

(2001) 07 CAL CK 0053**Calcutta High Court**

Case No: MAT No. 871 of 2001, CAN No. 2633 of 2001 with WP No. (W) of 2000 and AST No. 4510 of 2000

Bijoy Kumar Barai

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: July 23, 2001**Acts Referred:**

- West Bengal Panchayat Act, 1973 - Section 213A

Citation: 107 CWN 695**Hon'ble Judges:** Tarun Chatterjee, J; Hrishikesh Banerji, J**Bench:** Division Bench

Advocate: Sakti Nath Mukherjee, Anupam Chatterjee and Indrani Nandy, for the Appellant; Hirak Mitra, Amal Baran Chatterjee, Souraen Sen and Usof Ali Dewan, for the Respondent

Final Decision: Dismissed**Judgement**

Hrishikesh Banerji, J.

This appeal is directed against the judgment and order dated March 14, 2001 passed by a learned Single Judge of this Court. By the impugned judgment the Writ Petition filed by the Appellant herein challenging the orders of the Prescribed Authority as also the Appellate Authority under the provisions of Section 213A of the West Bengal Panchayat Act, 1973 (the 1973 Act" for short), has been dismissed. The Appellant, Bijoy Kumar Barai, was elected as a member of Dalkhola-II Gram Panchayat on Indian National Congress ticket in the last Panchayat General Election held in the year 1998. He, however, opposed" the proposals of the Indian National Congress during election to the officer of the Pradhan of Dalkhola-II Gram Panchayat, held on July 25, 1998. The Appellant himself contested the election to the office of the Pradhan as an independent candidate and with the support of seven CPI(M) members, two BJP members, two TMC members and his own vote was elected to the post of Pradhan securing a total of twelve votes out of the total votes

of twenty-one.

2. Prior to the date of election the Appellant gave up his membership of the Indian National Congress on July 22, 1998 informing the Block President (Ad hoc), Karandighi Block Congress Committee, Uttar Dinajpur, of such resignation. By the said letter of resignation from the Indian National Congress party, the Appellant communicated that his resignation would be effective from July 22, 1998 the date of the letter of resignation and that he would continue as an independent member of the Panchayat. The ground for such resignation as stated in the letter of resignation was that he was not satisfied with undemocratic activities of the Indian National Congress Party under the leadership of the Block President of Karandighi Block Congress Committee. Giving such resignation Shri Barai contested the election.

3. On July 22, 1998 a meeting of the elected members belonging to the Indian National Congress of the said Gram Panchayat was held and Nausad Alam Saiyed was elected as the leader of the Indian National Congress Party in the said Gram Panchayat.

4. Although the Appellant states that he was not informed of the meeting his conduct of tendering resignation from the Indian National Congress on July 22, 1998 itself and his refusal to accept the service of the notice of the said meeting clearly indicate that he stayed away from the said meeting with knowledge of such meeting.

5. On August 7, 1998 Nausad Saiyed lodged a complaint alleging that the Appellant had violated the directions of the Party and that he had acted contrary to the direction and whip of the Party and thereby incurred disqualification in terms of the provisions of Section 213A of the 1978 Act. It is also stated in the complaint that the Appellant had sent a letter of resignation from the membership of the Indian National Congress Party which was received by the addressee on July 29, 1998.

6. A proceeding was initiated by the Block Development Officer and the Prescribed Authority under the 1973 Act and the Appellant was asked to show cause why he should not be disqualified as stated above. In his reply to the "show cause" notice the Appellant stated that he was expelled from the primary membership of the Indian National Congress as communicated to him by the Political Secretary to the President, West Bengal Pradesh Congress Committee; that he had been suspended from party for a period of six years for anti-party activities and that there was no district unit of the Indian National Congress at the material time i.e. in August, 1998 and therefore the endorsement by Sibu Chatterjee as General Secretary of such district unit on the complaint of Nausad Alam Saiyed renders the complaint void and it should be treated as non-est.

7. The Prescribed Authority, however, overruled the contentions of Appellant and passed an order on September 25, 1998 disqualifying the Appellant from the said Gram Panchayat under the provisions of Section 213A of the 1973 Act

8. The appeal preferred against the said order before the Appellant Authority was heard on March 12, 1999 and the Appellate Authority by its order dated December 11, 2000 affirmed the decision of the Prescribed Authority.

9. The learned Single Judge overruled the contentions made on behalf of the Appellant herein that the Prescribed Authority and the Appellate Authority having collected certain material behind the back of the Appellant in arriving at their conclusions after the parties were heard, the impugned orders passed by the Prescribed Authority and the Appellate Authority are liable to be set aside on the ground that there had been violation of the principles of natural justice.

10. The provisions of Section 213A of the 1973 Act under which the Appellant has been disqualified are as follows :

"213A. Disqualification on change of political party by members of Panchayats..-

(I) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force. the prescribed authority for such Panchayat as may be specified by notification in this behalf, may, subject to the other provisions of this section, declare, for reasons to be recorded in writing, a member of such Panchayat, to be disqualified for being a member thereof, if-

(a) he is an elected member set up by a recognised political party and has-

(i) voluntarily given up his membership of such recognised political party, or

(ii) exercised the voting right contrary to the manner of voting of the majority members sets up by such recognised political party in such Panchayat; or

(b)

Provided that the prescribed authority shall not declare any member to be disqualified under this section without giving to such member a reasonable opportunity to represent his case and to be heard in person."

11. Mr. Mukherjee submits that both the Prescribed Authority and the Appellate Authority did not follow the principles of natural justice in arriving at their decisions as they based their decisions on consideration of certain material collected by them after the parties were heard. In such circumstances, he contends that the impugned orders of the Authorities concerned are liable to be set aside. He cites the following decisions in support of his contention:

Mayawati Vs. Markandeya Chand and Others,

(1986) 4 SCC 547 (Institute of Chartered Accountants of India vs. L. K. Ratna & Ors.),

AIR 1981 SC 1986 (S. L. Kapoor vs. Jagmohan),

(1982) 1 All ER 646 (R. vs. Blundeston Prison Board of ex parte Fox-Taylor),

12. In Mayawati Vs. Markandeya Chand and Others, the Apex Court while considering the scope of review of the Speaker's decision observed that the Constitution Bench had held in the case of Kihoti Hollohul vs. Zachillhu (supra) that the scope of judicial scrutiny was limited to ascertain whether the decision of the Speaker stood vitiated by jurisdictional errors viz. infirmities based on violation of constitutional mandate, mala fides, non compliance with the rules of natural justice and perversity.

13. In Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, the Supreme Court has held that a member of the Institute of Chartered Accountants of India is entitled to a hearing by the Council of the Institute after the Disciplinary Committee submits its report to the Council of its inquiry into the allegations of misconduct against the member.

14. In AIR 1981 SC 1986 (supra) the Apex Court has held that the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference after natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of the proof of denial of natural justice is unnecessary. In the said case the Supreme Court observed; "it will come from a person who had denied justice that the person who has been denied justice is not prejudiced."

15. In the said judgment, however, it has been observed by the Supreme Court that where from the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile Writs.

16. In (1982) 1 All ER 646 (supra) the applicant was charged with an offence against discipline as a result of a fight with a fellow prisoner. He was brought before the Board of Visitors in the prison. He denied that he was guilty of the offence. The Board, however, found the applicant guilty and as a result he lost ninety days' remission. Subsequently, the applicant discovered that another prisoner had witnessed the fight and that prior to the hearing before the Board of Visitors the prisoner had reported the fact to the Police Officer-in-Charge of the case who had referred him to see a senior prison officer. The Prison Authorities never brought the existence of the other prisoner as a potential witness to the attention of the applicant or the Board of Visitors. The applicant's prayer before the Court for quashing the Board's decision was allowed because he had been denied the opportunity of bringing a witness who could have given evidence in support of his defence and there had been a breach of the rules of natural justice.

17. In Bhagat Ram Patanga Vs. The State of Punjab, the Supreme Court in the facts of the said case has held that when the State Government passed an order of quasi-judicial nature it is obligatory on its part to make available to the member concerned the materials available before it and on the basis of which the show cause notice is issued.

18. Mr. Mukherjee also brings our attention to the following passage appearing in the 5th edition of Dr. D. Basu's Administrative Law at page 258 of Chapter 8 of the said Book:

"A judicial or quasi-judicial authority must act on the evidence properly brought before him in the presence of both parties and not on any information which he may receive otherwise.

Ordinarily, no evidence (personal or real) should be received at the back of the other party and if any evidence is received, it must be made available to the other party."

19. To controvert Mr. Mukherjee's contentions that in the case at hand there has been violation of the principles of natural justice. Mr. Mitra appearing for the Respondents cites the following decisions:

(1960) 1 All ER (University of Ceylon vs. Fernando)

K.L. Tripathi Vs. State Bank of India and Others,

(1987) 1 All ER 463 (R vs. Monopolies and Mergers Commission);

The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee,

C.B. Gautam Vs. Union of India and Others,

Dr Rash Lal Yadav Vs. State of Bihar and Others,

20. In (1960) 51 All ER 631 (supra) it was held by the Privy Council that where no special form of procedure was prescribed for an inquiry into the allegations against a University student, it was for the Vice-Chancellor to determine the procedure to be followed, as he thought best, subject to the obvious implication that some form of inquiry must be made such as would enable him fairly to determine whether he who held himself satisfied that the charge in question had been made out.

21. In M/s. Poulose and Mathen Vs. Collector of Central Excise and another, it was observed by the Apex Court as follows:

"Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural

justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating."

22. In K.L. Tripathi Vs. State Bank of India and Others, it has been held that neither cross-examination nor opportunity to lead evidence is an integral part of quasi judicial adjudications.

23. In Dr Rash Lal Yadav Vs. State of Bihar and Others, the Supreme Court has held that the concept of natural justice is not a static one but is an ever expanding concept but the requirement of providing a pre-decisional opportunity of being heard may be excluded by the legislature where the same cannot be read into the relevant statutory provisions.

24. In the present case the appellant was given in terms of the first proviso to sub-section (1) as also in terms of sub-section (12) of Section 213A of the 1973 Act, pre-decisional opportunities of representing his case both before the Prescribed Authority and the Appellate Authority and was also heard by both the Authorities.

25. Mr. Mukherjee contends that under Rule 6 of the West Bengal Panchayat (Members" Disqualification) Rules, 1994, the procedure to be followed in any inquiry under Sub-section (9) of Section 213A of the 1973 Act is to be the same as the procedure followed by the Committee of Privileges of the West Bengal Legislative Assembly. It is also urged that oath has to be administered in such proceedings but in our view we find that the Prescribed Authority followed the rules as far as practicable and there was no necessity of any administration of oath as the decision was arrived at by the Prescribed Authority on consideration of the documents produced by the parties, the genuineness of which was not challenged either before the Prescribed Authority or before the Appellate Authority and he was given pre-decisional opportunities of representing his case before both the Authorities and he was heard by them.

26. In such circumstances it cannot be said that only because the Authorities concerned confirmed certain facts by correspondence with ex-President and Working President of the West Bengal Pradesh Congress Committee, the appellant was prejudiced in any way.

27. The Prescribed Authority passed the order on 25.9.1998 after hearing the appellant on 16.9.1998 and on 29.9.1998. While passing the order he also considered the letter dated 22.9.1998 from Shri Soumen Mitra, ex-President. West Bengal Pradesh Congress Committee and the letter dated 23.9.1998 received, from the Working President. Shri Priya Ranjan Dashmunshi. By his aforesaid letter dated 22.9.1998 ex-President. West Bengal Pradesh Congress Committee communicated to the Prescribed Authority that no one other than the President, District-Congress Committee. Pradesh Congress Committee and All India Congress Committee or its Executive Committee can expel any party member and even the President has to

issue "show cause" notice before any member of the party is expelled. It was further communicated by this letter that Badal Bhattacharjee was never asked to issue any letter of expulsion of the appellant. The Working President, Shri Priya Ranjan Dashmunshi, by his letter dated 23.9.1998 communicated to the Prescribed Authority that the Political Secretary to the President was neither competent nor authorized to write any such letter as the one dated 10.6.1998 from Shri Badal Bhattacharjee.

28. In the appeal before the Appellate Authority, the appellant did not specifically challenge the truth of the contents of those letters dated 22.9.1998 and 23.9.1998 received by the Prescribed Authority from the above functionaries of the Indian National Congress Party in West Bengal. But he merely stated that a fair reading of the letter from Badal Bhattacharjee would show that the Political Secretary issuing the letter did so as he was directed to do so by the President of West Bengal Pradesh Congress Committee. This contention of the appellant cannot be accepted inasmuch as Badal Bhattacharjee's letter does not disclose the name of the person or the Authority under whose direction he issued the letter. The primary membership number and active membership number is given in this list of the members of Uttar Dinajpur District Congress Committee. The letter is purported to have been signed by Shri Badal Bhattacharjee on 18.6.1998. No document has been produced to show when the letter had actually been issued and when it reached the addressee.

29. Regarding Sibu Chatterjee's competence to endorse the complaint as the Secretary of the District Congress Committee we find that neither in his written objection filed before the Prescribed Authority nor in the Memorandum of Appeal preferred before the Appellate Authority the appellant urged that Sibu Chatterjee was not the Secretary of the District Congress Committee and as such was not competent to endorse the complaint.

30. He raised this point for the first time on 12.3.1999 at the time hearing before the Appellate Authority. In such circumstances the Appellate Authority considered the letter from the President of West Bengal Pradesh Congress Committee and was satisfied from the contents thereof that from the month of August, 1998 Sibu Chatterjee was to continue as the General Secretary of Uttar Dinajpur District Congress Committee. Therefore, having regard to the above facts and circumstances we are satisfied that there has been no violation of the principles of natural justice as urged by Mr. Mukherjee and that pre-decisional opportunities of hearing as contemplated by the first proviso to sub-section (1) and sub-section (12) of Section 213A of the 1973 Act were given to the appellant. We also do not find any ground to set aside the order of disqualification passed by the Prescribed Authority and the order passed by the Appellate Authority confirming the same.

Accordingly, the appeal and the application are dismissed.

There will be no order as to costs.

Tarun Chatterjee, J.

I agree.