

EP No. 1 of 2021
With
I A No. GA 1 of 2021

IN THE HIGH COURT AT CALCUTTA
ELECTION PETITION JURISDICTION

ORIGINAL SIDE

MAMATA BANERJEE
Versus
SUVENDU ADHIKARI

BEFORE:

The Hon'ble **JUSTICE KAUSIK CHANDA**

Date: July 07, 2021

Appearance:

Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. S.N. Mookherjee, Sr. Adv.
Mr. Sanjay Basu, Adv.
Mr. Samik K. Chakraborty, Adv.
Mr. Piyush Agrawal, Adv.
Ms. Utsha Dasgupta, Adv.
Mr. Aman Sharma, Adv.
Mr. Amit Bhandari, Adv.

.....For the petitioner.

1. This is an application for recusal of this Bench from the election petition No. 1 of 2021. The petitioner has challenged the election result declared on May 02, 2021, of Nandigram (assembly constituency 210), impleading the returned candidate as the respondent.

2. It appears that the present application for recusal was filed on June 23, 2021. Since no caveat has been lodged on behalf of the said respondent, and the election petition has not been heard effectively, I have decided to dispose of this application for recusal without hearing the respondent.

3. When the matter was taken up for hearing on June 24, 2021, the petitioner was present online. Her case was argued by Mr. Abhishek Manu Singhvi, learned senior advocate appearing with Mr. S. N. Mookherjee, learned senior advocate.

4. Mr. Singhvi, learned senior advocate, has taken me to the various statements made in the recusal application to suggest that after filing, the election petition was mentioned before some Hon'ble Judges for hearing, but the same was not listed before the said Hon'ble Judges for want of determination.

5. The matter was assigned to this Bench on June 15, 2021, by the Hon'ble Chief Justice (Acting). The petitioner immediately wrote a letter to the Hon'ble Chief Justice (Acting) on June 16, 2021, for reassignment of the petition to a different Bench expressing apprehension of bias against her by this Bench.

6. Referring to the various paragraphs and annexures to the recusal petition, Mr. Singhvi suggested that I should recuse myself from the case since I was associated with the legal cell of the Bharatiya Janata Party and had appeared in a number of cases on behalf of the said party before this Court as a lawyer.

7. Mr. Singhvi referred to two articles published in some national newspapers that reported about two politically sensational cases where I represented the Bharatiya Janata Party as a lawyer before this Court.

8. Two tweets made by a leader of the said party on me in the years 2014 and 2015 have also been referred to.

9. A purported list of cases where I had allegedly represented the said party before this Court has also been annexed, and submissions have been made that such a list is only illustrative but not exhaustive.

10. Two photographs have been annexed to the application showing my presence in a programme organised by the BJP legal cell of the High Court at Calcutta in the year 2016, where the State BJP President was also present. An invitation letter of 2016 BJP legal cell showing my name as one of the speakers of a programme has also been annexed.

11. Mr. Singhvi has also placed reliance upon the letter dated June 16, 2021, whereby reassignment of the case was sought by the petitioner. In the said letter, the petitioner mentioned that when her view was sought on my confirmation as a permanent Judge of this Court by the then Hon'ble Chief Justice of this Court in April 2021, she expressed her objection and reservation against such confirmation. The petitioner stated in the letter that she might not get justice from this Bench since she apprehended that the fact of her objection regarding my appointment as a Judge of this Court was known to me.

12. After placing the application, Mr. Singhvi submitted that my long and close association with the Bharatiya Janata Party prior to my elevation is apparent. The petitioner has challenged the election of the returned candidate who contested the election under the symbol of Bharatiya Janata Party. Mr. Singhvi suggested that there was a conflict of interest in the matter since I had a close, personal, professional, pecuniary and ideological relationship with BJP. Mr. Singhvi urged that justice must not only be done but seen to be done. The recusal application was filed at the earliest possible opportunity, and nothing else had happened that this Bench could not decide the recusal application.

13. Mr. Singhvi submitted that the Hon'ble Judge of this Hon'ble Court should be like Caesar's wife, above suspicion, and it is not worth getting involved in the controversy. Mr. Singhvi urged this Bench to "recuse graciously."

14. It is not necessary to comment upon all the statements made in the application.

15. I, however, must record my appreciation of the fact that the case was argued in a congenial atmosphere and the way Mr. Singhvi placed the application it never took the colour of adversarial litigation.

16. To answer the question whether I should recuse myself from the case, it should be borne in mind that whenever a Judge is faced with the recusal petition on the ground of apprehension of bias, he should not pose unto himself the question as to whether he is biased to the litigant or not. The only limited query a Judge should make as to whether the facts of the case can really give rise to the litigant's mind a reasonable apprehension of bias. The Judge should satisfy himself as to whether in the given facts before him, a reasonable man would apprehend bias. The neutrality of the Judge is totally irrelevant in the context.

17. I am unable to persuade myself to agree to the proposition as advanced by Mr. Singhvi that there is a conflict of interest in the matter since “I have a long, close, personal, professional, pecuniary and ideological relationship” with a political party. The argument of Mr. Singhvi takes too sombre a view of the integrity of a Judge. When a litigant raises the question of bias against a Judge, who has taken the oath to discharge his duties without any fear or favour, the test has to be a real likelihood of bias or real danger of bias. The appearance of impartiality, in such a case, should not be viewed from the perspective of a common man. It is for the Court to decide that in the given facts, a well informed reasonable man would perceive bias. In this case, the question of pecuniary interest does not arise at all. The interest, therefore, must be direct and not remote or tenuous. It is not the case of the petitioner that either of the parties to the proceeding is personally known to me. If a lawyer appears in several cases for a political party, his association with the legal cell of the party or with its leaders is natural. In this country, it is almost impossible not to get a person who may not have said to have some political views. Anyone interested in politics may be said to have an “interest.” Like any other citizen of the country, a Judge also exercises his voting rights in favour of a political party, but he lays aside his individual predilection while deciding a case. A lawyer’s mind is trained

not to identify himself with his client and at the same time be loyal to his duty towards his client. When a lawyer moves from Bar to Bench, he carries with him the same sense of detachment already in-built in him. Ironically, two leading counsel engaged in the case have well known political identities adverse to the petitioner's party. It is preposterous to suggest that a Judge having a past association with a political party as a lawyer should not receive a case involving the said political party or any of its members. The past association of a Judge with a political party by itself cannot form apprehension of bias. This proposition, if allowed to be accepted, would be destructive to the long-lived and deep-rooted notion of neutrality associated with the justice delivery system and lead to the unfair practice of Bench hunting to resist a fair adjudication by an unscrupulous litigant.

18. The petitioner seeks recusal since she apprehends that her objection against my confirmation as a permanent Judge of this Court is known to me. In my view, such ground also cannot justify recusal.

19. The petitioner cannot seek recusal based upon her own consent or objection with regard to the appointment of a Judge. A Judge cannot be said to be biased because of a litigant's own perception and action. It is ludicrous to believe that the petitioner would expect a favourable order

from a Judge whose appointment she has consented to and vice versa.

If such an argument is accepted, the election petition cannot be tried before this Court since the petitioner, in her capacity as the Chief Minister of the State, has either objected or gave consent to the appointments of most of the Hon'ble Judges of this Court.

20. The unfortunate part of the episode is that the letter addressed to the Hon'ble Chief Justice (Acting) was also deliberately made public on June 18, 2021, and has been disclosed in this recusal application also. The letter contained highly confidential information concerning the appointment of a Judge of the High Court, and the petitioner, being the Chief Minister of the State, who took the oath of secrecy, was constitutionally obliged to maintain the secrecy of such information. In all probability, such a ground has been made in a bid to ensure that anyhow or somehow, the case is not heard by this Bench.

21. Now, I deal with the reprehensive route that has been taken in moving this recusal application.

22. Across the country, the practice is to approach the same Judge for recusal before whom the case is assigned. The petitioner approached the Hon'ble Chief Justice (Acting) on the administrative side on 16th June 2021 by way of writing the letter for reassignment of the case.

23. The election petition was first taken up for hearing on 18th June 2021, before this Bench, and quite surprisingly, nothing regarding recusal was revealed. No clue was given to me as to the fact that the petitioner had already approached the Hon'ble Acting Chief Justice for reassignment of the petition.

24. In such circumstances, the following orders were passed:-

“Mr. S. N. Mookherjee, learned senior advocate appears for the petitioner in this election petition. As prayed for, let this matter be listed on next Thursday i.e. 24th June, 2021.

In the meantime, the Registrar, High Court, Original Side, shall file a report before this Court as to whether this petition has been filed in conformity with the Representation of People Act, 1951.”

25. In the course of hearing of the case, I repeatedly asked Mr. Singhvi as to the reason for such suppression on the first date of hearing. Mr. Singhvi replied that since a formal application was yet to be filed, there was no mention of recusal. He submitted that it would not have looked nice to allege apprehension of bias on the said date without an affidavit being filed.

26. This apparently attractive submission of Mr. Singhvi really does not jibe with the series of incidents that immediately followed after the Court proceeding was complete.

27. The script was already prepared; the dramatis personae were ready to launch a well-rehearsed drama outside the Court.

28. On the own showing of the petitioner in the recusal application, it appears that the chief national spoke person and leader of the petitioner's party in the Rajya Sabha was ready by that time with two photographs of mine attending a programme of BJP legal cell in the year 2016 . He uploads the photos at 12.22 P.M. and tweets as follows:-

“Who is that person ‘circled’ in both pics?

Is he Justice Kausik Chanda of Calcutta High Court?

Has he been assigned to hear the Nandigram election case?

Can the judiciary sink any lower?”

29. Another member of the Parliament of the said party also by that time, apparently, was ready with a purported list of cases where I had appeared for the Bharatiya Janata Party as a lawyer. She uploads the list at 1.17 P.M. and tweets as follows:-

“Milord- get a conscience or at least a better veil!

Mamatadi’s Nandigram petition listed before Justice Kausik Chandra, member of BJP’s legal cell & BJP lawyer in numerous appearances

Save our judiciary!”

30. Some other State leaders of the said party came up before the media and demanded recusal of this Bench from the case.

31. A nationwide controversy ensued. The petitioner in the application has annexed a number of tweets to suggest that it is the public perception that the petitioner may not get justice if the case is tried by this Bench. During his submission, Mr. Singhvi, however, submitted there could also be several tweets suggesting that I should not recuse the case, but I should decide the case untrammelled by public perception. I agree with him. Whatever may be the public perception, a case should be decided on the judicially evolved parameters.

32. The aforesaid chronology of the events that took place on June 18, 2021, clearly suggests that a deliberate and conscious attempt was made to influence my decision before the recusal application was placed before me for judicial consideration on June 24, 2021. The calculated psychological offensives and vilification adopted to seek recusal need to be firmly repulsed, and a cost of Rupees five lakh is imposed upon the petitioner. ***[See: (2014) 8 SCC 470 (Subrata Roy Sahara -vs- Union of India)].***

33. Such cost should be deposited with the Bar Council of West Bengal within two weeks from date, and upon such deposit, the Bar Council

shall set aside the amount for the families of the advocates who had succumbed to the Covid-19 pandemic.

34. I have no personal inclination to hear out the case of the petitioner. I had no hesitation in taking up the case, either. It is my constitutional obligation and duty to hear out a case assigned to me by the Hon'ble Chief Justice neutrally and dispassionately. I have, however, decided to recuse myself from this case for a different reason. The imbroglio stemmed from the inception of the litigation was due to the assignment of this case before this Bench. Since the two persons involved in this case belong to the highest echelon of the State politics, in the name of saving the judiciary, some opportunists have already emerged. These trouble-mongers will try to keep the controversy alive and create newer controversies. The trial of the case before this Bench will be a tool to aggrandise themselves. It would be contrary to the interest of justice if such unwarranted squabble continues along with the trial of the case, and such attempts should be thwarted at the threshold. The hearing of the case should proceed seamlessly, like any other litigation before this Court.

35. In view of the discussion above, the application being **IA No. G A No. 1 of 2021** is disposed of. **EP 1 of 2021** stands released from my list.

The advocate on record of the petitioner will file a compliance report with regard to the payment of cost before the Bench that may hear the election petition.

36. All parties to act on a server copy of this order duly obtained from the official website of this Court.

(Kausik Chanda, J.)