

(2007) 10 CAL CK 0034

Calcutta High Court

Case No: Writ Petition No. 1087 (W) of 2006

Smt. Kabita Bhattacharya

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Oct. 3, 2007

Acts Referred:

- Hindu Marriage Registration Rules, 1958 - Rule 11
- Special Marriage Act, 1954 - Section 3
- West Bengal Special Marriage Rules, 1969 - Rule 27

Citation: (2008) 1 CALLT 396

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: K.D. Mukherjee and P.C. Bhattacharjee, for the Appellant; Somnath De, for the Respondent

Judgement

Jayanta Kumar Biswas, J.

The petitioner is questioning the order of the Secretary, Judicial Department, Government of West Bengal dated November 30, 2005 removing her from the office of non-official marriage officer and non-official marriage registrar in terms of provisions of the West Bengal Special Marriage Rules, 1969, Rule 27 and the Hindu Marriage Registration Rules, 1958, Rule 11.

2. By order dated January 11, 1995 the State Government appointed her as a marriage officer for the purpose of the Special Marriage Act, 1954. By another order dated September 22, 1995 the State Government appointed her as a non-official Hindu marriage registrar u/s 3 of the Special Marriage Act, 1954. Proceedings for her removal were initiated by issuing a charge-sheet dated February 19, 2003. As many as eleven charges were levelled against her. She submitted her reply on March 20, 2003. Then by an order dated November 7, 2003 the State Government

removed her from office. Feeling aggrieved she moved this Court by filing a writ petition, which, I am told, was disposed of by an order dated August 1, 2005. The order of the State Government dated November 7, 2003 was set aside on the ground that no reasons in support thereof were disclosed. The State Government was directed to dispose of the proceedings by giving a reasoned order. Consequently, the judicial secretary appointed an assistant secretary of the department as the inquiry officer. By notice dated November 2, 2005 the inquiry officer directed her to participate in the inquiry scheduled for November 14, 2005. She with her advocate appeared and the inquiry was conducted and closed on the same day. The inquiry officer submitted his report to the judicial secretary. No copy of the inquiry report was supplied to her. The judicial secretary heard her on November 29 2005 and then made the impugned order. It was held that some of the charges were proved.

3. She has alleged that no inquiry worth saying was conducted by the inquiry-officer who in a perfunctory manner conducted and concluded the inquiry without giving her a reasonable opportunity to defend herself. Her allegation is that documents relied on by the inquiry officer were not exhibited, and she was not given any reasonable opportunity to inspect and rely on the documents in defence. Her further allegation is that opportunity to adduce defence witness was not given to her. In the face of these allegations which were evasively dealt with in the opposition, I directed the respondents to produce the original records to show that a proper inquiry was held. The records have been brought to Court today, and on inspection and perusal thereof, counsel for the respondents finds little to say against the various allegations made by the petitioner in support of her case that the inquiry officer conducted and concluded the inquiry in a most perfunctory manner. Admittedly, the proceedings of the inquiry were not signed by the parties. The documents relied on by the inquiry officer were not marked exhibits. The inquiry officer recorded in his report that certain documents were shown to the petitioner. There is no reliable material on the basis whereof it can be said that the petitioner is making a false allegation that in reality no documents were shown to her by the inquiry officer. The further admitted position is that copy of the inquiry report was never supplied to the petitioner. On these facts, I have no hesitation at all in holding that the inquiry was conducted and concluded in gross violation of the principles of natural justice. The allegations made in the charge-sheet were not established by adducing evidence, and above all the petitioner was not given reasonable opportunity to defend herself. These are sufficient reasons for setting aside the inquiry report, and needless to say that as a consequence the order of the judicial secretary cannot remain. It has also been alleged in the writ petition that the judicial secretary did not give the petitioner a proper opportunity of hearing. She has alleged that her advocate was not permitted to participate in the hearing. There is nothing to show that she made an incorrect allegation. In my view, the order complained of should be quashed.

4. For these reasons, I allow the writ petition in part. The order of the judicial secretary dated November 30, 2005 is hereby set aside. The inquiry report, a copy whereof has been annexed to the opposition, and on the basis whereof the impugned order was made, is also set aside. I order that the State Government will be at liberty to proceed with the matter afresh. If no steps are taken to proceed afresh within four weeks from the date of communication of this order to the judicial secretary, then the charge-sheet shall be deemed to be quashed, and in that case the respondent shall permit the petitioner to function as marriage officer and registrar. If a decision is taken to proceed afresh, then the judicial secretary, shall appoint an inquiry officer, who shall not be the same person who made the inquiry that culminated in the impugned order dated November 3, 2005. If the State Government decides to hold a fresh inquiry, then the inquiry shall be concluded and the final order shall be made by the State Government within four months from the date of communication of this order. The fresh inquiry, shall be conducted by the judicial secretary or the inquiry officer appointed by him following the principles of natural justice, i.e. the petitioner shall be given reasonable opportunities to cross-examine the witnesses, if any, examined in support of the charges; inspect all the seized documents; rely on the seized documents in support of her defence; adduce defence evidence. The day-to-day proceedings shall be maintained and every page of them shall be signed by the inquiry officer, the petitioner and the other person participating in the inquiry. Authenticated copies of the day-to-day proceedings shall be supplied immediately. Copy of the inquiry report shall be supplied to the petitioner, and she shall be given an opportunity of making representation against the findings, if any, of the inquiry officer. The fresh inquiry, if any, shall be conducted only with respect to the charges which were recorded in the impugned order of the judicial secretary as proved partly or in whole, i.e. charges which were recorded as not proved shall not be inquired again. After the inquiry report is submitted and the petitioner is given opportunity of making representation, the State Government, after giving her, she chooses, then through her advocate, an opportunity of hearing, shall make the final order in the proceedings and the order shall be communicated to her immediately.

5. Since removal is the only punishment, it is hoped that the whole matter shall be very carefully considered by the State Government, so that for any insignificant omission or commission a disproportionate punishment is not imposed. There shall be no order for costs.

6. Urgent certified xerox copy of this order shall be supplied to the parties, if applied for within three days from the date of receipt of the file by the section concerned.