

(2010) 09 CAL CK 0021

Calcutta High Court

Case No: Writ Petition 18319 (W) of 2010

Mor Salim Sk.

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Sept. 15, 2010

Citation: (2010) 4 CALLT 248

Hon'ble Judges: N. Pathery, J

Bench: Single Bench

Advocate: Bikash Kumar Mukherjee and Mr. Sourav Kumar Mukherjee, for the Appellant; Susanta Mukherjee, Ms. Sonali Bhar, Manick Chandra Dasv and Mr. Subrata Banerjee for State, for the Respondent

Final Decision: Dismissed

Judgement

N. Pathery, J.

By this writ petition the Petitioner seeks quashing of order dated 2nd August 2010 passed by the Respondent No. 2.

2. The case of the Petitioner is that a complaint was lodged by him against the private Respondent under Sub-section (7)(c) of Section 213A of the 1973 Act. The private Respondent at the time of election of Prodhan had joined the CPI (M) party and therefore owed his allegiance to such party. The notice issued by the requisitionist for removal of the Prodhan contained the name of the Petitioner. The requisitionist belonged to the All India Congress Party and having once belonged to the CPI (M) party, the change in party on the expiry of six months from the date of election disqualified the Petitioner u/s 213A from being a member of the Gram Panchayat. Such complaint was considered by the prescribed authority and an order passed on 8th June, 2010. Such order was passed contrary to Sub-section (9) of Section 213A as neither any enquiry was held nor did the prescribed authority satisfy himself prior to passing the order dated 8th June 2010. In fact, the notice u/s 12(2) of the 1973 Act the resolution and the vokalatnama has been signed by the private

Respondent as a member of the Congress party. This is beyond six months and therefore, disqualifies the private Respondent from continuing as a member. The 10th Schedule of the Constitution of India also provides for disqualification on Defection. Rule 6 of the Disqualification Rules of 1994 lays down the procedure to be followed. As the said procedure was not followed and as held in [Pandurang Dagadu Parte Vs. Ramchandra Baburao Hirve and Others](#), that if a person after election changes his affiliation and leaves the political party which supported him as a candidate, he should give up his membership. Such yardstick is also applicable in the case of an independent candidate who wishes to join a political party after the election. Therefore, the said order is applicable to the instant case and the order dated 2nd August 2010 be set aside. No statement has also been filed as an independent member which is the requirement of Sub-section (5) of Section 213 A of the 1973 Act. For all the said reasons the order of 2nd August 2010 be set aside.

3. Counsel for the private Respondent submits that the Petitioner has admitted that he all along was an independent candidate. From the letters placed before the prescribed authority the same will be evident. On 26th June, 2008 when the election of Pradhan and Upa Pradhan was made the private Respondent for appointment of the Pradhan supported the CPI (M) party and for appointment of the Upa Pradhan supported the Congress party. The letters which have been written by the Pradhan are subsequent to June 2008 wherein the private Respondent has been treated as an independent candidate. No document of change of party affiliation has been produced. In fact, the private Respondent as an independent candidate has supported the by(sic)which raises a voice against any irregularity. Therefore, the order dated June 2010 and 2nd August 2010 is justified and calls for no interference.

4. Counsel for the State-Respondent submits that there has been compliance with Section 213A and its Sub-sections. In fact, the Pradhan and Upa Pradhan were elected in 2008 June and there is no reason why the Petitioner should have filed the application now. All documents as per the requirement of law have been submitted by the private Respondent; therefore no interference is called for at this stage.

5. Counsel for the Petitioner in reply submits that the documents submitted are all prior to election being held.

6. Having considered the submissions of the parties a complaint was lodged against the private Respondent by the Petitioner on 24th May 2010. Such complaint was considered by the prescribed authority, namely, the BDO on 8th June 2010. At the hearing before the BDO letters addressed by the pradhan in August 2008 and 2009 was submitted wherein the private Respondent has been described as an independent candidate. Therefore till 2008 there is no dispute that the private Respondent was always treated as an independent candidate. The election of the Pradhan and Upa Pradhan was held on 26th June 2008. While for the election of Pradhan the private Respondent supported the CPI (M) party for the post of Upa Pradhan the Petitioner supported the Congress party. Joining the party cannot be

construed as becoming an affiliated member of the party as affiliation connotes membership and incidents of membership, namely, payment of membership fees. In the instant case no such case was made out either before the prescribed authority or before the appellate authority. In fact, in the complaint filed the Petitioner has admitted that the private Respondent did not belong to any recognized political party and furnished a statement under Sub-section (5) of Section 213A. For purposes of convenience the relevant paragraph 2 of the complaint is set out below:

(2) That opposite party was elected as member of Hassain 2/III/Gram Panchayat not belonging to any recognized political party under Sub-section (5) of Section 213A of the said Act and furnished statement to that effect to the Prescribed Authority under Sub-section (1) of the Act.

Photostat copy of her declaration form is annexed hereto and is marked with the letter "B"

7. Annexure-"B" includes the document dated 23rd July 2008 addressed to the Block Development Officer (BDO). This document was admittedly submitted after the election on 26th July 2008. Therefore, the plea of noncompliance of Sub-section (5) of Section 213A cannot be accepted. As the affiliation of the Petitioner to any party has not been shown, the order dated 2nd August 2010 calls for no interference.

8. AIR 1997 Bomb 387 will not apply to the facts of this case as the said decision dealt with a case where independent candidates formed a front such is not the case here as the private Respondent was an independent candidate and continued to be an independent candidate and chose to support a party according to his fancy. Therefore, the decision cited will not apply to the facts of this case.

9. The 10th Schedule of the Constitution also has no manner of application as it deals with cases of defection. Defection as defined in the Oxford dictionary means leaving one political party to join another. The private Respondent did not belong to any political party and the question of his joining another is also not evident, therefore; the 10th Schedule to the Constitution of India will not apply to the facts of the case.

10. Accordingly, no order is. passed on this application and this writ petition is accordingly dismissed.

11. As no affidavit in opposition has been filed, the allegation contained in the petition is not admitted.

Urgent certified photocopies of this order, if applied for, be given to the parties upon compliance with all requisite formalities.