

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C). No.413 of 2023

1. Arun Debnath, S/O -Late Krishna Debnath, Resident of -Village- Fulbari Kandi, P.O- Noorpur, P.S- Kailashahar, Gournagar RD Block, Unakoti Tripura, Tripura, Age-36 years
2. Nazmul Haque, S/o-Fazil Haque, R/o- Village- Fulbari Kandi, P.O- Noorpur, P.S- Kailashahar, Gournagar RD Block, Unakoti Tripura, Tripura, Age-39 years
3. Fatema Begum, W/o- Samsur Ali, R/o- Village- Fulbari Kandi, P.O- Noorpur, P.S- Kailashahar, Gournagar RD Block, Unakoti Tripura, Tripura, Age-29 years
4. Rubina Begum, W/o- Abdul Rashid, R/o- Village- Fulbari Kandi, P.O- Noorpur, P.S- Kailashahar, Gournagar RD Block, Unakoti Tripura, Tripura, Age-34 years.

.....Petitioners

_V_E_R_S_U_S_

1. The State of Tripura, (To be represented by the Secretary, Department of Panchayet, Government of Tripura), New Secretariat Building, New Capital Complex, Kunjaban, P.S - New Capital Complex, Agartala, West Tripura, PIN 799010
2. The Director, Department of Panchayet, Govt. of Tripura, Gurkhabasti, Agartala, West Tripura, PIN-799006
3. The DM & Collector, Unakoti District, Kailashahar, Govt. of Tripura.
4. The District Panchayet Officer, Govt. of Tripura, Unakoti District, Kailashahar, Govt. of Tripura,
5. The Block Development Officer, Govt. of Tripura, Gournagar R.D Block, Kailashahar, Unakoti Tripura
6. Bharatiya Janata Party, represented by the President, Paitur Bazar, Kailashahar, Unakoti District.

.....Respondents.

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate. Mr. S. Bhattacharjee, Advocate.
For Respondent(s)	:	Mr. M. Debbarma, Addl. G.A. Mr. B. N. Majumder, Sr. Advocate. Mr. B. Paul, Advocate.
Date of hearing	:	11.12.2023
Date of delivery of judgment and order	:	13.12.2023
Legal reporting	:	YES

HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT
_J_U_D_G_M_E_N_T_O_R_D_E_R_

[T. Amarnath Goud, J]

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the petitioners also heard Mr. M. Debbarma, learned Addl. G.A. and Mr. B. N. Majumder, learned senior counsel assisted by Mr. B. Paul, learned counsel appearing for the respondents.

[2] The present petition has been filed under Article-226 of the Constitution of India for quashing and cancelling the impugned declarations dated 12.06.2023 issued under Form-6B [Rule-27(4)] issued by the BDO, Gournagar RD Block, Kailashahar, Unakoti Tripura, whereby declaring that the petitioners have earned disqualification and ceased to be members of the Fulbarikandi Gram Panchayat. Further, directing the respondents not to hold any bye-election to fill up the panchayat seats of Fulbarikandi Gram Panchayat, in consequence of the declarations made to the effect that the petitioners have earned disqualification and ceased to be the members of Fulbarikandi Gram Panchayat till disposal of the present petition.

[3] The facts in brief are that the petitioners are an elected member of the Fulbarikandi Gram Panchayat, Gournagar RD Block, Unakoti Tripura. Out of the 11 members of the Fulbarikandi Gram Panchayat, 8 members were sponsored by the BJP Party. Thereafter, the BDO, Gournagar RD Block issued show cause notice to the petitioners to show cause as to why they will not be disqualified from being member of the panchayat due to alleged violation of the party whip. The petitioners replied that no whip was issued to them. Even thereafter, by the impugned order dated 12.06.2023 issued by the BDO, Gournagar RD Block, the petitioners have been declared to be disqualified to be the member of the Fulbarikandi Gram Panchayat. Thereafter, declaration also to that effect has been issued. As there is no whip issued by the respondent No.6, so question of violation of party whip does not arise. Without appreciating the letter and spirit of Section-16 of the Tripura Panchayat Act, the petitioners have been disqualified to be the member of Gram Panchayat. Against such arbitrary decision of the respondents, the present petition has been filed.

[4] Mr. P. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the petitioners has submitted that the petitioners who are the duly elected members of the Fulbarikandi Gram Panchayat have challenged the declarations dated 12.06.2023 issued by the BDO, Gournagar RD Block, Unakoti District, Kailashshar to the effect that the petitioners have earned disqualification and ceased to be the members of the Fulbarikandi Gram Panchayat. It has been purportedly held that the petitioners have earned disqualification and resultant thereto ceased to be the members of Fulbarikandi Gram Panchayat. Without serving any whip to the petitioners, without considering the reply to the show cause notice and without making any compliance with the mandate of Section-16 of the Tripura Panchayat Act, 1993.

[5] On 21.02.2022, the petitioners along with three other members of Fulbarikandi Gram Panchayat, lodged a complaint to the District Panchayat Officer, Unakoti District, Kailashahar for removal of pradhan of Fulbarikandi Gram Panchayat. In the complaint, it has been stated that the Pradhan has taken autocratic decision in respect to selection of beneficiaries regarding distribution of fund under Pradhan Mantri Awas Yojana (Urban)-PMAY (U). In the complaint, the petitioners also protested against the corruption in respect to construction of village road, soiling and RCC by the Pradhan the said complaint was made under Form-2 (Rule-5(2) of Tripura Panchayat (Election of Office Bearers) Rules, 1994.

[6] Thereafter, vide notification dated 23.02.2022 in terms of Sub-section-3 of Section-23 of the Tripura Panchayat Act notice were issued to all the members of the Gram Panchayat that a meeting will be convened on 10.03.2022 in connection with no-confidence motion against Pradhan. Thereafter, Panchayat Extension Officer was appointed as Presiding officer to preside over the meeting. On 10.03.2022 special meeting was held for removal of Pradhan of Fulbarikandi Gram Panchayat. In the meeting 7 members voted in favour of no confidence motion against the Pradhan and 4 members voted against the motion. Proceedings have been recorded in the minutes of the meeting by the DPO, Unakoti Tripura.

[7] It has been contended that in the proceeding notice, it was mentioned that whip has been read out but fact remains that no whip has been read out. In the proceeding note there is no written acknowledgement of the

petitioners to the effect that whip was read out in the meeting. In the remarks column, there is no whisper to that effect that whip was read over and served to the petitioners. In the remark column of the proceeding of the meeting of Fulbarikandi Gram Panchayat it is not mentioned that the petitioners have earned disqualification in terms of Rule-27(1) of the Tripura Panchayat (Election of Office Bearers) Rules, 1994.

[8] It is mandatory that if any elected member of Gram Panchayat votes or abstains from voting contrary to party whip, then it should be recorded by the Presiding Officer in the Remark Column against the name of such member. But in the proceeding of the Fulbarikandi Gram Panchayat meeting there is no such mention against the name of the each of the petitioners. Even in the remarks column it is not mentioned that whip was served to the members including the petitioners herein.

[9] Mr. Barman, learned senior counsel has argued on the point that as no action has been done in terms of the minutes of the meeting, as stated above, on 15.03.2022 the petitioners and 3 others also submitted representation to the District Panchayat Officer, Unakoti District, Kailashahar and prayed for issuance of removal letter in favour of Pradhan. Thereafter, the District Panchayat Officer, Unakoti District vide order dated 16.03.2022 in exercise of power conferred under Sub Rule-6 of Rule-5 of the Tripura Panchayats (Administration) Rules, 1994 removed Sundar Mia from the office of the Pradhan of Fulbarikandi Gram Panchayat under Gournagar RD Block.

[10] Subsequently, the petitioners jointly filed writ petition being WP(C) No.418 of 2022 challenging their disqualification vide impugned order/declaration dated 20.04.2022 issued by the BDO, Gournagar RD Block. This Court vide order dated 29.03.2023 allowed the writ petition by quashing and setting aside the impugned order/declarations dated 20.04.2022 issued by the BDO Gournagar RD Block. Thereafter a meeting of Fulbarikandi Gram Panchayat was conveyed on 28.04.2023 for election of Pradhan. 11 members participated in voting by raising their hands. Out of 11 members 7 members voted in favour of Najmul Hoque and 4 members voted in favour of Kanu Debnath. In the meeting, Arun Debnath, proposed the name of Najmul Hoque, the petitioner No.2 as Pradhan and Sundor Mia, proposed the name of Kanu Debnath as Pradhan. Thereafter, members participated in the election and

Najmul Hoque the petitioner No.2 secured and votes and Kanu Debnath secure 4 votes.

[11] The BDO Gournagar RD Block issued memo dated 29.05.2023 against the petitioners asking them to show cause as to why they shall not be disqualified from being members of Fulbarikandi Gram Panchayat as per Clause(b) Sub-Section-1 of Section-16 of Tripura Panchayat Act, 1993. In the memorandum, it is mentioned that the presiding officer of the meeting for election of pradhan of Fulbarikandi Gram Panchayat have informed that the petitioners had voted in the voting process or acted in contrary to the direction issued by the political party and they have become liable for disqualification under Section-16 of the Act, 1993 and Rules-27 of Rules, 1994.

[12] It has been further contended that each of the petitioners submitted reply to the show cause notice on 03.06.2023. In the reply, the petitioners stated that they have not earned disqualification. The petitioners further asserted that no whips were issued or served upon them by the political party on or before the meeting. The petitioners also stated that before obtaining their replies, the BDO, Gournagar RD Block, has unilaterally decided against them, by coming to the conclusion that the petitioners voted against the party whip. The petitioners stated that it is unfortunate and it is against the principle of natural justice and it amounts to being condemned unheard. All the petitioners submitted similar and identical reply.

[13] From the minutes of the proceedings of the Fulbarikandi Gram Panchayat, held on 28.04.2013, reveals, that, no whip was served upon them before the meeting. From the minutes it is found that, 8 Party whips had been received by the District Panchayat Officer. The whips were not served upon the Petitioners even in course of the meetings. Moreover, whip, if any, was not also read out before commencement of the meeting. Without considering the reply to the Show Cause Notice, more specifically without considering that no Whip was issued and if issued, the said Whip was not served upon the petitioners, the BDO, Gournagar RD Block, issued impugned Order, dated 12.06.2023, disqualifying the membership of the petitioners on the alleged ground of violation of party whip.

[14] In the impugned Order, dated, 12.06.2023, there is no whisper as to whether whip was issued & if issued whether such whip was served on the

Petitioners. The Petitioners in their reply to the show cause notice, categorically asserted, that, no whip was issued & no whip was served on them. This categorical assertion of the Petitioners have not been dealt with in the impugned order, dated, 12.06.2023 & the BDO, Gournagar RD Block, did not consider, it necessary to gave specific finding on such assertion of the Petitioners on the basis of the minutes of the proceeding of the meeting of Fulbarikandi Gram Panchayat, which was held on 28.04.2023. Without considering the reply to the show cause notice, & without dealing with the specific assertion, made by the petitioners in the reply to the show cause notice so far non issuance & non receipt of party whip, upon the petitioners, in blatant disregard & disobedience of the mandate of Section-16 of the Tripura Panchayat Act, the BDO, Gournagar RD Block, issued the impugned declaration to the effect, that, the Petitioners have earned disqualification and therefore ceased to be a member of the Fulbarikandi Gram Panchayat.

[15] Before making the impugned declarations, declaring that, the petitioners have earned disqualifications and ceased to be a Members of the Fulbarikandi Gram Panchayat, the BDO did not act in compliance with the rigorous provisions of Section-16 of the Act, 1994. The impugned Order & declarations, both dated, 12.06.2023, holding, that, the petitioners have earned disqualification of their membership have been issued against the letter and spirit of Section-16 of the Act, 1993. The petitioners do not attract any of the grounds as enumerated under Section-16 of the Act, 1993 for earning disqualification. Most arbitrarily & illegally, being swayed by extraneous consideration, the BDO, the respondent No-5 has issued the impugned declarations, declaring that, the petitioners have earned disqualification & ceased to be a member of the Fulbarikandi Gram Panchayet, Gournagar RD Block, Unakoti. The fact remains, that, the petitioners have not earned disqualification & the petitioners have not ceased to be members of the Fulbarikandi Gram Panchayat.

[16] The petitioners have strong prima facie case and the impugned action of the respondents is ex-facie illegal and arbitrary. The petitioners are very much confident, that, the writ petition will be allowed by this Court. During the pendency of the writ petition, the respondents are required to be restrained from holding any election to the Fulbarikandi Gram Panchayet to fill up the seats which were held by the petitioners. The impugned Order & declarations, dated, 12.06.2023, issued by the BDO, Gournagar R.D Block declaring, that, the

petitioners has earned disqualifications under Section-16 of the Tripura Panchayat Act, 1993 to be a members of Fulbarikandi Gram Panchayet, are required to be stayed.

[17] Mr. B. N. Majumder, learned senior counsel assisted by Mr. B. Paul, learned counsel appearing for the respondents has submitted that the present writ petition is not maintainable because of the fact that the question involved in this writ petition is a disputed question of fact and therefore the writ petition of the petitioner is liable to be dismissed in limine. At the very outset, Mr. Majumder, learned senior counsel has contended that the petition under consideration is not maintainable inasmuch as, the petitioners do not disclose any cause of action relating to the failure of the state respondents to carry out any statutory obligation and or any Constitutional obligation for which this high prerogative writ Jurisdiction of this Court may be invoked to issue necessary direction upon the State respondents.

[18] It has been stated that declaration dated 12th June, 2023 had been made in exercise of the powers conferred by Section-16 of the Tripura Panchayat Act, 1993 read with sub Rule (2) and sub-Rule (3) of Rule 27 of the Tripura Panchayats (Election of office Bearers) Rules, 1994. The declarations mentioned above was made based on the proceedings regarding election of pradhan of Fulbarikandi Gram Panchayat under Gournagar R.D. Block held on 28/04/2023 at 11.00 am submitted by the Presiding Officer appointed for election of pradhan of Fulbarikandi Gram Panchayat under Gournagar R.D. Block to the Director of Panchayets dated 02.05.2023 and in which the Presiding Officer has categorically stated that " as per vote casted in Form- 05, it was observed that" following members voted in the voting process or acted contrary to the direction issued by the political party and liable for disqualification under Section-16 of Tripura Panchayat Act, 1993 and Section-27 of Tripura Panchayat (Election of Office Bearer) Rules, 1994.

[19] For the purpose of reference, Section 16(3) of the Tripura Panchayat, Act 1993 reads as follows:-

“If any question arises as to whether a member of a Gram Panchayat has become subject to disqualification under this section, the question shall be referred for decision of the Block Development Officer having jurisdiction over such Gram Panchayat and his decision shall be final”.

Further, Rule-27 of the Tripura Panchayat (Election of office Bearers) Rules, 1994 reads as follows:-

“27(1) In any meeting of a Gram Panchayat, or a Panchayat Samity or a Zilla Parishad where vote is taken for election or for any other purpose, the presiding Officer shall if his attention is drawn that any member has voted or abstained from voting contrary to the direction of the Political Party to which he belongs and thereby has earned disqualification under section 16 or section 76 or section 128 record the facts in the remarks column of the record of Proceedings of the meeting, obtain clarification from such member and then refer the question to the Block Development Officer having jurisdiction for decision in Form-6A.”

Rule-27(4) of Tripura Panchayat (Election of office Bearers) Rule 1994 states that *"if the authority as aforesaid is satisfied on the basis of the report of the presiding officer and after making such inquiry as he may consider necessary that any such member has become disqualified under section 16 record his decision, communicate it to the Gram Panchayat and make declaration in Form 6 B"*. In this particular case the proceeding report as submitted by the presiding officer and subsequent inquiry report clearly mentioned that during the meeting of election of Pradhan of Fulbarikandi Gram Panchayat under Gournagar R.D. Block held on 28.04.2023 at 11.00 AM and the members had voted in the voting process or acted contrary to the direction issued by the Political Party.

[20] It is noteworthy to mention here that along with the show cause reply, petitioners did not submit any substantial evidence to prove that they did not receive the party Whip on or before the election of Pradhan of Fulbarikandi Gram Panchayat. Therefore, the declarations dated 12.06.2023 was done in compliance with the mandate of Section-16 of the Tripura Panchayat Act 1993 and Tripura Panchayat (Election of office Bearers) Rules-1994 and after due consideration of the show cause reply submitted by the petitioners. It has been further contended that the BDO Gournagar R.D. Block had issued the memorandum dated 29.05.2023 to the petitioners asking them to show cause as to why they should not be disqualified from members of Fulbarikandi Gram Panchayat as the presiding officer of the meeting of Fulbarikandi Gram Panchayat conveyed for election of Pradhan on 28.04.2023 at Fulbarikandi Gram Panchayat at 11 AM. The presiding officer had submitted one Form-6A and submitted that the same members earned disqualification under Section-16 of "The Tripura Panchayats Act 1993" and referred the issue of deciding the question of their disqualification for decision under sub Section(2) or as the case may be (3) or both Section-16 of the Act.

[21] In the proceeding note as submitted by the presiding Officer of the meeting for election of pradhan of Fulbarikandi Gram Panchayat under Gournagar R.D. Block held on 28.04.2023 at 11 AM also mentioned that

4(Four) members had voted in the voting process or acted contrary to the direction issued by the political party and are liable for disqualification under Section-16 of Tripura Panchayat Act 1993 and Section-27 of Tripura Panchayat (Election of office Bearer) Rule, 1994. Furthermore, on 29.04.2023, the District President of the political party which sponsored the petitioners have intimated that above mentioned four members of Fulbarikandi Gram Panchayat had violated the party whip and they had voted in the voting process or acted contrary to the direction issued by the political party.

[22] It has been further averred that in show cause reply dated 03.06.2023 the petitioners herein did not adduce any substantial evidence in support of their claim that they were not served whips or no whips were served upon them by the political party on or before the meeting dated 28.04.2023. The allegation brought by the petitioners before obtaining their replies the BDO Gournagar R.D. Block has unilaterally decided against them by coming to the conclusion that the petitioners voted against the party whip is totally false as petitioners had submitted their replies on 03.06.2023 and declarations were made on 12.06.2023 and which is after giving due consideration of their replies.

[23] Furthermore, through issuance of show cause notices to all four members of Fulbarikandi Gram Panchayat were given fair chance in order to place and established their side along with sufficient evidence for consideration on the same as a principle of Natural Justice and this was also mentioned in the order dated 12.06.2023. It has been stated that, the Presiding Officer appointed for election of Pradhan of Fulbarikandi Gram panchayat under Gournagar R.D. Block has clearly stated in his proceeding report that "as per vote casted in Form-05, it was observed that following members voted in the voting process or acted contrary to the direction issued by the political party and liable for disqualification under Section-16 of Tripura Panchayat Act 1993 and Section-27 of Tripura Panchayat (Election of office Bearer) Rule, 1994. Therefore, from the proceeding mentioned above, it clearly proves that all four members as petitioners had voted in the voting process or acted contrary to the direction issued by the political party and liable for disqualification.

[24] Mr. Majumder, learned senior counsel has contended that the BDO Gournagar R.D. Block had issued the memorandum dated 29.05.2023 to the petitioners asking them to show cause as to why they shall not be disqualified

from members of Fulbarikandi Gram Panchayat as the presiding officer of the meeting of Fulbarikandi Gram Panchayat conveyed for election of Pradhan on 28.04.2023 at Fulbarikandi Gram Panchayat at 11 AM had submitted one Form 6A and brought to my notice that same members have earned disqualification under Section-16 of "The Tripura Panchayats Act 1993" and referred the issue of deciding the question of their disqualification for decision under sub Section(2) or as the case may be (3) or both section 16 of the Act.

[25] In the proceeding note submitted by the presiding Officer of the meeting for election of Pradhan of Fulbarikandi Gram Panchayat under Gournagar R.D. Block held on 28.04.2023 at 11 AM also mentioned that 4(Four) members had voted in the voting process or acted contrary to the direction issued by the political party and liable for disqualification under Section-16 of Tripura Panchayat Act 1993 and Section-27 of Tripura Panchayat (Election of office Bearer) Rule 1994.

[26] Furthermore, on 29.04.2023, the District President of the political party which sponsored the petitioners have intimated that above mentioned four members of Fulbarikandi Gram Panchayat had violated the party whip and they had voted in the voting process or acted contrary to the direction issued by the political party. It has been contended that the declaration dated 12.06.2023 was made in compliance with the provision of Section-16 (3) of the Tripura Panchayat Act 1993 read with Rule-27(1) and (4) of the Tripura Panchayat (Election of office Bearers) Rules, 1994. No steps have been taken in order to fill up any vacant Panchayat seat or holding up of any bye-election at Fulbarikandi Gram Panchayat from office of the BDO Gournagar R.D. Block.

[27] It has been submitted that the petitioners have suppressed the fact that prior to the election dated 28.04.2023, the respondent had called all the elected members of BJP Party on 22.04.2023 and there was a verbal discussion with the elected members of Fulbarikandi Gram Panchayat, nominated/ sponsored by the BJP, regarding the whip of the party to elect/ nominate Sri Kanu Debnath for the post of Pradhan for Fulbarikandi Gram Panchayat and in that meeting, it was unambiguously disclosed to all the elected members of the party, including the petitioners, that this time Sri Kanu Debnath will be the candidate of BJP Party for the post of Pradhan for Fulbarikandi Gram Panchayat.

[28] It is further stated that on that day, the petitioners openly expressed their disagreement to the aforesaid decision of the BJP Party, on various pretext, further expressing that they would not follow the said dictum/ whip of the party and would not support Sri Kanu Debnath as the Pradhan for Fulbarikandi Gram Panchayat. Being confronted with such a situation, the President of the District and being duly authorized by the State BJP President, had no other alternative, thereafter communicated the whip of the BJP Party, by way of registered post, addressed to their respective residential addresses on 25.04.2023.

[29] The Registered letters containing the written whip of the BJP Party, in respect of the petitioners dated 25.04.2023 were returned undelivered back to the respondent No. 6, with the postal remark that the letters were refused by all the petitioners. The original envelopes, containing the written whip of the respondent No. 6 are annexed here with and marked as Annexure-R/8. In view of the aforesaid facts it is more than apparent that the petitioners have willfully and deliberately violated the whip of the BJP party. It may further be stated here that Section-27 of the General Clauses Act specifies that when a registered letter is sent to a recognized address and has been refused to be accepted by the addressee it is a proper and legal service of any communication.

[30] In view of the same, the plea of the petitioners that they were not communicated with the whip of the BJP party, is unsustainable in all manners. Be it pointed out that the respondent No. 6 had issued the written whip of the BJP party on 25.04.2023 to the members of the present gram panchayat but only the registered letters of the petitioners were refused by them and all the other 4 members had received the written communication dated 25.04. 2023.

[31] By disagreeing with the decision of the party verbally communicated to the petitioners on 22.04.2023 and by refusing to receive the written communication dated 25.04.2023, sent through registered post, the petitioners have expressed themselves that they are not willing to abide by the whip of the BJP party and therefore there is no room for the petitioners to challenge the disqualification on any legal footing.

[32] The only point which has been ventilated by Mr. P. Roy Barman, learned senior counsel appearing for the petitioners is that which is said to have been issued has not been put to notice with regard to the meeting that has been scheduled on 10.03.2022. Since, they are not aware about the said meeting, the

respondents cannot find fault with the petitioners and as such, they cannot terminate them on the ground as they have violated the same. Hence, the said removal needs to be set aside.

[33] Mr. B. N. Majumder, learned senior counsel assisted by Mr. B. Paul, learned counsel appearing for the respondents has placed on record the notice which are sent through registered post with A/D were returned as the same were refused by the addressee with the postal endorsement. The sealed cover which are received by the respondents were placed on record and in the open Court the same were opened indicating that the notices which were signed on 22.04.2023 and sent to the petitioners through RPAD wherein, the meeting was scheduled on 28.04.2023 and on the envelop also the postal authorities have indicated that the same is refused by the addressee on 28.04.2023.

[34] For the purpose of reference, Section-16 of the Tripura Panchayat Act, 1993 may be reproduced herein below:

"Disqualification on ground of defection"

"16 (1) A member of a Gram Panchayat belonging to any political party shall be disqualified for being a member of the Gram Panchayat (a) if he has voluntarily given up his membership of such political party or

(b) if he votes or abstains from voting in the Gram Panchayat contrary to any direction issued by the Political Party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining in either case, the prior written permission of such political party, persons or authority and such voting or abstention has not been condoned by such political party, person or authority within thirty days from the date of such voting or abstention.

Explanation: For the purpose of this sub-section, a member of a Gram Panchayat shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member.

(2) A member of a Gram Panchayat who has been elected as such, otherwise than as a candidate set up by any political party, shall be disqualified for being a member of the Gram Panchayat if he joins any political party after such election.

NOTE: For the purpose of this Section, "political party" means a political party which has been recognised by the Election Commission of India as a national party or as a state party of this State.

(3) If any question arises as to whether a member of a Gram Panchayat has become subject to disqualification under this Section, the question shall be referred for decision of the Block Development Officer having jurisdiction over such Gram Panchayat and his decision shall be final.

(4) The proceeding under sub-section (3) shall be completed and decision thereon shall be communicated within fifteen days from the date when any such question has been referred.

(5) During pendency of a proceeding, no decision shall be taken by the Gram Panchayat in any meeting for the removal or election of the Pradhan or the Upa-Pradhan.

(6) The disqualification under this Section shall take effect from the date of the decision of the Block Development Officer.

20. That, Rule-27 of the Tripura Panchayat (Election of Office Bearers) Rules, 1994, reads as follows:-

"27.(1) In any meeting of a Gram Panchayat, or a Panchayat Samity or a Zilla Parishad, where vote is taken for election or for any other purpose, the Presiding officer shall, if his attention is drawn that any member has voted or abstained from voting contrary to the direction of the political Party to which he belongs and thereby has earned disqualification under Section- 16, or Section-76 or Section-128 record the facts in the remarks column of the record of proceedings of the meeting, obtain clarification from such member and then refer the question to the Block Development Officer or as the case may be, the District Magistrate having jurisdiction for decision in Form- 6A, or 12A or 17A as the case may be.

2. If the Gram Panchayat or a Panchayat Samity or Zila Parishad received a written information from a political party or from a member that, the member has voluntarily given up the membership of the party or the member having been elected otherwise than as a member of political party has joined the political party, the Pradhan or Upa Pradhan in case of Gram Panchayat, the Chairman or Vice Chairman in case of Panchayat Samity or Sabhadhipati or Sahakari Sabhadhipati in case of Zila Parishad shall refer the question to the block Development Officer or as the case may be the District Magistrate to decide whether such member has earned disqualification under Section-16, or Section-76 or Section-128 in Form 6A, 12A or 17A as the case may be.

3. Every such member who is alleged to have earned disqualification by reason of voting or abstain from voting contrary to the direction of his political party, may submit letter or prior permission or condonation to the Block Development Officer, or as the case may be, the District magistrate having jurisdiction within 30 days from the date of voting and such authority shall take up the question of disqualification only after expiry of the said period of thirty days and decide the same within 15 days from the expiry of the said period of thirty days.

4. If the authority as aforesaid, is satisfied on the basis of the report of the Presiding Officer & after making such inquiry as he may consider necessary that any such member has become disqualified under Section-16 or as the case may be Section-76, or Section-128, record his decision, communicate it to the Gram Panchayat concerned, or as the case may be, the Panchayat Samity or the Zila Parishad and make declaration in Form 6B, or 12B, or 17B as the case may be, that the member of the Gram Panchayat, or as the case may be, the Panchayat Samity or the Zila parishad."

[35] The Hon'ble Apex Court in *C.C. Alavi Haji vs. Palapetty Muhammed & Another* has reiterated the said principle that presumption of service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice un-served, it is deemed to have been served or that the addressee deemed to have knowledge of the notice. For the purpose of reference the same principle may be reproduced hereunder:

“14. [Section 27](#) gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement refused or not available in the house or house locked or shop closed or addressee not in station, due service has to be presumed. [Vide Jagdish Singh Vs. Natthu Singh ; State of M.P. Vs. Hiralal & Ors. and V.Raja Kumari Vs. P.Subbarama Naidu & Anr.] It is, therefore, manifest that in view of the presumption available under [Section 27](#) of the Act, it is not necessary to aver in the complaint under [Section 138](#) of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved.”

[36] It is well settled that a notice refused to be accepted by the addressee can be presumed to have been served on him in a case of the Apex Court [Harcharan Singh v. Shivrani](#), reported in (1981 (2) SCC 535) wherein, it has been held thus:

“Section 27 of the General Clauses Act, 1897 deals with the topic-'Meaning of service by post' and says that where any Central Act or Regulation authorises or requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting it by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The section thus arises a presumption of due service or proper service if the document sought to be served is sent by properly addressing, pre-paying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgement due is received from the addressee or not. It is obvious that when the section raises the presumption that the service shall be deemed to have been effected it means the addressee to whom the communication is sent must be taken to have known the contents of the document sought to be served upon

him without anything more. Similar presumption is raised under Illustration (f) to Section 114 of the Indian Evidence Act whereunder it is stated that the Court may presume that the common course of business has been followed in a particular case, that is to say, when a letter is sent by post by pre-paying and properly addressing it the same has been received by the addressee. Undoubtedly, the presumptions both under Section 27 of the General Clauses Act as well as under Section 114 of the Evidence Act are rebuttable but in the absence of proof to the contrary the presumption of proper service or effective service on the addressee would arise. In the instant case, additionally, there was positive evidence of the postman to the effect that the registered envelope was actually tendered by him to the appellant on November 10, 1966 but the appellant refused to accept. In other words, there was due service effected upon the appellant by refusal. In such circumstances, we are clearly of the view, that the High Court was right in coming to the conclusion that the appellant must be imputed with the knowledge of the contents of the notice which he refused to accept. It is impossible to accept the contention that when factually there was refusal to accept the notice on the part of the appellant he could not be visited with the knowledge of the contents of the registered notice because, in our view, the presumption raised under Section 27 of the General Clauses Act as well as under Section 114 of the Indian Evidence Act is one of proper or effective service which must mean service of everything that is contained in the notice. It is impossible to countenance the suggestion that before knowledge of the contents of the notice could be imputed the sealed envelope must be opened and read by the addressee or when the addressee happens to be an illiterate person the contents should be read over to him by the postman or someone else. Such things do not occur when the addressee is determined to decline to accept the sealed envelope. It would, therefore, be reasonable to hold that when service is effected by refusal of a postal communication the addressee must be imputed, with the knowledge of the contents thereof and in our view, this follows upon the presumptions that are raised under Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act.

[37] In view of the same, this Court presumes that the notices are served upon the petitioners as it is settled principle of law that any refusal of the summons/notices are presumed to be served. Nowhere in the statute the period of service of notices are specified. In absence of the same, notices which are said to have been sent are deemed to be served.

[38] In that view of the matter, the present petition preferred by the petitioners stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

A. Ghosh

**ANJAN
GHOSH**

Digitally signed by
ANJAN GHOSH
Date: 2023.12.18
10:34:39 +05'30'