

1.
17-08-2023
debajyoti
(Ct. no.06)

MAT 1519 of 2023
+
IA NO:CAN/1/2023

Aparna Bar
Vs.
Jhumjhum Naskar & Ors.

Mr. Kishore Dutta, Sr. Adv.,
Mr. Subhrangsu Panda,
Mr. Sumitava Chakraborty,
Ms. Oisani Mukherjee
... For the Appellant.

Mr. Debanik Banerjee,
Mr. Akash Ganguly
... For Respondent No.1.

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

Ms. Sonal Sinha,
Mr. Tarun Kumar Chatterjee,
Mr. Sujit Gupta,
Mr. Sayan Datta,
Mr. Soumen Chatterjee
... For State Election Commission.

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

An order dated July 21, 2023, passed by a learned Single Judge of this Court in WPA 16943 of 2023 being a writ petition filed by the respondent no.1 herein, is under challenge in this appeal.

We are reproducing the order impugned, which will speak for itself:-

“ Affidavit-of-Service filed in Court today be kept with the records.

The petitioner contested the Panchayat General Election 2023 from the Sankrail Zilla Parishad-2 constituency in respect of a seat reserved for Scheduled Caste Women.

Allegation of the petitioner is that the respondent no.7, the other contesting candidate, is not a Scheduled Caste member. She obtained Scheduled Caste Certificate by practicing fraud and misrepresentation.

Complaint was lodged before various authorities of the respondents. None has been answered till date.

The Sub Divisional Officer being the competent authority to issue the caste certificate is directed to file a report before this Court apropos the allegation made by the petitioner in the instant writ petition by 11th August, 2023.

List the matter on 21st August, 2023.

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.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities. ”

The private respondent in the writ petition has come up by way of this appeal.

Mr. Dutta, learned Senior Advocate, representing the appellant/private respondent, says that the matter relates to an election dispute and, therefore, the learned Judge should not have entertained the writ petition, in view of the constitutional bar under Article 243(O) of the Constitution of India read with the provisions of the West Bengal Panchayat Elections

Act, 2003. Mr. Dutta also referred to various decisions of the Hon'ble Supreme Court which have made clear that an election dispute can be only raised by way of an election petition before the appropriate forum.

Learned advocate for the writ petitioner, on instructions, says that he is not pressing prayer (A) of the writ petition, which reads as follows:

“ A) To issue a Writ of or in the nature of Mandamus by commanding the Respondent Authorities, particularly respondent no.2 to cancel the candidature of the private respondent no.7 in Sankrail ZP-2 constituency, District-Howrah. ”

Mr. Dutta then points out that if prayer (A) is not pressed and is deemed to be deleted from the writ petition, the learned Judge, who passed the impugned order, would not have determination to entertain the writ petition. In that case, the writ petition will have to be heard by the learned Judge, who has determination to hear Group-IX matters.

Mr. Dutta seems to be right. Learned counsel for the writ petitioner has agreed to our suggestion that we may dispose of this appeal along with the connected application and the writ petition.

Accordingly, we dispose of the appeal by setting aside the order impugned along with the connected application and the writ petition, by treating the writ petition as on the day's list, leaving it open to the writ petitioner to approach the appropriate forum, in accordance with law, to ventilate her grievance.

Affidavits not having been called for, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)