

10.07.2025

Item No.194

Ct. No. 4

KB/nb

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

WPA/1075/2023

**SARASWATI MITRA
VS
STATE OF WEST BENGAL AND ORS.**

Ms. Juin Dutta Chakraborty (VC).
...for the petitioner.

Mr. Subir Kr. Saha,
Mr. Momenur Rahaman
...for the State respondents.

The petitioner is aggrieved by Clause 11 of the resolution adopted by the Board of Councillors of Cooch Behar Municipality in a meeting held on May 30, 2022.

The petitioner claims that she had been awarded six several contracts by the Cooch Behar municipality, inter alia, for carrying out the works of construction of shop room at Bhabaniganj Market. The petitioner carried out such works and constructed the shop rooms.

Suddenly, in a meeting of the Board of Councilors of Cooch Behar Municipality held on May 30, 2022, it was resolved that the construction done during the period June 27, 2017 to February 6, 2022 had been done unauthorizedly and illegally and that all of the said works would be treated to be cancelled.

The petitioner alleges that such decision of the Board of Councillors of Cooch Behar Municipality amounts to cancellation of works awarded to the petitioner by the aforesaid six several contracts without giving an opportunity to the petitioner to present its case.

While praying for revocation of the aforesaid resolution thereby cancelling the petitioner's contract, the petitioner has also prayed for disbursement of the cost of development incurred by the petitioner in terms of the agreement dated May 4, 2019 and for a further direction to permit the petitioner to collect selamy from the stall holders and to complete the rest of the work within a specified period.

The learned Advocate appearing for the petitioner submits that the resolution adopted by the Board of Councillors of Cooch Behar Municipality on May 30, 2022 is wholly illegal inasmuch as the Board of Councilors, Cooch Behar Municipality being a statutory authority ought to have complied with the principles of natural justice and ought to have issued a show cause to the petitioner before taking a decision to terminate the petitioner's contracts.

Learned Advocate appearing for the respondent municipality submits that the contracts had to be cancelled by adopting the

resolution as aforesaid inasmuch such contract had been entered into *de hors* the provisions of the West Bengal Municipal Act, 1993. It is further submitted that in any event since the petitioner's contract has been cancelled, the petitioner should avail of civil remedies before the appropriate civil courts, more so, since the petitioner has claimed disbursal of sums and has asserted right to collect rent. It is submitted that the dispute between the petitioner and the municipality does not involve any public law element justifying invocation of the highly prerogative writ jurisdiction of this Court under Article 226 of the Constitution of India.

It is further submitted on behalf of the Municipality that the Chairman of the Board of Councilors at the relevant point of time when the contract was awarded to the petitioner had taken such decision unilaterally without consulting the Board of Councillors.

Learned Advocate appearing for the State respondents invites the attention of this Court to Section 80B of the West Bengal Municipal Act, 1993 and submits that the Board of Councilors of the Cooch Behar Municipality could have taken the decision to award contract to the petitioner for the purpose of construction or to lease out property or to otherwise transfer or sell any immovable property belonging to the Municipality

only upon taking prior approval from the State Government. It is submitted that no such approval was taken by the Cooch Behar Municipality before awarding the contract to the writ petitioner.

Learned counsel appearing for the State respondent further submits that in the absence of prior approval from the State Government any contract entered into between the Board of Councilors represented by its Chairman and the petitioner would be void and as such, the contract has been rightly cancelled.

Heard the learned counsel appearing for the respective parties and considered the material on record.

The petitioner's grievance as regards disbursal of funds allegedly payable to the petitioner and the petitioner's right to collect salami etc. from the shop owners is primarily dependent on the decision as to whether the resolution adopted by the Board of Councillors in its meeting dated May 30, 2022 *vis-à-vis* the contracts awarded to the petitioner and the works done by her was right or not.

The State respondents as well as municipality have submitted that the contracts that had been entered into by and between the petitioner and municipality at the relevant point of time had

been so entered without obtaining prior approval from the State Government. If such is the case, the contracts may be held to be illegal. However, whether the case in hand was such or not was required to be decided upon hearing the petitioner. This Court is of the considered view that decision that has been taken by the Municipality as it apparent from the minutes of meeting dated May 30, 2022, ought to have been taken by the Municipality upon giving hearing to the petitioner. This is so because the Board of Councilor of Cooch Behar Municipality answers the definition of a “State” under Article 12 of the Constitution of India.

Since such decision has been taken without hearing the petitioner, such decision may not pass muster before the Court of law on the ground of violation of principles of natural justice in a fit case. However, since it is noted that more than two years have passed since the decision and that no interim order was passed by this Court at the time of entertaining the writ petition, annulling such decision at this distance in time would not be proper.

It may be so that during the long interregnum of two years the municipality has taken certain steps acting on the said resolution. Justice would subserved if the Board of Councilors, Cooch Behar

Municipality is directed to give to the petitioner a post decisional hearing within a week from date. The Board of Councilors shall be entitled to review/recall/reject or even reach the same conclusion that it has reached in its meeting held on May 30, 2022, after the post decisional hearing.

Insofar as the prayers pertaining to disbursal of amounts due under the contract, which according to the petitioner have not been fully paid to the petitioner, this Court is of the prima facie view that the same cannot be gone into by a writ court inasmuch it has been submitted by the Municipality that the payments claimed to be due from the Municipality are disputed. The Board of Councillors shall take a reasoned decision after such post decisional hearing within a week from date and shall communicate the same to the petitioner within a week from date of such decision.

WPA No. 1075 of 2023 stands disposed of with the aforesaid observations.

(Om Narayan Rai, J.)