

9.
09-02-2023
AB/Debjyoti
(Ct. no.06)

MAT 114 of 2023
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IA NO CAN/1/2023

Suresh Kumar Agarwal
Vs.
The State of West Bengal & Ors.

Mr. Saptansu Basu, Sr. Adv.,
Mr. Ankit Agarwal,
Ms. Alotriya Mukherjee
... For the Appellant.

Mr. Anirban Ray, Learned Government Pleader,
Mr. Raja Saha,
Mr. Arka Kumar Nag,
Mr. Debraj Sahu
... For the State.

Mr. Suman Sengupta,
Mr. Dip Jyoti Chakraborty
... For Respondent No.10.

Mr. Phiroze Edulji,
Mr. Rahul Kumar Singh
... For Respondent No.12.

Mr. Pratik Dhar, Sr. Adv.,
Mr. Kaustav Bagchi,
Mr. Debayan Ghosh,
Mrs. Cardina Roy,
Ms. Priti Kar
... For Respondent No.20/
Writ Petitioner.

By consent of the parties, the appeal and the stay application have been taken up for hearing together.

This appeal is directed against an interim order dated January 20, 2023, passed in WPA 1752 of 2023 (Shila Chatterjee Vs. The State of West Bengal & Ors.) and WPA 1757 of 2023 (Purnima Kandou Vs. The State of West Bengal & Ors.).

In an earlier round of litigation, one of the writ petitioners herein, namely, Shila Chatterjee, had approached the learned Single Judge, challenging a notice issued by the Competent Authority, to show cause as to why she should not be disqualified as a Councilor of the Municipality. Such disqualification proceeding was initiated on the basis of a complaint dated November 14, 2022, filed by the present appellant before the Competent Authority being the concerned Sub-Divisional Officer. Having failed to obtain an order from the learned Single Judge, she went up in appeal before the Division Bench.

This Bench by a judgment and order dated December 23, 2022, dismissed the appeal and the connected application. However, this Bench granted liberty to Shila 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. Those two letters were issued by the Competent Authority calling upon Shila to file her response to the petition of complaint received by the Competent Authority.

The judgment and order dated 23.12.2022 was carried in appeal by way of a special leave petition by Shila. By its order dated January 9, 2023, the Hon'ble Supreme Court disposed of the special leave petition with the following observations:

“Heard learned senior counsel for the petitioner.

Having noted that the Division Bench has in fact provided an opportunity to the petitioner to put forth all contentions, we see no reason to interfere with the order.

However, since the learned senior counsel has pointedly refereed to paragraph 13 of the order to indicate that the High Court has wrongly take note that Shri Suresh Kumar Agarwal was the leader of the Board of Councillors which is not the fact situation, the said observation shall not prejudice the Competent Authority while taking note of the objections put forth by the petitioner in the factual scenario.

In addition, it is made clear that in view of the time frame granted by the High Court, the petitioner has filed preliminary objections. In that view, on the same being taken note, if a need for detailed objections from the petitioner is required, reasonable opportunity shall be granted by the Competent Authority.“

It appears that Shila filed her preliminary objection to the petition of complaint on January 5, 2023. The Sub Divisional Officer issued a notice dated January 9, 2023, addressed to Shila intimating that the Sub Divisional Officer had received another representation dated December 8, 2022, from Suresh Agarwal (present appellant) and that the hearing was fixed on January 17, 2023. By a letter dated January 17, 2023, addressed to the Sub Divisional Officer, Shila, inter alia, requested for a copy of the representation dated December 8, 2022, submitted by the present appellant.

It appears that hearing was held by the Sub Divisional Officer on January 17, 2023. It is pertinent

to note that on January 16, 2023, Shila had been elected as the Chairperson of the Municipality. On January 18, 2023, Purnima Kanduk, the petitioner in WPA 1757 of 2023, was sworn in as the Vice-Chairperson of the Municipality. On that very day, the Sub Divisional officer passed an order disqualifying Shila as Councillor of the Municipality. Consequently, Shila also ceased to be the Chairperson of the Municipality. Again, on the very same day, the State, in exercise of power under Section 17(4) of the West Bengal Municipal Act, 1993, appointed one Sudip Karmakar as the Chairman of the Municipality.

Challenging the order of her disqualification as also the State's order appointing Sudip as Chairman of the Municipality, Shila approached the learned Single Judge in the present round of litigation by filing WPA 1757 of 2023.

Purnima Kanduk, the petitioner in WPA 1757 of 2023, also challenged the State's order appointing Sudip as the Chairman of the Municipality.

By the interim order dated January 20, 2023, impugned before us, the learned Judge, as an interim measure, directed that the orders dated January 18, 2023, shall not be given effect to till February 17, 2023, or until further order whichever is earlier. The learned Judge directed the parties to exchange affidavits and directed that the matter be listed on February 10, 2023 i.e. tomorrow.

The learned Judge further directed that “in the interregnum, the Court appoints Purnima Kandu, the respondent no.19 in WPA 1752 of 2023 and the petitioner in WPA 1757 of 2023, as Chairman in charge till further order of Court”.

The learned Judge passed the said order on the basis that there was violation of the principle of natural justice inasmuch as although the Competent Authority in the order disqualifying Shila, relied on the representation dated December 8, 2022, submitted by Suresh Agarwal, no copy of such representation was made available to Shila.

Being aggrieved by the aforesaid order, Suresh who is the respondent no.10 in Shila’s writ petition, has come up in appeal.

Appearing for the appellant, Mr. Basu, learned Senior Advocate submitted that even assuming that copy of the representation dated December 8, 2022, was not supplied to Shila, in her writ petition there is no pleading as to how Shila has suffered any prejudice by reason of not being favoured with a copy of the said representation. Mr. Basu submitted that the principle of natural justice is not a straitjacket formula. The person, complaining of breach of natural justice, must demonstrate how he/she has suffered by reason of such breach. In the present case, the representation dated December 8, 2022, was a mere reiteration of the statements in the representation dated November 14,

2022, along with certain developments, which took place after November 14, 2022. Hence, not supplying copy of the December representation to Shila, could not have prejudiced her in any manner. Accordingly, the learned Single Judge should not have stayed the operation of the disqualification order.

Insofar as appointment of Purnima Kandu as Chairperson in charge is concerned, Mr. Basu submitted that the Government, in exercise of its statutory power under Section 17(4) of 1993 Act, had appointed Sudip Karmakar as Chairman till election of the next Chairperson. There was no reason for the learned Judge to displace Sudip by appointing Purnima as the Chairperson in charge. No reason has also been indicated in the order as to why Purnima and not somebody else was appointed as the Chairperson in charge.

Mr. Basu further argued that the learned Single Judge has left the question of maintainability of the writ petition open. Without first holding that the writ petition is maintainable, the learned Judge ought not to have passed an interim order. In this connection Mr. Basu relied on an observation of a Coordinate Bench of this Court in the case of ***Calcutta Cosmopolitan Club Ltd. v. Bhanwarlal Bhandari & Ors., reported in (2004) 1 CHN 498*** to the effect that before passing an order, the Court has to examine as to whether or not it has jurisdiction and has to prima

facie satisfy itself that it has jurisdiction on the face of the averments made in the plaint even if not raised.

In support of his submission that the principle of natural justice is not an inflexible rule, Mr. Basu relied on the following 3 judgments:-

(i) *Sangram Singh v. (1) Election Tribunal, Kotah (2) Bhurey Lal Baya, reported in AIR 1955 SC 425*:- the Hon'ble Supreme Court observed that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to.

(ii) *Canara Bank v. V.K. Awasthy, reported in (2005) 6 SCC 321*:-reliance was placed on the observation of the Hon'ble Supreme Court to the effect that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice do not improve the situation, "useless formality theory" can be pressed into service.

(iii) *Fiayaz Ali v. Secretary (Law) & Ors., reported in (2011) 1 CHN 16* reliance was placed on paragraph 14 of the judgment which reads as follows:-

“14. It is settled law that rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual without possibility of any change in the decision of the case on merits [see escorts Farms Ltd. v. Commissioner, Kumaon Division, 2002 (4) SCC 281]. It follows that an order need not be set aside merely on the ground that the rule of audi alteram partem has been breached if ultimately rehearing of the matter, by the authority or body competent to hear and decide, would be an exercise in futility in all probability.”

Mr. Basu prayed for setting aside of the impugned order.

Mr. Roy, learned Government Pleader, appearing for the State Government, has supported Mr. Basu. He has reiterated that it is the prerogative of the State to appoint a Chairperson in the event the post falls vacant, who shall function till election of a regular Chairperson. The State did so in the present case. The learned Single Judge has usurped the power of the State Government.

Mr. Dhar, learned Senior Advocate appearing for the Shila (writ petitioner) has submitted that admittedly Shila was not favoured with a copy of the complaint petition dated December 8, 2022, which Suresh had submitted to the Competent Authority. The order of the Competent Authority disqualifying Suresh specifically relies on such representation. There could not have been a mere blatant case of breach of natural justice. Hence, the learned Judge was justified in staying operation of the disqualification order.

Insofar as the appointment of Purnima as the Chairperson in charge is concerned, Mr. Dhar submitted that she is the Vice-Chairperson of the Municipality. Purely by way of an interim arrangement, the learned Judge has appointed her as Chairperson in charge. This is of-course subject to what the learned Judge may finally decide in the writ petition which is pending.

We have given our anxious consideration to the contentions of the respective parties. It seems to be an admitted position that a copy of the present appellant's representation dated December 8, 2022, was not made available to Shila. The order of the Competent Authority disqualifying Shila as a Counciller of the Municipality specifically relies on such representation. The representation had numerous annexures thereto including a pendrive. Shila had no opportunity of

knowing what was there in the representation dated December 8, 2022, or in the annexures thereto. Yet, it was on the basis of inter alia such representation that she was disqualified. There could hardly be a more flagrant breach of the principles of natural justice. In effect, Shila was condemned unheard. This is more so in view of the fact that as submitted on behalf of the appellant, the representation dated December 8, 2022, not only reiterated what was there in the representation dated November 14, 2022, but certain other developments subsequent to November 14, 2022, were included in the December representation. Shila never got a chance to deal with such material.

In our considered view, the learned Judge rightly came to the prima facie conclusion that there has been breach of the principles of natural justice and rightly stayed the operation of the disqualification order as an interim measure.

However, insofar as the other portion of the order is concerned, we are afraid that we are unable to agree with the learned Judge that Purnima Kandukoti should act as Chairperson in charge. Learned Government Pleader has submitted that the disqualification order took effect from January 18, 2023, itself. On that date, Shila purportedly administered oath on Purnima for the purpose of appointing her as Vice Chairperson. Since Shila stood disqualified from that date, the appointment of

Purnima as Vice Chairperson in charge stood vitiated. We are not required to enter into that controversy. In our opinion, once the operation of the order disqualifying Shila is stayed, the only logical corollary would be that she stands reinstated as the Chairperson of the Municipality. She was duly elected on January 16, 2023, following a democratic process. Her election has not been set aside by any competent forum. Hence, we set aside the portion of the order under appeal whereby Purnima Kandu was appointed as Chairperson in charge of the Municipality. For the reasons aforestated, Shila Chatterjee shall act as the Chairperson until further orders of the learned Single Judge in the pending writ petitions.

As regards the point that the learned Judge should not have passed an interim order without first deciding the question of maintainability of the writ petition, we do not agree with Mr. Basu. It is well established that availability of an alternative remedy is not a complete bar to a writ petition being entertained by the Court. It does not go to the question of the Courts jurisdiction to pass an order. It is a self imposed restriction designed by the High Courts generally to require an aggrieved person to exhaust other remedies available before invoking the high prerogative writ jurisdiction under Article 226 of the Constitution of India. Even if the learned Judge at the final hearing comes to the conclusion that the writ

petition ought not to be entertained, that would not make the interim order that has been passed by her Ladyship, an order without jurisdiction.

In so far as the decisions on the principles of natural justice are concerned, none of them in our considered opinion, applies to the facts of this case. The principles of law laid down in the decisions are sound and well established. However, the case in hand is one where a competent authority has condemned a Councillor of a municipality relying on, inter alia, a complaint petition dated December 8, 2022, without supplying a copy of such petition to the concerned Councilor. The Councilor, who was disqualified, had no opportunity of refuting or dealing with the allegations in the complaint petition. There can hardly be a more classical example of violation of the principles of natural justice. The “useless formality theory” will not apply in the present case it cannot be said with any degree of certainty that the decision of the competent authority would have been the same even if Shila was granted an opportunity of dealing with the allegations in the representation dated December 8, 2022, filed by Suresh before the competent authority. It can also not be said that Shila has not suffered any prejudice by reason of breach of the principles of natural justice. It will be preposterous

to contend that being disqualified as a councilor does not amount to prejudice.

We make it clear that all the observations made in this order are prima facie and only for the purpose of disposing of this appeal. We have noted that the writ petitions have been directed to be listed before the learned Single Judge on 10.02.2023, after exchange of affidavits. We request the learned Judge to decide the writ petitions without being influenced by any observation in this order. All points are left open for the parties to agitate before the learned Single Judge.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

M.A.T. No.114 of 2023 is, accordingly, disposed of along with IA CAN 1 of 2023.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)