

Item No. 50-53
30.11.2023
A.G.M.

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

**W.P.A 1752 of 2023
IA No. CAN 1 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.**

With

W.P 26511 of 2023

**Purnima Bagti & Ors
-Versus-
The State of West Bengal & Ors.**

With

WPA 26514 of 2023

**Biplab Kayal & Anr
-Versus-
The State of West Bengal & Ors.**

**Mr. Pratik Dhar, Sr. Adv.,
Mr. Koustav Bagchi,
Mr. Debayan Ghosh,
Ms. Priti Kar.**

**...For the Petitioners in W.P.A
26511 of 2023 and W.P.A 26514 of 2023.**

**Mr. Partha Sarathi Bhattacharya, Sr. Adv.
Mr. Vivekananda Bose
Mr. R. Pal**

... For the petitioner in W.P.A 1752 of 2023 and for the respondent no. 16 in WPA 26511 of 2023

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

... for the petitioner in W.P.A 1757 of 2023 and for the respondent nos. 11 and 15 in CAN 1 of 2023 in WPA 1752 of 2023

**Mr. Suman Sengupta,
...For Sudip Karmakar.**

**Mr. Ankit Agarwala,
Mr. Tapas Maity.
...For Suresh Agarwal**

**Mr. S. Bandopadhyay
Mr. A. K. Nag
... For the State.**

**Mr. Ritwik Pattanayak
... For the respondent nos. 13 and 14 in WPA 1752 of 2023 and for the respondent nos. 10, 14, 17, 18, 19 in WPA 26514 of 2023.**

WPA 1752 of 2023 was filed by Shila Chatterjee challenging her disqualification to act as Chairperson in Jhalda Municipality. The matter was heard in details by the Court and an interim order was passed on 20th January, 2023 appointing Purnima Kandu as the Chairman-in-charge until further orders.

The order passed by this Bench was carried in appeal and by an order dated 9th February, 2023 passed in MAT 114 of 2023 + IA No. CAN 1 of 2023 (Suresh Kumar Agarwal _vs.- The State of West Bengal and Ors), the Hon'ble Division Bench was pleased to modify the order passed by this Bench and directed that Shila Chatterjee shall act as Chairperson until

further orders by the learned Single Judge where the writ petition is pending consideration.

On the day the writ petition was filed by Shila Chatterjee, she enjoyed the majority of the elected members of the Municipality.

The interim order passed by this Bench is subsisting till date. Prayer has been made by the learned senior advocate representing Shila Chatterjee to extend the interim order till the matter is finally decided on merits by the Court.

Subsequent writ petition being WPA 26511 of 2023 has been filed by five petitioners and WPA 26514 of 2023 has been filed by two petitioners all alleging that they do not have the confidence upon Shila Chatterjee and the seven (5+2) elected councillors do not want the tenure of Shila Chatterjee to act as Chairperson to be extended by the Court. Prayer has been made for conducting floor test to ascertain as to whether Shila Chatterjee enjoys the confidence of the majority members.

Jhalda Municipality has twelve elected councilors in total. As of now, seven elected councilors have approached this Court with a prayer not to extend the interim order issued in favour of Shila Chatterjee and to conduct special meeting for election of the Chairman of the Municipality. The aforesaid prayer of seven councilors has been opposed by Shila Chatterjee. It has been submitted that the interim order which is subsisting cannot be varied/vacated or modified in view of the provision under Order 39 Rule 4 of the CPC.

It has also been submitted that no order can be passed by the Court clarifying the earlier order that has been passed upon hearing of the parties.

I have heard the submissions made on behalf of all the parties.

Admittedly, there has been a sea change with regard to the facts of the case on the date the interim order was passed and the facts as it appear today. Shila Chatterjee submits that there is nothing as on record to suggest that seven councillors do not have confidence on her. It has been submitted on behalf of Shila Chatterjee that she enjoys the confidence of seven elected councillors.

In a democracy, the Chairperson ought to enjoy the confidence of the majority members otherwise the Municipality cannot function smoothly. Any person who loses confidence or does not enjoy the confidence of the majority members does not have any right to hold the post of Chairperson.

Shila Chatterjee was acting as Chairperson in terms of the order passed by this Court. Time has come when test is required to be conducted to ascertain as to whether she still holds majority so that she can continue to act as the Chairperson of the Municipality.

In view of the above, the District Magistrate is directed to take necessary steps to ascertain as to whether Shila Chatterjee still enjoys the confidence of the majority members.

The District Magistrate will take steps in the matter in accordance with law at the earliest but positively by 8th December, 2023.

Report of the District Magistrate shall be filed before this Court on 11th December, 2023.

All the elected members of the Municipality are directed to co-operate with the District Magistrate at the time of conducting the floor test.

For the sake of convenience, the interim order that is subsisting is extended till 15th December, 2023 or until further order whichever is earlier.

(Amrita Sinha, J.)