

(2016) 03 CAL CK 0138
CALCUTTA HIGH COURT
Case No: Writ Petition 30272(W) of 2015

Md. Abul Ashadul Haque

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: March 16, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- West Bengal Panchayat Act, 1973 - Section 213(A)

Citation: (2016) 6 WBLR 352

Hon'ble Judges: Indra Prasanna Mukerji, J.

Bench: Single Bench

Advocate: Mr. Milan Chandra Bhattacharya and Ms. Sulagna Bhattacharya (Bagchi), Advocates, for the Petitioner; Mr. Srijib Chakraborty, Mr. Abir Ranjan Neogi and Mr. Pritam Roy, Advocates, for the Respondent Nos. 5, 6 and 7; Mr. L.K. Gupta and Mr. Jayak Gupta, Advoc

Final Decision: Disposed Off

Judgement

Indra Prasanna Mukerji, J. - The affairs of Samserganj Panchayat Samity are involved in this writ. The alleged defection by three members of a particular party is the issue before me.

2. The Samserganj Panchayat Samity had 27 members, 16 belonging to the CPI (M), 9 to the Indian National Congress and 2 to the Trinamool Congress.

3. On 3rd November, 2014, 9 Congress members made a requisition for removal of the Sabhapati.

4. On 17th November, 2014, a meeting was held. Allegedly 3 CPI (M) members voted against the will of the majority of their members and supported the requisitionists. The 2 Trinamool Congress members voted similarly. The Sabhapati was removed.

5. Now the allegation of the writ petitioner, who is the leader of the CPI (M) party is that the complaint that was filed with the Sub-Divisional Officer, under Section 213(A) of the Panchayat Act, 1973, to declare that there was defection and to disqualify these 3 CPI (M) members, has not been disposed of by him within the stipulated time. The complaint was lodged on 4th March, 2015.

6. According to Mr. Bhattacharya, learned senior counsel for the petitioner, hearing was concluded on 17th August, 2015.

7. The learned Additional Advocate General for the State respondents submits that hearing has not been concluded. The records show that the complainant has been asking for time, he submits.

8. This submission is denied by Mr. Bhattacharya.

9. Mr. Chakraborty, learned counsel appearing for the 3 CPI (M) members denies the allegation of the petitioner.

10. Mr. Bhattacharya further submits that after expiry of the stipulated time of eight weeks from the date of receipt of the complaint, the Sub-Divisional Officer has no power to adjudicate it.

11. It is to be deemed that the 3 members of the CPI (M) stand disqualified.

12. I am unable to accept this submission. There is no such deeming provision in the Act. If the legislature had intended that on the failure of the Sub-Divisional Officer to adjudicate the complaint within the stipulated time, a candidate would be deemed to be disqualified, it would have surely expressly indicated its intention. In my opinion, the court has the power to order the Sub-Divisional Officer to do his duty and to extend the time for him to do so.

13. Accordingly, I direct the Sub-Divisional Officer to conclude the hearing of the complaint without granting any unnecessary adjournment within three weeks of conclusion of the ensuing Assembly Election.

14. The decision will be reasoned and communicated to the party within this time.

15. I have not gone into the merits. It will be decided by the Sub-Divisional Officer.

16. All the papers are before this court.

17. Affidavits were not invited. The allegations contained in the petition are deemed not to have been admitted.

18. The writ application is, accordingly, disposed of.

Urgent certified photo copy of this order, if applied for, be given to learned advocates for the parties upon compliance of all requisite formalities.