

SL 01 & 2
20.01.2023
S.H/d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 1752 of 2023

**Shila Chatterjee
-versus
The State of West Bengal & Ors.**

With

W.P.A. 1757 of 2023

**Purnima Kandu
-versus-
The State of West Bengal & Ors.**

**Mr. Pratik Dhar, Sr. Adv.,
Mr. Koustav Bagchi,
Ms. Cardina Roy,
Mr. Debayan Ghosh,
Ms. Priti Kar.
...For the Petitioner.**

**Mr. Anirban Roy, Ld. G.P.,
Mr. Raja Saha,
Mr. Debraj Sahu.
...For the State.**

**Mr. Phiroze Edulgi,
Mr. Rahul Kumar Singh.
...For the Respondent No.13
in WPA 1752 of 2023 and
Respondent No. 14 in WPA
1757 of 2023.**

**Mr. Suman Sengupta,
Mr. Dipjyoti Chakraborty.
...For the Respondent No.11
in both the matters.**

**Mr. Ankit Agarwala,
Mr. Tapas Maity.
...For the Respondent No.10
in WPA 1752 of 2023.**

The order passed by the Sub-Divisional Officer, Jhalda Municipality, Purulia and the competent authority under Section 21B of the West Bengal Municipal Act, 1993 dated 18th January, 2023 and the subsequent order passed by the Additional Secretary to the Government of West Bengal, Department of Urban Development and Municipal Affairs (Municipal Affairs Branch) dated 18th January, 2023 are impugned in the writ petition being WPA 1752 of 2023.

The petitioner Shila Chatterjee was elected as the Chairman of the Jhalda Municipality on 16th January, 2023 and charge was handed over to her on 17th January, 2023 in compliance of the direction passed by this Court on 17th January, 2023 in WPA 26900 of 2022.

A proceeding for disqualification of Shila Chatterjee was already pending consideration at that point of time. The said proceeding was initiated in response to application filed on 14th November, 2022 and 17th November, 2022.

The petitioner submitted her reply on 5th January, 2023 within the time limit as specified by the Hon'ble Division Bench on 23rd December, 2022 in MAT 1939 of 2022.

The Sub-Divisional Officer thereafter, intimated the petitioner about further application dated 8th December, 2022. Copy of the said application dated 8th December, 2022 was, however, not forwarded to the petitioner, despite request.

The impugned order dated 18th January, 2022 took into consideration the application dated 8th

December, 2022 along with the previous applications dated 14th November, 2022 and 17th November, 2022 and disqualified Shila Chatterjee under Sub-Section 1 of Section 21B of the West Bengal Municipal Act, 1993 and she stood removed from the Board of Councillors of Jhalda Municipality with effect from 18th January, 2023.

As a consequences of her removal, the Additional Secretary, Government of West Bengal appointed one Sudip Karmakar an elected member of the constituency to hold office as Chairman as per provision of Section 17(4) of the Act.

The petitioner submits that there has been violation of principles of natural justice as the application dated 8th December, 2022 was not forwarded to her and she was not made aware of the contents of the said application.

It appears that though the impugned order records about the request made by Shila Chatterjee for serving the letter dated 8th December, 2022, but no reason has been assigned in the impugned order as to why the said letter dated 8th December, 2022, relied upon by the competent authority, will not be or has not been served upon the petitioner.

The other fact remains that even though there are eleven other elected members of the said Municipality, the Additional Secretary chose to appoint a member from the losing party to act as Chairman.

The Learned Government Pleader submits that according to the provisions of the Act, any councillor may be appointed to act as the Chairman in charge.

The Learned Government Pleader denies that there has been any violation of principles of natural justice. Issue of maintainability of the writ petition has been raised. It has been submitted that the impugned order is an appealable one and without exhausting the appellate provision, the petitioner ought not to have approached this Court.

Both the parties rely upon the provision of Section 21B.

Without going into the matter in details at this stage due to paucity of time, the Court is prima facie of the opinion that the letter dated 8th December, 2022 not being served upon the petitioner, ought not to have been relied upon at the time of passing the impugned order. If the letter dated 8th December, 2022 is sought to be relied upon, then the same ought to have been served upon the petitioner.

That apart, the issue whether the writ petition will be maintainable on the ground of existence of an alternative remedy will be taken up for consideration by the Court on the next date.

As an interim measure, the impugned orders dated 18th January, 2023 shall not be given effect to till 17th February, 2023 or until further order whichever is earlier.

The parties are directed to file their affidavit-in-opposition within 3rd February, 2023, reply, if any, by 9th February, 2023.

List the matter on 10th February, 2023.

In the interregnum, the Court appoints Purnima Kandu, the respondent No.19 in WPA 1752 of 2023 and petitioner in WPA 1757 of 2023, as Chairman in charge till further order of Court.

Supplementary affidavit filed in Court today by the learned advocate appearing for the petitioner annexing copy of the order dated 17th January, 2023 passed in WPA 26900 of 2022 is taken on record. Copy of the same is handed over to the learned advocates appearing for the respondents.

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

(Amrita Sinha, J.)