

(2011) 07 CAL CK 0078

Calcutta High Court

Case No: Writ Petition No. 10359 (W) of 2010

Sukul Murmu

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: July 1, 2011

Hon'ble Judges: Patherya, J

Bench: Single Bench

Advocate: Moloy Kr. Basu, Suvrojit Basu and Md. Anwar Hossain, for the Appellant; Asok De and Alokesh Dalai for Respondent No. 7 and Manisha Mukherjee, for State, for the Respondent

Final Decision: Dismissed

Judgement

Patherya J.

1. By this Writ Petition the Petitioner seeks to set aside the orders dated 8th February, 2010 and 5th April, 2010 passed by the prescribed authority and appellate authority.

2. The case of the Petitioner is that a complaint was lodged u/s 213A of the 1973 Act. The Petitioners being one-third (1/3rd) of the members of the Gram Pranchayat constituted a group and were entitled to protection under Sub-section (b) of the second proviso of Section 213(1)(b) of the 1973 Act. Filing of one complaint will evidence that the Petitioners as members of the Gram Pranchayat, as a group gave up their membership and there was no violation u/s 213 (a)(i). An objection was filed by the Petitioners and an order passed by the prescribed authority on 8th February 2010. An appeal was filed from the said order which appeal was disposed of by order dated 5th April 2010. Reliance is placed on AIR 1967 SC 1211, AIR 1987 SC 57 and 2002 2 CLJ 197. Although three of the Petitioners have expressed their desire not to proceed with this petition and an order also passed in this respect, will not in any way affect the petition as the complaint was filed against all the Petitioners and

the order of the prescribed authority and the appellate authority has also been passed against all the Petitioners. It is only after the filing of the writ petition that the Petitioners' Nos. 2, 3 and 4 have taken a different stand. Therefore orders be passed as sought.

3. Opposing the said application Counsel for the Pradhan submits that subsection-(b) of the second proviso of Section 213(1)(b) of the 1973 Act specifically mentions that any member willing to voluntarily give up his membership must claim along with other members to constitute a group of not less than one-third (1/3rd) of the total number of members. In the instant case no such claim has been made by the Petitioner nor have the Petitioners formed a group. There is no bar to filing one complaint against all the members who are seeking to voluntarily give up their membership as the same is permitted by the Code of Civil Procedure. 2002 2 CLJ 197 is distinguishable as in the reported decision a group was constituted while in the instant case no constitution of group has been claimed by the Petitioner. As no penal provision has been provided therefore the directions are merely directory and not mandatory as held in 1991 CHN 189. Reliance is also placed on AIR 1917 PC 12 for the proposition that when a particular procedure is to be followed then the same must be strictly followed or not at all. u/s 213A(7) the complaint has been filed. In the event the verification is defective the same will be irregular and therefore curable as held in [Prasar Bharati Broadcasting Corpn. of India Vs. Debyajoti Bose, and Vidyawati Gupta and Others Vs. Bhakti Hari Nayak and Others](#), . The Notice dated 7th July 2009, the declarations, and the affidavit filed are separate and not joint. Therefore, this application warrants no order.

4. Counsel for the Petitioner in reply submits that the order dated 1st July 2010 be considered while passing final orders.

5. Having considered the submission of the parties a complaint was filed u/s 213A(7) of the 1973 Act, which section contemplates filing of one complaint against one or more members. Therefore, it cannot be said that the complaint filed is defective except may be the verification, which as directed has been corrected by order dated 1st December, 2009.

6. In paragraph 4 of the complaint the grounds of voluntarily giving up membership and acting contrary to the party whip has been stated. Subsequently the ground of voluntarily giving up of membership contained in Sub-section (i) of Section 213A(1)(a) has been pursued. Therefore the ground on which the complaint was lodged is voluntarily giving up of membership by the Petitioners herein. The only provision that could have protected the Petitioner was Sub-section (b) of the second proviso of Section 213A(1) (b) which contemplates that the members who intend to voluntarily give up their membership can do so if they constitute a group of not less than one-third (1/3rd) of the total number of members. There is no doubt that the Petitioners constituted one-third (1/3rd) of the total number of members but while relinquishing the membership they have nowhere stated that they constituted a

group. It is true that in the letter dated 7th July 2009 they have used the word "Amra" meaning we but nowhere have they claimed that they constituted a group. Therefore, by not claiming constitution of a group the protection reserved to such members cannot be attracted. This will be further borne out from separate declarations given by each of the Petitioners on 17th July 2009. The affidavit which has been filed though joint does not mention that the Petitioners have constituted a group while leaving the said political party. No claim has been made in support of such assertion too. Therefore, no interference is called for with the orders dated 8th February 2010 and 5th April 2010. Accordingly the writ petition is dismissed.