municipal Act, 1993. The representation reads as follows:-

“Sir,

This is to inform you that one Smt. Shila Chatterjee was elected as a Councillor from ward No. 3 of Jhalda Municipality. On the date of declaration of result, i.e. on 02/03/2022, she had joined All India Trinamool Congress and later voted in accordance with the motion of the AITC party during the formation of the board of Jhalda Municipality.

Thereafter on 27/10/2022 Smt. Shila Chatterjee has forwarded her resignation from the membership of the All India Trinamool

Congress Party, expressed her intention to quit from all posts of AITC party before the press channels and has also indulged in anti-party affairs by joining hands with other political parties to wreck the elected board of Jhalda Municipality.

Thereby it is apparent from the record that the act and action of Smt. Shila Chatterjee is clearly violative of the appropriate provision laid down in the West Bengal Municipal Act, for holding and continuing the post of a Councillor, any more.

In such circumstances I write to you to draw up appropriate proceedings forthwith against Smt. Shila Chatterjee, Councillor of Ward No. 3 Jhalda Municipality for her disqualification as a Councillor of the Municipality in terms of appropriate provisions as laid down in the West Bengal Municipal Act, for disqualification of Councillors.

This is for your information and necessary action.”

3. Under cover of a letter dated November 14, 2022, the Competent Authority forwarded a copy of the said representation to the appellant and requested the appellant “to clarify your position on the matter at the earliest.” This letter was under challenge before the learned Single Judge.

4. It was argued before the learned Single Judge that the impugned letter was issued by the Competent Authority without recording primary satisfaction as to whether the writ petitioner is required to forward her views.

5. It was further argued that she was elected as Councillor of the Jhalda Municipality as an independent candidate and never pledged her allegiance in favour of any political party. The learned Judge noted that though there is a communication allegedly made by the writ petitioner on October 27, 2022, addressed to the District President of the All India Trinamool Congress, expressing her intention to resign from the post that she had been holding, yet, it was contended on her behalf that she never submitted any declaration that she joined the All India Trinamool Congress Party as required by the Explanation to Section 21B of the West Bengal Municipal Act, 1993. The writ petitioner expressed her apprehension before the learned Judge that she would be disqualified by the Competent Authority only with a view to ousting her from the Board of Councillors of the Municipality.

6. Learned Advocate representing the State respondents submitted that the writ petition was pre-mature. No cause of action had arisen to file the writ petition.

7. Upon hearing the respective parties, the learned Judge disposed of the writ petition with the following observations:-

“Upon hearing the submissions made on behalf of all the parties, it appears that the Sub-Divisional Officer has sought for the views of the petitioner apropos the letter given by the leader of the Board of Councillors, Jhalda Municipality. The petitioner is yet to submit her views. No proceeding as of now has been initiated against her.

Accordingly, the Court is not inclined to interfere in the matter at this stage. It will be open for the petitioner to express her views with regard to the letter dated 14th November, 2022 within 7th December, 2022.

The Sub-Divisional Officer shall decide the issue after giving reasonable opportunity of hearing to all the necessary parties. A reasoned order shall be passed and communicated to the parties.”

8. Being aggrieved the writ petitioner is before us by way of the present appeal.

9. Appearing for the appellant, Mr. Pratik Dhar, learned Senior Advocate, has submitted as follows:-

(i) The representation made to the Competent Authority, has not been made by the leader of a political party and hence is invalid.

(ii) The Competent Authority could not have called for the view of the appellant as regards the representation made to the Competent Authority, without satisfying himself *prima facie* that grounds for disqualification exist. He submitted that had the appellant joined any political party, she would have had to give a declaration to the Competent Authority as envisaged in the Explanation to Section 21B of the 1993 Act. There is no such declaration. Hence, the Competent Authority ought not to have entertained the representation at all.

(iii) The independent status of the appellant is not in dispute. Nothing has been shown to substantiate that the appellant has joined a political party.

(iv) Several orders have been passed by the Court in favour of the appellant but the respondents have rendered the same ineffective by their *mala fide* conduct. The appellant has been elected as Chair Person of the Municipality at a meeting held on December 3, 2022. To render the same infructuous, the respondents are trying,

by hook or by crook, to oust the appellant from the Municipality by disqualifying him as a Councillor.

(v) The Competent Authority has acted with undue haste. He received the representation on November 14, 2022. Under the statute, he had six weeks to conduct an enquiry and eight weeks to pass an order on the representation. However, on the very day that he received the representation, he issued the impugned letter to the appellant calling for her views with regard to the representation. This shows the biased attitude of the Competent Authority.

10. Learned Government Pleader appearing for the State/Competent Authority submitted that under the scheme of Section 21B of the 1993 Act, the Competent Authority is the adjudicator in respect of a representation made for disqualification of a Councillor. He is empowered to make necessary enquiry and either reject or allow the representation. The Competent Authority shall follow all statutory mandates in deciding the representation that he has received. There is no reason for the appellant to apprehend that the petition for disqualification shall necessarily be allowed

and she shall be disqualified. Learned Advocate submitted that there is no reason to interfere with the order under appeal.

11. We have considered the rival contentions of the parties.

12. Before we proceed, it would be helpful to set out the relevant sub-sections of Section 21B of the 1993 Act:-

“21B. Disqualification for being a Councillor on change of political party by the Councillor.—(1) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, such competent authority for a Municipality as may be appointed by the State Government by notification in this behalf (hereinafter referred to in this section as the competent authority), may, subject to the other provisions of this section, declare, for reasons to be recorded in writing, a Councillor of such Municipality to be disqualified for being a Councillor thereof, if —

(a) he is an elected Councillor set up by a recognised political party and has —

(i) voluntarily given up his membership of such recognised political party, or

(iA) joined another recognised political party, or

(ii) exercised the voting right contrary to the manner of voting of the majority of the Councillors who are the members of such recognised political party in such Municipality, or

(b) he is an elected Councillor not set up by a recognised political party and he has joined a recognised political party on the expiry of six months from the date of election:

Provided that the competent authority shall not declare any Councillor to be disqualified under this section without giving to such Councillor a reasonable opportunity to represent his case and to be heard in person:

Provided further that an elected Councillor referred to in sub-clause (iA), or sub-clause (ii), of clause (a) shall not, on the competent authority being satisfied In this behalf, be declared to be disqualified, if-

(a) the action of such Councillor was taken on obtaining prior permission of, or was condoned by, such recognised political party, or

(b) such Councillor claims that he and any other Councillors, who are the members, of such recognised political party,

constitute in the Municipality a group representing a faction consisting of not less than one-third of the total number of Councillors set up by such recognised political party in the Municipality and that all the Councillors constituting such group have voluntarily given up their membership of such recognised political party, or

(c) the former recognised political party of the Councillor merges with another recognised political party, and he claims that he and the other members of his former recognised political party—

(i) have become members of such other recognised political party or of a new recognised political party formed out of merger, as the case may be, or

(ii) have not accepted the merger, and from the time of such merger, he and such other Councillors constituting not less than one third of the total number of Councillors set up by the former recognised political party in the Municipality, have opted to remain members of the former

recognised political party or have formed a new recognised political party.

(2) On being declared to be disqualified under sub-section (1), a Councillor shall, subject to the provisions of sub-section (12), stand removed from the Board of Councillors from the date of such declaration.

(3) As soon as may be within one month from the date of the first meeting of the Board of Councillors or within one month from the date on which this section comes into force, as the case may be, the elected Councillors set up by the recognised political parties shall, by adopting a resolution, select one Councillor from amongst themselves to be the leader and such leader shall, within fifteen days from the date of such selection, furnish to the competent authority referred to in sub-section (1)—

- (i) a copy of the resolution,
- (ii) a signed statement containing the names, addresses and constituencies of himself and other Councillors set up by such recognised political party, and

(iii) a copy of a set of rules and regulations, if any, by whatever name called, of such recognised political party:

Provided that an office-bearer may also hold the office of the leader;

Provided further that the competent authority shall not refuse to accept, or to rely on, the documents furnished by the leader merely on the ground that the resolution selecting the leader was not adopted within one month from the date of the first meeting of the Board of Councillors or within one month from the date on which this section comes into force, as the case may be, or that the documents as aforesaid were not furnished to him within fifteen days from the date of such selection.

(7) The leader referred to in sub-section (3), who is a member of a recognised political party, 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 [or the Head of the district functionary in whatever designation he may be called] of such recognised political party to the competent authority, stating that—

(a) one or more Councillors who are the members of such recognised political party have—

(i) voluntarily given up his or their membership of such recognised political party, or

(iA) joined another recognised political party, or

(ii) have exercised the voting right contrary to the manner of voting of the majority of the Councillors set up by such recognised political party in the Municipality, or

(b) the Councillor referred to in sub-section (4) has voluntarily given up his membership of the recognised political party that set him up, or

(c) the Councillor referred to in sub-section (5) has joined a recognised political party on the expiry of six months from the date of election, and that such Councillor or Councillors should be declared to be disqualified under sub-section (1) and should be removed from the Board of Councillors.

(9) On receipt of the petition referred to in sub-section (7), the competent authority shall, as soon as possible within six weeks

from the date of the receipt of such petition, proceed to make an enquiry to satisfy himself, among others, as to—

(a) the common decision in regard to the manner of voting to be exercised by the majority of the Councillors set up by the recognised political party, and

(b) whether the Councillor or Councillors, against whom such petition is filed, exercised the voting right in a meeting of the Board of Councillors contrary to such manner of voting.

(10) For the purpose of enquiry under sub-section (9), the competent authority, may summon such members of the recognised political party or other persons, and may require such signed statement from, and production of such documents and records by the members or other persons as aforesaid, as he may deem necessary.

(11) As soon as possible within eight weeks from the date of receipt of the petition referred to in sub-section (7), the competent authority shall, in consideration of the statements, documents and records before it,

(a) reject the petition, or

(b) admit the petition wholly or in part and declare any member or members of such recognised political party to be disqualified under sub-section (1) for being Councillor or Councillors of the Municipality.

(12) Any Councillor declared disqualified under sub-section (1) or the leader of the recognised political party referred to in sub-section (7), if aggrieved by the decision of the competent authority, may, within thirty days from the date of the order, appeal to such authority as the State Government may appoint in this behalf and thereupon, the authority so appointed may stay the operation of the order till the disposal of the appeal and may, after giving notice of the appeal to the competent authority, and after giving the appellant and the opposite parties an opportunity of being heard, set aside or confirm the order or declare any Councillor or Councillors to be disqualified under, and in accordance with the provisions of, sub-section (1) [within a period of eight weeks from the date of receipt of the appeal under this sub-section] and, upon such declaration, the Councillor or Councillors shall stand removed from the Board of Councillors.”

13. As regards the first point of Mr. Dhar, learned Advocate for the appellant, we do not find that sub-section 7 of Section 21B stipulates that the leader of a political party has to make the application for disqualification of a Councillor. Sub-section 7 says that the leader referred to in sub-section 3 can file a petition. Sub-section 3 contemplates that the Councillors shall select from amongst themselves one Councillor to be the leader. In the present case, there is no dispute that as on the date of making of the representation, Suresh Kumar Agarwal was the leader of the Board of Councillors, Jhalda Municipality. Hence, the appellant's first point has no merit.

14. We are also unable to accept the second point of the appellant that the Competent Authority could not have asked for the appellant's view in respect of the petition for her disqualification. The scheme of Section 21B of the 1993 Act empowers the Competent Authority to conduct necessary enquiry for coming to a conclusion as to whether or not the petition for disqualification should be allowed. The Competent Authority is in the position of an adjudicator and has to carry out a fact finding exercise. He is also under an obligation to give an opportunity to the Councillor under attack to deal with the petition and also a personal hearing. We see no

requirement under the scheme of Section 21B that the Competent Authority must first satisfy himself *prima facie* that there are grounds for disqualification of the concerned Councillor before he can call for the said Councillor's view. Whether or not a declaration has been furnished by the concerned Councillor to the effect that he has joined a recognised political party is of course one of the factors that the Competent Authority will have to consider in deciding the petition for disqualification. The Competent Authority has also been authorised to consider and call for such material from members of recognised political parties as he may deem necessary. In short, Section 21B has clothed the Competent Authority with full power to take a decision on the disqualification petition. We do not find merit in the appellant's second contention also.

15. Regarding the appellants third contention, it is true that it is not in dispute that she contested and got elected as a Councillor as an independent candidate. However, whether or not she subsequently joined a recognised political party, as has been alleged in the representation made to the Competent Authority, is something to be ascertained by the Competent Authority.

16. The fourth point urged by the appellant is that the respondents are rendering ineffective, orders of Court which are in favour of the appellant. It is not exactly clear how the respondents are doing that. However, if the respondents are in any way violating orders of Court, then, and we do not have to advise the appellant for this, her remedy would be elsewhere.

17. Finally, the appellant has complained of the Competent Authority acting in hot haste. We cannot blame the Competent Authority for being prompt. Section 21B sub-section 9 requires the Competent Authority to Act promptly and to make an enquiry “as soon as possible within six weeks from the date of the receipt of such petition.” The Competent Authority can hardly be faulted for his promptitude.

18. Mr. Dhar, learned Advocate relied on a decision of the Hon’ble Supreme Court in the case of ***D. Sudhakar (2) & Ors. v. D.N. Jeevaraju & Ors. Reported at (2012) 2 SCC 708.*** In our considered view and with great respect to learned Counsel, the said decision is not germane to the issues involved in this appeal. The said decision dilates on what would amount to joining a political party.

19. We are of the considered opinion that the learned Single Judge was justified in permitting the Competent Authority to take a decision on the

representation received by him after observing the principles of natural justice. The Competent Authority has also been directed to dispose of the petition by recording a reasoned order. We are of the view that the writ petition was premature. There is nothing on record to indicate that the disqualification petition will necessarily be allowed by the Competent Authority. Even if the petition is allowed following the procedure laid down in Section 21B of the 1993 Act, Section 12 of the Act provides for a statutory appeal to the disqualified Councillor. Sub-section 12 also specifically provides for the appellate authority to pass an interim order of stay in the appeal. We are not inclined to stifle the proceedings before the Competent Authority at the nascent stage.

20. We must also remember that we are hearing an intra Court appeal. Unless we find perversity, arbitrariness, Wednesbury unreasonableness, lack of jurisdiction or the like in the order under appeal, we should not interfere. Just because we may have a different view from that of the learned Single Judge, that will not be a good ground to interfere if the view taken by the learned Single Judge is a plausible one. Of course, in the present case, we are completely in agreement with the learned Single Judge's view.

21. The appeal fails and is dismissed along with the connected application. However, the appellant will be at liberty to express her views in response to the letters dated November 14, 2022 and November 17, 2022 issued by the Competent Authority, by January 5, 2023.

22. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)