

03.08.2023
Item No.04
Court No.6.
S. De

M.A.T. 1432 of 2023
With
I.A. No. CAN/1/2023
I.A. No. CAN/2/2023

Asma Khatun Middya.
Vs
Rasmina Khatun & Ors.

Mr. Saptangsu Basu, Ld. Sr. Adv.,
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 by a learned Single
Judge of this Court. The intending appellant was not
made a party to the writ petition.

Mr. Basu, learned senior counsel appearing for the applicant says that the applicant is the successful candidate. Without hearing her, no order should have been passed by the learned Judge.

We are of the view that the applicant may have something to say about the impugned order. Hence, leave is granted to prefer appeal against the impugned order.

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

In re : MAT 1432 of 2023 & I.A. No. CAN 2 of 2023.

From the affidavit of service filed in Court today, it appears that all the respondents have been served. The Election Commission and the State are represented. The writ petitioners are also represented.

The writ petitioners approached the learned Single Judge alleging that the husband of the returned candidate, i.e. the present appellant, is a member of the Police Force and he was responsible for manipulating votes. It was alleged that booth capturing took place. It was submitted that a representation has been made before the State Election Commission but the same has not received the attention of the Commission.

The learned Judge disposed of the writ application 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 successful candidate has come up by way of this appeal.

Mr. Basu, learned senior counsel appearing for the appellant says that the appellant was a necessary party to the writ petition. She was not impleaded. In any event, the writ petition is not maintainable in view

of the constitutional bar in Article 243-O of the Constitution of India read with the relevant provisions of the West Bengal Panchayat Election Act, 1979. Mr. Basu also wanted to refer to decisions of the Hon'ble Supreme Court in support of his case.

We are not inclined to enter into the merits of the case. However, we are of the considered view that the appellant herein is a necessary party to the writ petition and justifiably may demand an audience before the writ petition is disposed of.

Accordingly, only on the aforesaid ground, we set aside the order under appeal and remand the matter to the learned Single Judge having determination to hear the writ petition keeping all points open including the point of maintainability of the writ petition. We request the learned Single Judge to dispose of the writ petition by passing a fresh order after granting an opportunity of hearing to the present appellant.

Mr. Chatterjee, learned advocate for the writ petitioners says that his clients shall add the present appellant as a party respondent in 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 1432 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.)