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13.05.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 13383 of 2024

Debasish Dhar
Vs.
Election Commission of India & Ors.

Mr. Nilanjan Bhattacharjee,
Mr. Brajesh Jha,
Mr. Akash Dutta,
Ms. Megha Datta
... for the petitioner

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

Mr. Biswabrata Basu Mullick,
Mr. Debangshu Dinda
...for the State

1. Affidavit of service filed today be kept on record.
2. The petitioner wanted to stand in the ongoing Parliamentary Election as a candidate.
3. However, the nomination of the petitioner was rejected on the ground that the petitioner failed to produce No Due Certificate in respect of rent for the accommodation which he was occupying, electricity charges and water charges in respect of the official accommodation of the petitioner.
4. The short backdrop is that the petitioner worked in the police forces of West Bengal and had tendered his resignation, which was subsequently

accepted. Only after such resignation, the petitioner filed his nomination.

5. Learned counsel points out that the Election Commission of India was approached after such liberty being given by the Supreme Court in its order dated April 30, 2024.

6. The Election Commission of India, vide its Circular dated May 03, 2024, directed all concerned authorities to issue such No Due Certificate within 48 hours of the receipt of the request letter in cases where dues are not pending or are not due by law. The Election Commission of India also noted while issuing such Circular that instances of withholding No Due Certificate may cause significant loss not only to aspiring candidates but also to political parties and the electorate of the Constituency as a whole and undermines the principle of participatory electoral democracy.

7. Despite the same and in spite of the petitioner having sought for No Due Certificate by an e-mail dated April 30, 2024 and by a subsequent communication dated May 01, 2024, the respondent no. 3 is sitting tight over the matter, thereby denying the opportunity to the petitioner to contest the election.

8. On the other hand, the petitioner has also preferred an appeal before the Election Commission

of India against the rejection of nomination of the petitioner.

9. Learned counsel for the Election Commission of India submits that the writ petition has become infructuous since the elections, in respect of the constituency where the petitioner sought to be nominated, is going on today.

10. Learned counsel appearing for the State respondents submits that in place of the petitioner, a different person has been nominated by the political party under the aegis of which the petitioner sought to contest the election. Moreover, it is repeatedly argued by the State that disciplinary proceedings are going on against the petitioner.

11. In reply, learned counsel for the petitioner points out that despite the pendency of the disciplinary proceedings, the same did not prevent the respondent no. 3 and the State authorities to accept the resignation of the petitioner, which has been accepted at all levels. However, when the question of issuing No Due Certificate came, the respondent no. 3 sat tight over the matter.

12. Upon hearing learned counsel for the parties, the submission of the Election Commission of India that the petitioner's challenge has become infructuous cannot be accepted, since in the event the appeal of the petitioner succeeds, the entire

nomination process might be held to be vitiated, reopening the same.

13. That apart, insofar as the State respondent is concerned, the inaction of the said respondent is vibrant in the absence of action.

14. It is evident that the State respondents sat tight over the issue to let the petitioner's application for nomination as a candidate in the election tide over and to deprive the petitioner from an opportunity to contest the election.

15. The petitioner is fully justified in arguing that since the petitioner's resignation was readily accepted despite the pendency of the disciplinary proceedings, the No Due Certificate could not be withheld on the ground of such pendency, since such issuance has nothing to do with the disciplinary proceedings and depends only on the clearance of all dues by the petitioner.

16. In the event the petitioner is ultimately found guilty in the disciplinary proceedings, penal action may be taken against the petitioner in accordance with law. However, there is no overlapping operation of the No Due Certificate and the disciplinary proceeding insofar as the petitioner is concerned.

17. Thus, the pendency of the disciplinary proceedings was an invalid ground for withholding

the No Due Certificate to the petitioner, particularly since elections are going on and the Election Commission of India, which directed issuance of such certificates within 48 hours of being sought, acts as the supervisory authority over all concerned authorities. It was the incumbent duty of the respondent no. 3 to issue the No Due Certificate to the petitioner.

18. Accordingly, W.P.A. No. 13383 of 2024 is disposed of by directing the respondent no. 3 to ensure that No Due Certificate, as claimed by the petitioner regarding electricity charges, water charges, telephone charges and/or otherwise, as applicable, be issued to the petitioner within May 16, 2024.

19. Insofar as the pending challenge of the petitioner before the Election Commission of India against the rejection of his nomination is concerned, it is expected that the Election Commission of India, that is, the respondent no. 1, shall decide on such challenge as expeditiously as possible, keeping in view of the ongoing election process, preferably within May 31, 2024.

20. All parties shall act on the server copy of this order without insisting upon prior production of a certified copy thereof.

21. There will be no order as to costs.

22. Urgent certified copies of the order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)