

03. 15.05.2023
Court No.6
Tanmoy Ghosh

MAT 303 of 2023

Ajit Mahato
-Versus-
The West Bengal State Election Commission & Ors.

With
IA No: CAN/1/2023

Mr. Md. Nauroz Rahber, Adv.,
Mr. Muhammad Jaurwod, Adv.
...for the appellant.

Ms. Sonal Sinha, Adv.
...for the respondent nos. 1 & 2.

Mr. Srijan Nayak, Adv.,
Ms. Rituparna Maitra, Adv.
...for the State.

Mr. Arnab Chatterjee, Adv.,
Mr. Jisan Iqubal Hossain, Adv.,
Ms. Chandrima Debnath, Adv.,
Mr. Karna Mondal, Adv.
...for the respondent no.6.

Affidavit of service filed in Court today, be kept with the records.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

A Judgment and order dated January 24, 2023, whereby the appellant's writ petition being WPA 7543 of 2022, was dismissed, is under challenge in this appeal at the instance of the writ petitioner.

The private respondent was elected as Councillor of Dalkhola Municipality in the 2022 elections which, we are told, were held in February/March, 2022. The private

respondent contested and won as a Scheduled Caste candidate.

The appellant/writ petitioner approached the learned Single Judge with the grievance that the private respondent was a General category candidate and could not have contested for the post of Councillor in Ward No.9 in the said Municipality which is reserved for a Scheduled Caste candidate.

On behalf of the private respondent a copy of a certificate, issued by the Sub-Divisional Officer, Islampur sub-Division, dated December 23, 2019, was produced. That certificate was to the effect that the private respondent belongs to a caste which is recognized as Scheduled Caste. It is submitted on behalf of the private respondent that the certificate that was issued by the Sub-Divisional Officer, Islampur sub-Division, was duly verified by the Election Commissioner before she was permitted to contest as a Scheduled Caste candidate.

It was submitted before the learned Judge on behalf of the State Officials as also the Election Commission that the Election Commissioner, after verifying and being satisfied with the documents filed by the private respondent, permitted her to contest the election as Scheduled Caste category candidate.

Learned Judge dismissed the writ petition with the following observations:

“It appears from the submissions made on behalf of all the parties that the authorities have verified the documents of the

private respondent and being satisfied that she belongs to the scheduled caste category permitted her to contest the election from the reserved category seat.

The elections are long over and valuable right of the parties has accrued in the meantime. It will not be appropriate to unsettle the settled position after such a long period of time.

In view of the above, no relief can be granted to the petitioner in the instant case.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

We have heard learned Counsel for the parties. We see no apparent infirmity in the order under appeal. The concerned Authority, i.e., the Sub-Divisional Officer, Islampur sub-Division, issued a certificate to the effect that the private respondent belongs to the Scheduled Caste category. The writ Court can hardly go into the issue of whether or not factually the said Sub-Divisional Officer should have issued such certificate. The Authority to consider that issue would be that Officer who issued the certificate. In fact, the appellant has made a representation to the Sub-Divisional Officer, Islampur sub-Division, dated April 5, 2022 (page 38 of stay petition). However, learned Advocate for the appellant says that the appellant be permitted to make a fresh comprehensive representation to the said Sub-Divisional Officer, annexing all documents on which the appellant wants to rely.

We are of the view that granting such a liberty to the appellant would serve the ends of justice. Accordingly, we grant liberty to the appellant to make a comprehensive representation supported by documents he wishes to rely

upon, to the Sub-Divisional Officer, Islampur sub-Division, within a fortnight from date with copies of the representation to the District Magistrate, the Election Commissioner as well as the private respondent herein. If such a representation is made within the time period indicated above, the Sub-Divisional Officer, Islampur sub-Division, shall dispose of the same, in accordance with law, by a reasoned order, after affording opportunity of hearing to all the concerned parties, i.e., the State, the Election Commissioner as well as the private respondent herein. Let such exercise be completed within eight (8) weeks from the date of receipt of the representation.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 303 of 2023 and the connected application being IA No: CAN/1/2023 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)