

Calcutta High Court

Ujjal Chatterjee vs State Of West Bengal And Ors. on 3 March, 2006

Equivalent citations: 2006 (2) CHN 172

Bench: J Bhattacharya

JUDGMENT Jyotirmay Bhattacharya

1. The propriety of the order dated 29th December, 2005 passed by the competent authority in connection with a proceeding under Section 21B of the West Bengal Municipal Act, 1993 is under challenge in this writ petition.

2. The said proceeding was initiated on the basis of the petitioner's application dated 28th November, 2005 wherein a prayer was made for declaring the respondent Nos. 4 and 5 as disqualified for being Councillor on the ground that the said respondents voluntarily gave up their membership of the recognised political party which set up the said respondents for their election as Councillors in the said Municipality.

3. Such prayer of the petitioner was rejected by the respondent No. 3 viz., the competent authority on the following grounds :

(i) An incomplete application has been filed by the petitioner.

(ii) Petitioner's prayer cannot be allowed due to inconclusive evidence.

4. Mr. Chatterjee, learned Senior Advocate, appearing for the petitioner, submitted that the petitioner was duly selected as leader by the elected Councillors set up by Trinomul Congress by adopting a resolution on 21.11.2005 and such a leader submitted a petition for declaring the respondent Nos. 4 & 5 who were elected as Councillors on the ticket of Trinomul Congress, as disqualified for being Councillor on the ground that they had voluntarily given up their membership of Trinomul Congress. Copy of the letter by which the said respondents gave up their membership of such political party, was filed along with the said application.

5. Mr. Chatterjee contended that since the necessary particulars which the petitioner was required to disclose in such an application as per Sub-section (8) of Section 21B of the said Act, had been disclosed in the said petition, the competent authority ought not to have rejected the petitioner's said application by holding inter alia that the said application is an incomplete one.

6. Mr. Chatterjee further submitted that submission of documents as referred to Section 21B(3)(ii) & (iii) along with the application under Section 21B(7) of the said Act, cannot be regarded as a pre-condition for maintaining such an application inasmuch as Sub-sections (7) and (8) of Section 21B of the said Act do not prescribe for production of such documents along with the application under Section 21B(7) of the said Act.

7. According to Mr. Chatterjee, the significance of Sub-section (3) of Section 21B of the said Act in relation to Sub-section (7) of Section 21B is only that the application under Sub-section (7) of

Section 21B of the said Act cannot be filed by any other Councillor except by the leader as referred to in Sub-section (3) thereof.

8. Mr. Chatterjee further contended that the second part of Sub-section (3) of Section 21B of the said Act which deals with the leader's obligation to submit the document as referred to in (i), (ii) and (iii) therein to the competent authority within the specified time, has nothing to do with the maintainability of the application under Sub-section (7) of Section 21B of the said Act. As such, the competent authority ought not to have rejected the petitioner's said application for non-submission of those documents as referred to in Section 21B(3)(ii) & (iii) of the said Act.

9. Accordingly, Mr. Chatterjee submitted that the impugned order should be set aside and the application should be remanded back to the competent authority for consideration afresh on merit.

10. Mr. Brathindra Narayan Roy, learned Advocate, appearing for respondent Nos. 4 & 5, submitted that the writ petition is not maintainable as the remedy which has been sought for herein can be availed of by the petitioner by filing an appeal under Sub-section (12) of Section 21B of the said Act. Mr. Roy further submitted that when an alternative remedy is available to the petitioner under the statute itself, the petitioner cannot come straightaway to this Court bypassing the statutory forum.

11. Mr. Roy further submitted that Section 21B is the self-content provision which deals with removal of a Councillor on declaration that he/she is disqualified for being a Councillor on any of the grounds as mentioned therein.

12. According to Mr. Roy Sub-section (3) of Section 21B cannot be read in isolation of Sub-section (7) of Section 21B of the said Act. Mr. Roy submitted that the production of the documents as referred to in Section 21B(3)(i)(ii)(iii) is mandatory for maintaining the application as referred to under Sub-section (7) of Section 21B of the said Act.

13. Thus, Mr. Roy submitted that when those documents as referred to in Section 21B(3)(ii) & (iii), admittedly were not submitted along with the said application by the petitioner, the competent authority did not commit any illegality by rejecting the petitioner's said application by holding the same as an incomplete one.

14. Mr. Haque, learned Advocate, appearing for the State respondent, also argued in the same fashion as Mr. Roy did in the instant case.

15. Heard the learned Advocates of the parties. Considered the materials on record.

16. It is, no doubt, true that Sub-section (12) of Section 21B provides for an appeal against such an order before the appellate authority as prescribed therein. Sub-section (13) of Section 21B provides that the order passed by the authority as referred to in Sub-section (12) thereof on the said appeal shall be final.

17. On consideration of the aforesaid provisions, I find much substance in the first contention of Mr. Roy regarding the maintainability of this writ petition before this Court.

18. Such objection regarding maintainability of the writ petition, however, was not taken by Mr. Roy at the inception of hearing. On the contrary, an affidavit has been used by the respondent Nos. 4 & 5 in connection with this writ petition.

19. Thus, when the writ petition was entertained and the affidavit was exchanged, this Court does not think it fit to reject the writ petition on the ground of its maintainability alone because of availability of the alternative remedy by of appeal.

20. Accordingly, this Court feels it necessary to consider the writ petition on merit.

21. Section 21B of the West Bengal Municipal Act, 1993 is a self-content provision dealing with removal of a Councillor on declaration of his disqualification for being a Councillor on any of the grounds as mentioned therein.

22. Sub-section (7) of Section 21B of the said Act provides that such an application can be filed by the leader as referred to in Sub-section (3) of Section 21B. It necessarily follows that an application under Sub-section (7) of Section 21B of the said Act cannot be maintained by any other person other than a leader as referred to in Sub-section (3) of Section 21B of the said Act.

23. Sub-section (3) of Section 21B of the said Act consists of two parts. The first part deals with selection of leader by adopting a resolution by the elected Councillors set up by the recognised political parties within a particular time. The second part of the said sub-section casts a duty upon such leader to furnish the following documents to the competent authority within fifteen days from the date of his selection as leader:

(i) A copy of the resolution,

(ii) A signed statement containing the names, addresses and constituencies of himself and other Councillors set up by such recognised political party, and

(iii) A copy of a set of rules and regulations, if any, by whatever name called, of such recognised political party.

24. The second proviso to the said sub-section, however, makes it clear that the time limit prescribed therein either for selection of leader or for submission of the aforesaid documents, is not mandatory. But the said proviso does not suggest that such documents need not be filed at all.

25. Let me now consider as to whether the submission of those documents as referred to in Sub-section (3) of Section 21B of the said Act is necessary for consideration of the application as referred to in Sub-section (7) of Section 21B of the said Act or not.

26. Section 21B(1)(a) specifies the ground on which an elected Councillor set up by a recognised political party can be declared as disqualified for being a Councillor. The material facts on which the petitioner relies upon in support of his prayers are required to be disclosed in the said application in the manner as prescribed in Section 21B(7)(a) of the said Act. Presently, this Court is concerned with Section 21B(7)(a)(i) which is set out hereunder :

Section 21B(7)(a): One or more Councillors who are the members of such recognised political party have

(i) voluntarily given up his or their membership or such recognised political party.

27. For declaring a Councillor as disqualified under the said provision, first thing which is required to be considered is as to whether such an application has been filed by the leader as referred to in Sub-section (3) of Section 21B of the said Act or not. Such an ascertainment can be done on consideration of the copy of the resolution of selection of the leader as referred to in Section 21B(3)(i) of the said Act.

28. As such, the copy of such resolution is required to be considered in connection with the petition as referred to in Section 21B(7) of the said Act. The said document was submitted by the petitioner along with the said application.

29. The second requirement is to find out as to whether the Councillor against whom such proceeding has been initiated is a member of the recognised political party of which the applicant is the leader or not.

30. Such ascertainment can be done with reference to the document as referred to in Section 21B(3)(ii) of the said Act. The competent authority can very well verify from such signed statement as to whether the Councillor against whom such proceeding was sought to have been initiated, is the Councillor set up by such recognised political party of which the applicant is the leader or not.

31. Unless the identification of the Councillor as member of a particular recognised political party is ascertained with reference to the document as mentioned in Section 21B(3)(ii), the Councillor cannot be declared as disqualified.

32. The document as referred to Section 21B(3)(iii) is also required for ascertaining the modalities prescribed under the said rules and regulations regarding resignation and/or giving up membership of such recognised political party by a member voluntarily.

33. Unless the said document is produced, no one can come to the conclusion regarding satisfaction as to the ground as mentioned in Section 21B(1)(a) of the said Act.

34. The said respondent Nos. 4 & 5 stated in their affidavit that their resignation was not accepted by the party. The said respondents claim that they are still the members of the said political parties. Identical claim was made by the said respondents in their reply to the said application before the

competent authority. For ascertaining the effect of the letter which was given by the said respondents, the rules and regulations are required to be considered.

35. Thus, this Court is unable to accept the submission of Mr. Chatterjee that the requirement for production of those documents is, in no way, related to the proceeding for declaring a Councillor as disqualified under Section 21B of the said Act.

36. Here, of course, it is not disputed that the respondent Nos. 4 & 5 are not the members of Trinomul Congress which set up the said respondents for election as Councillor of the said Municipality. The selection of the petitioner as leader, has also not been disputed by the respondent Nos. 4 & 5 herein.

37. Thus, here the only dispute concentrates to the effect of the letter by which the membership of the said respondents alleged to have been surrendered. This, in my view, cannot be considered in the absence of the rules and regulations of the said political party. If the rules and regulations provides for acceptance of such resignation and the effectiveness of such resignation depends upon acceptance by any authority prescribed under the said rules and regulations, then certainly the said respondents cannot be declared as disqualified until their resignation is accepted. But if the resignation is automatic and its effectiveness does not depend upon acceptance of such resignation by any authority prescribed under said rules and regulations, then the said respondents may be declared as disqualified provided it is found that they gave up the membership of that political party voluntarily.

38. The competent authority held that the effect of the said letter of resignation cannot be considered in the absence of the said rules and regulations. The petition was rejected on the ground of want of conclusive evidence.

39. I do not find any wrong in such finding, particularly when the said document was not submitted by the petitioner coupled with the fact that the existence of such document is also not denied by the petitioner. The respondents in their objection to the petitioner's application under Section 21B of the said Act as well as in their affidavit filed in connection with the writ petition stated that their resignation has not been accepted by the said political party and they are still functioning as member of the said political party. The said statement of the respondents still remain uncontroverted by the petitioner who choose not to file any reply to the said affidavit. In such view of the fact I cannot disagree with the competent authority who held that such an application cannot be allowed due to inconclusiveness of evidence.

40. Admittedly, the document as referred to in Section 21B(3)(ii) & (iii) have not been produced by the petitioner in connection with the said proceeding. As such the finding of the competent authority to the effect that an incomplete application has been filed, cannot be disturbed for the reasons above.

41. Be it mentioned here that the inquiry as contemplated under Section 21B(9) and (10) of the said Act is not necessary for disqualifying a Councillor on the ground as mentioned in Section 21B(i)(a).

The inquiry as contemplated under Section 21B(9) and (10) relates to a prayer for disqualifying a Councillor on the ground as mentioned in Section 21B(1)(iA). Since the prayer for disqualification in the present case has not been made on the ground as mentioned in Section 21B(1)(iA) of the said Act, no further inquiry as contemplated under Section 21B(9) and (10) is necessary here.

42. As such, the competent authority rightly rejected the petition under Section 21B(11) of the said Act on consideration of the materials placed before him.

43. This writ petition, thus, stands rejected.

44. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.