

03.08.2023
Item No.05
Court No.6.
S. De

M.A.T. 1429 of 2023
With
I.A. No. CAN/1/2023
I.A. No. CAN/2/2023

Taybur Rahaman.
Vs
Rasmina Khatun & Ors.

Mr. Subhrangsu Panda,
Ms. Ina Bhattacharyya,
Mr. Sumitava Chakraborty,
...for the appellant.
Mr. Lalit Mohan Mahato,
Mr. Ziaul Haque,
...for the State.
Mr. Sabyasachi Chatterjee,
Mr. Sandipan Das,
Mr. Badrul Karim,
Mr. Subhajit Saha,
Mr. Dipankar Das,
...for the writ petitioners/respondents.
Ms. Sonal Sinha,
Mr. Sujit Gupta,
...for the WBSEC.

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

In re : I.A. No. CAN 1 of 2023.

This is an application for leave to prefer appeal against a judgment and order dated July 24, 2023, whereby WPA 16742 of 2023, filed by the respondent nos.1 and 2 herein was disposed of.

The applicant says that he is the husband of the successful candidate. The allegations in the representation which the learned Single Judge has

directed the authorities to consider, are all against him. He should have been made a party to the writ petition and should have been heard before the writ petition was disposed of.

Having heard learned counsel for the parties, we are of the view that the applicant has locus standi to maintain the proposed appeal. Accordingly, the application is allowed.

I.A. No. CAN 1 of 2023 is, accordingly, disposed of.

In re : MAT 1429 of 2023 & I.A. No. CAN 2 of 2023.

The writ petitioners approached the learned Single Judge alleging that the appellant, a member of the Police Force as well posted as a bodyguard of a local MLA, was responsible for manipulating votes. Several allegations were made against the appellant including booth capturing. It was submitted that a representation had been made before the State Election Commission but the same had not received the attention of the Commission.

The learned Judge disposed of the writ petition with the following directions :

“Without going into the merits of the allegations of the petitioners, as it appears that a representation is pending consideration before the State Election Commission, accordingly, the instant writ

petition is disposed of by directing State Election Commission to consider and dispose of the representation filed by the petitioners in accordance with law at the earliest but positively within a period of ten days from the date of communication of this order.

A reasoned order shall be passed and communicated to the petitioners immediately thereafter.

The CCTV/Video footages and the ballot papers in respect of the concerned constituency shall be properly preserved and be produced before the Court as and when directed.

Learned advocate for the petitioners is directed to forward a copy of the representation dated 12th July, 2023 seeking consideration along with all supporting documents to the aforesaid respondent at the time of communicating the order of the Court.”

Being aggrieved, the present appellant has come up before us.

It is submitted on behalf of the appellant that since the allegations are directed against him, he should have been impleaded as a party to the writ petition. He should have been heard before the writ petition was disposed of, albeit directing consideration of the representation of the writ petitioners.

We are inclined to agree with the appellant. Since the allegations and complaints made by the writ

petitioners are against the present appellant, we are of the opinion that the appellant should be granted an opportunity of hearing before any order is passed on the writ application.

On the above ground alone and not entering into the merits of the case at all, we set aside the order under appeal and remand the matter to the learned Judge having determination to hear the writ petition. We add the appellant as a party respondent to the writ petition. Learned advocate on record for the writ petitioners shall carry out necessary amendment to the cause title of the writ petition. We request the learned Single Judge to decide the writ petition afresh after granting an opportunity of hearing to this appellant. We keep all points open including the point of maintainability of the writ petition.

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

MAT 1429 of 2023 is disposed of along with the application being I.A. No. CAN 2 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)