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06-12-2023
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 2351 of 2023
+
IA NO:CAN/1/2023**

**Shila Chatterjee
Vs.
Biplab Kayal & Ors.**

W I T H

**MAT 2350 of 2023
+
IA NO:CAN/1/2023**

**Shila Chatterjee
Vs.
Purnima Bagti & Ors.**

W I T H

**MAT 2349 of 2023
+
IA NO:CAN/1/2023**

**Shila Chatterjee
Vs.
Purnima Kandu & Ors.**

W I T H

**MAT 2348 of 2023
+
IA NO:CAN/1/2023**

**Shila Chatterjee
Vs.
The State of West Bengal & Ors.**

Mr. Kalyan Bandyapadhyay, Sr. Adv.,
Mr. Vivekananda Bose,
Mr. Ratikanta Pal

... For the Appellant in all the appeals.

Mr. Kaustav Bagchi,
Mr. Debayan Ghosh,
Ms. Priti Kar

... For the Respondent/Writ Petitioner
in MAT/2351/23 & MAT/2349/23

and Respondent Nos.15 & 19 in
MAT/2350/23.

Mr. Ritwik Pattanayak,
Ms. Madhumati Das
... For Respondent Nos.10 to 14
in MAT/2351/23, MAT/2350/23
& MAT/2349/23.

Mr. Ritwik Pattanayak,
Ms. Madhumanti Das
... For Respondent Nos.12 & 14 in
MAT/2348/23.

Mr. Arka Kumar Nag
... For the State in all the appeals.

Learned counsel for the appellant is directed to
cure the defect, as pointed out by the Additional
Stamp Reporter.

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

An order dated November 30, 2023, interim in
nature, passed on four writ petitions, being WPA 1752
of 2023, WPA 1757 of 2023, WPA 26511 of 2023 and
WPA 26514 of 2023, is under challenge in these four
appeals.

A brief factual background of the case is that the
present appellant, Shila Chatterjee (in short “Shila”),
who is the writ petitioner in WPA 1752 of 2023, was
elected as the Chairperson of Jhalda Municipality.
Subsequently, she was disqualified by the concerned
Sub-Divisional Officer. Shila challenged such
disqualification order by filing the aforesaid writ
petition.

The learned Single Judge, as an interim
measure, while staying the disqualification order,

appointed another person, namely, Purnima Kandu, to act as Chairperson of the Municipality. Being aggrieved by the said order, another Councillor, namely, Suresh Agarwal, preferred an appeal. A coordinate Bench held that the logical corollary of staying the operation of the disqualification order of Shila would be that Shila could continue as Chairperson of the Municipality. Accordingly, the learned Single Judge's order was modified by the Division Bench by permitting Shila to continue as Chairperson, by way of an interim measure.

WPA 26511 of 2023 and WPA 26514 of 2023 have been filed by seven Councillors of the Municipality (5+2), praying for an order directing the Competent Authority to ascertain whether or not Shila still enjoys the support of the majority of the Councillors of the Municipality. The petitioners in WPA 26511 of 2023 also applied for vacating of the subsisting interim order in WPA 1752 of 2023 and for a clarification that the interim order would not stand in the way of the applicants exercising their statutory right to take steps for removal of Shila as Chairperson of the Municipality.

On November 30, 2023, the learned Judge took up all the four writ petitions along with the application for vacating and/or clarification of the subsisting interim order and directed the District Magistrate to take necessary steps to ascertain as to whether or not Shila still enjoys the confidence of the majority Councillors of the Municipality. The District Magistrate was directed to take steps in the matter in accordance with law at the earliest, but positively, by December 08, 2023. Report of the District Magistrate was directed to be filed before the learned Single Judge on December 11, 2023.

Being aggrieved, Shila has come up by way of these four appeals.

Mr. Kalyan Bandyopadhyay, learned Senior Advocate, appearing for Shila, has argued that the procedure for removal of the Chairperson of a Municipality has been laid down by the legislature in Section 18(3) of the West Bengal Municipal Act, 1993 read with Rules 6(3) and 9 of the West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995. Section 18(3) is set out hereunder.

“ 18(3). The Chairman may be removed from office by a resolution carried by a majority of the total number of elected members of the Board of Councillors holding office for the time being, present and voting by them, at a special meeting to be called for this purpose in the manner prescribed upon a requisition made in writing by not less than one-third of the total number of elected members of the Board of Councillors, and the procedure for the conduct of business in the special meeting shall be such as may be prescribed:

Provided that no such resolution shall be moved before the expiry of six months from the date of assumption of office by a Chairman, and if such resolution is not carried by a majority of the total number of elected members no further resolution for such purpose shall be moved before the expiry of a period of six months from the date on which the former resolution was moved. ”

Rules 6(3) and 9 of the 1995 Rules read thus:-

“ 6(3). If there is a requisition for removal of the Chairman under sub-section (2) of section 18, -

- (a) a special meeting for considering the resolution for removal of the Chairman shall be held in the manner laid down in these rules;

- (b) if the resolution for removal of the Chairman is duly carried out, the vacancy in the office of the Chairman shall be filled up by election at a meeting to be held in accordance with the procedure laid down in clauses (b), (c), (d) and (e) of sub-rule (2), the provisions of which shall apply *mutatis mutandis*.

9. Extraordinary meeting.- (1) In an extraordinary meeting, no matter, other than the one for which the meeting has been convened, shall be discussed. Such meetings may be-

- (a) an emergent meeting; or
- (b) a special meeting.

(2) An emergent meeting for transaction of business of an emergent nature, may be convened, at any time, by the Chairman or, in his absence, the Vice-Chairman, after giving twenty-four hours' notice to the members.

(3) (a) A special meeting may be convened by the Chairman or, in his absence, by the Vice-Chairman *suo motu* after giving not less than three days' notice to the members.

(b) A special meeting may also be convened after giving not less than three days' notice to the members, on a requisition containing specifically the agenda and signed by not less than one-third of the total number of Councillors of the Municipality, by-

- (i) the Chairman, within fifteen days from the date of receipt of such requisition or, on his failure to do so,
- (ii) the Vice-Chairman within seven days thereafter or, on his failure to do so, or
- (iii) any three of the Councillors of the Municipality within further seven days thereafter.

(c) Notwithstanding anything contained in these rules, if the situation so demands owing to stalemate condition prevailing in the functioning of the Municipality, the officer may, in the interest of public service, convene a special meeting of the Municipality with at least three days' notice to the members, specifying the agenda and venue of the meeting. ”

Learned Senior Advocate argued that the Court cannot direct anybody to ascertain whether or not the Chairperson of a Municipality enjoys the confidence of the majority of the Councillors, nor can the Court, even if it is found that the Chairperson has ceased to enjoy the confidence of the majority, direct that the Chairperson be removed. The law has laid down a procedure. Such statutory procedure has to be followed.

Mr. Pattanayak, learned advocate, appearing for the writ petitioners in WPA 26511 of 2023 and Mr. Bagchi, learned advocate, appearing for the writ petitioners in WPA 26514 of 2023, argued that no prejudice has been caused to Shila by the direction of the learned Single Judge, which is impugned in these four appeals. The Court has only directed the District Magistrate to find out whether Shila still enjoys the support of the majority of the Councillors of the Municipality. They say that their clients, who are seven out of the twelve Councillors of the Municipality, have withdrawn their support to Shila. Shila, therefore, does not have the support of the majority of the Councillors any more and has, therefore, lost the right to continue as the Chairperson of the Municipality. The learned Judge has only directed the District Magistrate to ascertain the factual position as to whether or not the majority of the Councillors of the Municipality still support Shila. They further say that a similar exercise was carried out by this Court at the time when Shila was elected as the Chairperson of the Municipality and this procedure is not unknown to law.

Mr. Pattanayak and Mr. Bagchi further submitted that in view of the subsisting interim order

of the learned Single Judge, the seven Councillors, who are their clients, feel that they may not be entitled to take recourse to the statutory procedure for removal of the Chairperson.

Mr. Nag, learned advocate, appearing for the State, says that the interim order, that is subsisting, was passed on a writ petition filed by Shila challenging the order of the Sub-Divisional Officer disqualifying her. That interim order cannot stand in the way of the Councillors of the Municipality exercising their statutory right under Section 18 of the 1993 Act. He further submitted that the District Magistrate has no role to play in the removal of the Chairperson of a Municipality.

Having anxiously considered the rival contentions of the parties, we are of the considered view that Mr. Bandyapadhyay is correct in submitting that the Court has no role to play in the removal of the Chairperson of a Municipality. The legislature has laid down the procedure under Section 18(3) of the 1993 Act read with the Rules of 1995 framed under the said Act. Hence, in our view, the learned Judge ought not to have directed the District Magistrate to carry out the exercise, which is impugned in these four appeals. In any event, it will be an exercise in futility since even if the District Magistrate reports to the learned Judge that Shila no more enjoys the support of the majority of Councillors, it will be beyond the Court's jurisdiction to direct removal of Shila as Chairperson. The only issue that is pending before the learned Judge in Shila's writ petition is whether or not the order disqualifying her can be sustained in law. Hence, we set aside the portion of the order impugned directing

the District Magistrate to ascertain whether or not Shila still enjoys the support of the majority.

We, however, hasten to clarify that this order is not to be understood in any manner as curtailing the legal/statutory right of the Councillors of the Municipality, including the writ petitioners in WPA 26511 of 2023 and WPA 26514 of 2023, to take recourse to the statutory procedure prescribed for removal of the Chairperson of a Municipality. The Councillors will be at liberty to take steps in accordance with law in that regard. We further clarify that the interim order that subsists on Shila's writ petition pending before the learned Single Judge cannot and shall not stand in the way of any of the Councillors of the Municipality taking recourse to the statutory procedure for removal of the Chairperson of the Municipality in accordance with law.

Mr. Nag points out that pursuant to the order of the learned Single Judge, the District Magistrate, Purulia, has issued a Memo being No.242/MA, dated December 04, 2023, addressed to the Sub-Divisional Officer, Jhalda, Purulia, directing him to convene a special meeting on December 08, 2023 to ascertain whether Shila still enjoys the confidence of the majority of the Councillors. Since we have set aside the direction of the learned Single Judge directing the District Magistrate to undertake that exercise, the aforesaid Memo/Notice dated December 04, 2023 also stands set aside. We reiterate that the writ petitioners in WPA 26511 of 2023 and WPA 26514 of 2023 will be free to exercise their statutory right for removal of the Chairperson in accordance with law, if they are so advised.

The appeals and the connected applications are, accordingly, disposed of.

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.

(M. V. Muralidaran, J.) (Arijit Banerjee, J.)