(2006) 03 CAL CK 0070

Calcutta High Court

Case No: W. P. No. 045, 046, 047, 048, 049, 050 and 051 of 2006

Smt. Vasantha and Others		APPELLANT
	Vs	
The Lieutenant Governor and Others		RESPONDENT

Date of Decision: March 7, 2006

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 193, 228

Citation: 110 CWN 552

Hon'ble Judges: Subhro Kamal Mukherjee, J

Bench: Single Bench

Advocate: Amber Majumdar, for the Appellant;S.K. Mondal and Krishna Rao, for the Respondent

Judgement

Subhro Kamal Mukherjee, J.

All these maters are taken up for hearing analogoously as I am informed, by Mr. Amber Majumdar, learned advocate appearing for the petitioners, Mr. Krishna Rao, learned advocate appearing for the respondent Nos. 5 to 7 and Mr. S. K. Mandal, learned Government Pleader appearing for the respondent Nos. 1 to 4, that similar questions of law and fact are involved in. all these matters. In order to appreciate the points involved in these writ petitions, I propose to narrate the facts in relation to W. P. No. 45 of 2006.

2. By filing the application under Article 226 of the Constitution of India, the writ petitioner has challenged the show cause notice dated March 1, 2006 issued by the Election Commission, Andaman & Nicobar Islands. The Election Commissioner asked her to show cause as to why she should not be disqualified for being a member of the municipal council for violation of the provisions of Sub-section (1) of Section 21

of the Andaman & Nicobar Islands (Municipal) Regulation, 1994. She was asked to file her show cause within seven days from the receipt of the said show cause notice.

3. Shrimati M. Vasantha, the petitioner, was elected as the councilor of Port Blair Municipal Council from Ward No. 11.

4. Sub-section (1) of Section 21 of the said Regulation of 1994 contemplates that every member shall, not later than thirty days after making and subscribing the oath or affirmation under sub-Section (1) of Section 20 and before the last day of the same month in each succeeding year file with the Chairperson a declaration in such form as may be prescribed of all the assets owned by him and any member of his family and such declaration shall form part of the records of the municipality.

5. Sub-section (2) of Section 21 of the said Regulation of 1994 prescribes that a person shall be disqualified for being a member -- (a) if he fails to file a declaration referred to in sub-Section (1) or (b) if he files a declaration under that sub-Section which is either false or which he knows or believes to be false.

6. In the explanation appended to. Section 21, it was explained that for the purpose of the said section "family" means a spouse and dependent children of the member.

7. It has been alleged that although declaration of assets of the writ petitioner, namely, Shrimati M. Vasantha was dated October 22, 2005, but such declaration was actually filed in the office of the municipal council on February 10, 2006.

8. Sub-section (4) of Section 12 of the said Regulation of 1994 contemplates that if a question arises as to whether a member of a municipality has become subject to any disqualification mentioned in sub-Section (1) or sub-Section (2) of Section 21, the question shall be referred for the decision of the Administrator and his decision shall be final.

9. Under sub-Section (5) of Section 12 of the said Regulation of 1994, before giving any decision on any such question, the Administrator shall obtain the opinion of the Election Commission and shall act according to such opinion.

10. As it has been alleged that the member concerned did not submit her declaration of assets in time, and as such, she has been disqualified for being a member of the municipal council, the Administrator sought for opinion under sub-Section (5) of Section 12 of the said Regulation of 1994 from the Election Commission.

11. Chapter IX of the Andaman & Nicobar Islands (Municipal) (Preparation of Electoral Rolls and Conduct of Elections) Rules, 1995 deals with the powers of Election Commission in connection with inquiries as to disqualifications of the members.

12. Rules 121 and 123 of the said Rules of 1995 are quoted hereunder:

121. Powers of Election Commission:

1. Where in connection with the tendering of any opinion to the Administrator under sub-Section (5) of Section 12 of the Regulation, the Commission considers it necessary or proper to make an inquiry, and the Commission is satisfied that on the basis of the affidavits filed and the documents produced in such enquiry by the parties concerned of their own accord, it cannot come to a decisive opinion on the matter which is being inquired into, the Commission shall have, for the purposes of such inquiry, the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the. following matters, namely:

(a) Summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document or other material object producible as evidence;

(c) receiving evidence on affidavits,

(d) requisitioning any public record or a copy thereof from any court or office;

(e) issuing Commissions for the examination of witnesses or documents.

2. The Commission shall also have the power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as in the opinion of the Commission may be useful for, or relevant to, the subject matter of the inquiry.

3. Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code (45 of 1860).

123: Procedure to be followed by the Commission:

The Commission shall have the power to regulate its own procedure (including fixing of places and times of its sittings and deciding whether to sit in public or in private).

13. The Administrator referred the question as to whether the writ petitioner has become subject to any disqualification'' to the Election Commission for opinion. The Election Commission asked the writ petitioner to show cause, so that after hearing the writ petitioner, the Election Commission can give proper opinion in the matter. The Administrator shall have to act according to the opinion of the Election Commission.

14. I do not think that the notice of show cause dated March 1, 2006 is ultra vires as contended by the learned advocate for the petitioner. On the contrary, I find the notice was issued to the writ petitioner to enable her to explain her stand before the Election Commission, so that the Election Commission can give an honest opinion to

the Administrator and that the Administration can safely act according to such opinion.

15. It is submitted by Mr. Amber Majumdar, learned advocate for the petitioner, that the reference to the Election Commission was not competent inasmuch as such reference under sub-Section (5) of Section 12 of the said Regulation of 1994 is to be made by the Administrator himself, but such reference has been made by the Deputy Secretary to the Administrator.

16. Such contention is not factually correct. Mr. S.K. Mandal, learned Government Pleader, produces a copy of the letter dated February 12, 2006 written by the Administrator, who is the lieutenant Governor of these islands, to the Election Commission. The Administrator personally sought for the opinion of the Election Commissioner. Therefore, requirement of sub-Section (5) of Section 12 of the said Regulation of 1994 is complied with.

17. Xerox copy of the said letter dated February 12, 2006 filed in this Court by Mr. Mandal is to be kept with the records:

18. I do not, therefore, find any substance in these writ petitions and all these writ petitions are rejected.

19. However, as the time to file show cause is- shortly expiring, liberty is granted to the petitioners to submit their replies to the show cause notices within seven days from this date. If such replies are filed, the Election Commission is requested to proceed with the matter in accordance with law.

20. By way of abundant caution, I make it clear that I have not gone into the merits of the claim and the counter claim of the parties and all questions are kept open and shall be decided by the Election Commissioner in accordance with law.

21. I make no order as to costs. As a special case, let a xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned advocates appearing for the parties, on their usual undertakings.