

01.08.2023
Item No.4.
Court No.6.
AB

M.A.T. 1437 of 2023
With
I A CAN 1 of 2023
I A CAN 2 of 2023

Niladri Sekhar De
Vs
Kashmira Begam Khan & Others

Mr. Biswaroop Bhattacharya,
Mr. Vivekananda Bose,
Mr. Ratikanta Pal,
Mr. Subhajit Das ...for the Appellant.

Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag ...for the State.

Mr. Anuran Samanta
.....for the Election Commission of India.

Ms. Sonal Sinha,
Mr. Sujit Gupta,
Mr. Tarun Kr. Chatterjee,
Mr. Sayan Gupta,
Mr. Soumen Chatterjee
.....for the State Election Commission.

Mr. Sabyasachi Chatterjee,
Mr. Sandipan Das,
Mr. Badrul Karim,
Mr. O. F. Gazi,
Mr. Subhrajit Saha,
Mr. Sayan Banerjee,
Mr. Kiran Sk.,
Mr. Dipankar Das,
Ms. Indrani Roy,
Ms. Priyanka Pal,
Ms. Anindita Chatterjee,
Mr. Suman Sarkarfor the Writ Petitioners/
Respondents.

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

In re : CAN 1 of 2023

This is an application for leave to prefer appeal against an order dated July 27, 2023, passed by a learned Single Judge in WPA No.14723 of 2023.

The appellant was the Block Development Officer of Uluberia-I. He was impleaded as a respondent in the writ petition in his official capacity. He intends to file an appeal against the order of the learned Single Judge in his individual capacity as he says that the order vitally affects him.

We have heard learned Counsel for the parties and we are of the view that the appellant might have something to say in respect of the order assailed in the proposed appeal.

Accordingly, this application being CAN 1 of 2023 is allowed.

In re : MAT 1437 of 2023, CAN 2 of 2023

By a judgment and order dated June 26, 2023, passed in MAT 1135 of 2023, we had appointed Justice Debi Prosad Dey (Retired), a former Judge of this Court, as a one man Commission under whose supervision the State Police was to conduct an enquiry as regards the allegations made in the writ petitions wherefrom MAT 1135 of 2023 arose. We had directed the one man Commission to file a report before the learned Single Judge. Such a report dated July 19,

2023, was filed by Justice Dey (Retd.) before the learned Single Judge in WPA 14723 of 2023.

The allegation of the writ petitioners before the learned Single Judge was that they were wrongfully prevented from contesting the Panchayat Elections. Although they submitted OBC Certificates with their nomination papers, which were accepted, subsequently, the Returning Officer being the concerned Block Development Officer and other Officers in the Administration conspired to reject such certificates and disqualified the writ petitioners from contesting the Panchayat Elections.

The report, that the Commissioner has filed before the learned Single Judge, is to the effect that the grievance of the writ petitioners is justified. In a nutshell, the report categorically states that the present appellant as also two other Officers in the Administration including the concerned Sub Divisional Officer, in connivance with each other, tampered with documents, thereby illegally precluding the writ petitioners from contesting the Panchayat Elections.

Based on the aforesaid report, the learned Single Judge has passed an order dated July 27, 2023, which is assailed before us in this appeal.

Mr. Bhattacharya, learned Advocate appearing for the appellant says that the appellant was not given a separate hearing by the learned Single Judge prior to the order impugned being passed. The order impugned

seals the fate of the appellant. It is a final finding of guilt against the appellant although the appellant had no opportunity of making his submission in respect of the Commissioner's report. Nobody can be condemned unheard however the grave the allegations against that person be. He says that already an order has been issued by the Government on July 31, 2023, directing the Deputy Magistrate and Deputy Collector of Uluberia to take over charge from the concerned Block Development Officer being the appellant herein. Such charge has already been handed over by the appellant pursuant to the aforesaid order.

Mr. Bhattacharya further submits that the matter has been made returnable on August 3, 2023, for the learned Single Judge to take note of the steps taken in the matter. It, therefore, appears that the learned Judge has given direction for taking steps in the matter against the appellant although the appellant was not given an audience.

We have not called upon the other parties to make submission.

The appeal, in which we had passed the judgment and order dated June 26, 2023, had been preferred by a number of Officers in the Administration including the present appellant. The grievance of the appellants in that appeal was primarily that the State Police are competent enough to hold an enquiry as regards the allegations made by

the writ petitioners. The learned Judge had erred in directing Central Bureau of Investigation to hold the enquiry. The present appellant was the appellant no.3 in that appeal and had also affirmed the stay petition filed in that appeal on behalf of the appellants.

We had accepted the contention of the appellants in that appeal and, accordingly, had directed the State Police to conduct requisite investigation in the matter in stead of Central Bureau of Investigation. However, to instill confidence in the minds of the members of the public as regards the impartiality of the investigation, we had requested Justice Debi Prosad Dey (Retired), a former Judge of this Court, to act as one man Commission to supervise the investigation of the State Police. Our order was not challenged before the Hon'ble Supreme Court by the appellants or any of them including the present appellant.

Pursuant to our direction, the one man Commission has filed a report before the learned Single Judge. It is upto the learned Judge to assimilate the contents of the report and pass an appropriate order. The learned Judge has passed an order, which is assailed before us in this appeal. We are not inclined to interfere with the order. However, we would request the learned Judge to treat the observations made by Her Ladyship in the order appealed against as tentative, insofar as the subject matter of this

appeal is concerned, give a hearing to the appellant herein and then pass a final order. This may be done on August 3, 2023, when the matter has been made returnable by Her Ladyship or on other day as per Her Ladyship's convenience.

Mr. Bhattacharya, learned Advocate appearing for the appellant says that he still does not have a copy of the report of the one man Commission. We request Mr. Bandopadhyay, learned Advocate representing the State before us to make available a copy of the report to learned Advocate on record for the appellant in course of the day.

We leave it entirely to the discretion of the learned Single Judge to pass a final order on the writ application after affording an opportunity of hearing to the present appellant. If any steps have been taken on the basis of the impugned order, we do not interfere with the same.

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

MAT 1437 of 2023 stands disposed of along with IA CAN 2 of 2023.

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

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)