

23.06.2023
Item No.6
Court No.6.
AB

M.A.T. 1135 of 2023
With
IA CAN 1 of 2023

The District Magistrate of Howrah & Others
Vs
Kashmira Begam Khan & Others

Mr. Kalyan Bandopadhyay, Sr. Adv,
Mr. Sirsanya Bandopadhyay,
Mr. Shamim Ul Bari,
Mr. Arka Kumar Nag ...for the Appellants.

Mr. Bikash Ranjan Bhattacharya, Sr. Adv,
Mr. Srijib Chakraborty,
Mr. Sabyasachi Chatterjee,
Mr. Sandipan Das,
Mr. Sayon Banerjee,
Mr. Badrul Karim,
Mr. Kiron Sk.
Mr. Dipankar Dasfor the Writ Petitioners /
Respondents.

Mr. Kishore Dutta, Sr. Adv,
Ms. Sonal Sinha,
Mr. Sujit Gupta,
Mr. Sayak Dutta,
Mr. Soumen Chatterjee
....for the Election Commission.

This appeal is directed against an order dated June 21, 2023, passed by a learned Single Judge in WPA 14723 of 2023.

The two writ petitioners before the learned Single Judge appeared to be aspiring candidates for the upcoming Panchayet Elections. They approached the learned Single Judge, in the present round of litigation, with the grievance that the Panchayet Returning Officer has tampered with the documents that they filed along with their nominations. In

particular, although they had filed the caste certificate, which was one of the necessary documents, at the stage of scrutiny, wrongfully it was held that caste certificate was not filed. Accordingly, their nominations were cancelled.

The learned Judge passed the impugned order observing as follows:

“As it appears that the allegation of tampering has been brought against an officer who is responsible for conducting the election in a free and fair manner, accordingly, the said allegation is required to be enquired into by a competent independent authority.

The Joint Director of the CBI has been impleaded as respondent No.12 in the instant writ petition.

The Court directs the aforesaid respondent to conduct an enquiry to ascertain the allegations of the petitioners.

Submission has been made by the learned advocates appearing for the State Election Commission and the State respondents that the investigation ought to be conducted by the State authority and not by the CBI.

The aforesaid submission of the respondent authorities cannot be accepted.

As the officer against whom the allegation is made is acting according to the directives of the State respondents and is also responsible for conducting the election in a free and fair manner, it may not be possible for the State agency to act in an independent way.

For the purpose of maintaining independency and transparency in the process of investigation, the Court thinks it fit to direct the CBI to conduct the investigation and file a report before this Court.

The Panchayat Returning Officer, who videographed the entire incident is directed to properly maintain and preserve the footage and the instruments, equipments in which such footage was recorded and all the footage with the recording instruments and equipments from the date and time when the nominations were filed by the petitioners till the time the same was re-

scrutinized upon direction passed by the Court shall be handed over the respondent no.12 as and when sought for.

Let the investigation be conducted at the earliest but positively by 5th July, 2023.”

Being aggrieved, the District Magistrate of Howrah and three other officers have come up in appeal before us.

We have heard Mr. Kalyan Bandopadhyay, learned Senior Advocate representing the appellants and Mr. Bikash Ranjan Bhattacharya, learned Senior Advocate representing the respondents/writ petitioners.

The crux of Mr. Bandopadhyay's argument has been that CBI enquiry/investigation cannot be ordered for the mere asking. Just because some allegations are made against the Officers in the Administration, the premier investigating agency of the country cannot be directed to conduct an enquiry. Any and every administrative lapse cannot be subjected to CBI enquiry.

This apart, Mr. Bandopadhyay has also drawn our attention to various documents to buttress his case that the writ petitioners did not and could not have filed the caste certificate with their respective nominations. He also argued that the writ petitioners filed acknowledgment slips showing that their applications for OBC "A" certificate had been received by the competent authority and are pending. Learned

Senior Counsel relied on the decision of a Coordinate Bench of this Court in the case of ***Director General of Police (WB) & Others Vs Gopal Kumar Agarwal & Anr.*** reported in ***2020 SCC Online Cal 755***. He also argued that the Panchayet Department of the State of West Bengal or the State of West Bengal itself has not been made a party in the writ petition. The writ petition is bad for non-joinder of necessary parties. He also submitted that the appellants, against whom allegations have been made in the writ petition, were not individually served before the writ petition was moved and the impugned order obtained.

Mr. Bhattacharya, learned Senior Advocate appearing for the writ petitioners/respondents challenged the maintainability of the appeal. According to him, the learned Single Judge has decided nothing. The learned Judge has merely directed a preliminary enquiry to be held by CBI and to place the report before Court. This, by no stretch of imagination, can be said to be a judgment within the meaning of Clause 15 of the Letters Patent, 1865. In support of this point, Mr. Bhattacharya has relied on the following decisions:

- I. (1981) 4 SCC 8
- II. (2023) 1 SCC 634
- III. (2006) 5 SCC 399

Mr. Bhattacharya then argued that there is nothing in the impugned order by which the State can

be legitimately aggrieved. It is significant that the State is trying to shy away from CBI enquiry. Learned Senior Counsel further submitted that the Writ Court has sufficient power to direct CBI enquiry in a fit case. In this connection, he relied on a decision of a Coordinate Bench of this Court rendered on June 15, 2023 in MAT 909 of 2023 (State of West Bengal Vs Soumen Nandy & Ors.).

Mr. Srijib Chakraborty, learned Advocate assisting Mr. Bhattacharya drew our attention to Sections 21 to 25 of the West Bengal Panchayat Elections Act, 2003. He submitted that it is not understood as to how the State has got hold of documents, which have been annexed to the appeal papers. Such documents are supposed to be in the exclusive custody of the State Election Commission.

As regards non-joinder of parties, learned Advocate for the respondents/writ petitioners submitted that this point was not urged before the learned Single Judge. If this point is not taken at the first instance, the same cannot be taken at a subsequent stage. He refers to Order 1 Rule 13 of the Code of Civil Procedure. He also says that since the Government of West Bengal has been made a party, non-joinder of any of the Officers shall be of no consequence.

In reply, Mr. Bandopadhyay submitted, on the point of maintainability, that the learned Single Judge

has recorded reasons for the order that is under challenge in this appeal. That would make the order a judgment within the meaning of Clause 15 of the Letters Patent.

Basically, two questions arise which we need to consider. Firstly, what are the circumstances in which a CBI enquiry may be justifiably directed by the Court ? Secondly, whether or not the facts of the present case portray or depict one of such circumstances?

We propose to pass our order on 26.6.23 at 2 p.m. when the matter will be listed again along with MAT 1147 of 2023.

Since both parties have arguable cases, which require our careful consideration, let CBI not take any steps in terms of the impugned order till 26.6.2023.

Other portions of the impugned order shall remain untouched for the time being.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)