

HIGH COURT OF TRIPURA
AGARTALA
W.P.(C) 928/2022

Inuchh Ali, son of late Mashuk Ali, resident of Srinathpur, Gournagar RD Block, P.O. Babur Bazar, P.S. Irani, Kailasahar, District- Unakoti, Tripura

---- **Petitioners**

Versus

1. The State of Tripura, represented by the Secretary, Department of Panchayat, 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 Panchayat, Government of Tripura, Gurkhabasti, Agartala, West Tripura, Pin- 799006

3. The DM & Collector, Unakoti District, Kailasahar, Government of Tripura

4. The District Panchayat Officer, Government of Tripura, Unakoti District, Kailasahar, Government of Tripura

5. The Block Development Officer, Gournagar RD Block, Kailasahar, Unakoti, Tripura

----**Respondents**

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate
Mr. K. Nath, Advocate

For Respondent(s) : Mr. D. Bhattacharjee, GA
Mr. S. Saha, Advocate

Date of hearing and delivery : **29.03.2023**

Of Judgment & Order

Whether fit for reporting : **Yes / No**

HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT

(Amarnath Goud, ACJ)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Nath, learned counsel appearing for the petitioner as well as Mr. D. Bhattacharjee, learned GA assisted by Mr. S. Saha, learned counsel appearing on behalf of the respondents.

2. Petitioners, have filed this writ petition for quashing the declarations dated 21.10.2022 issued by the respondent no. 5 followed by impugned

memo dated 12.10.2022 declaring that the petitioner has earned disqualification and ceased to be the members of the Srinathpur Gram Panchayat. The petitioner is the duly elected member of Srinathpur Gram Panchayat. It is the further case of the petitioner that all on a sudden the respondent no. 5 vide memo dated 12.10.2022 issued a show cause notice upon the petitioner asking him to show cause as to why he should not be disqualified from being a member of Srinathpur Gram Panchayat. The petitioner has submitted his reply dated 17.10.2022 contending that before convening the special meeting no party whip was served upon him and since no party whip was served upon him so question of violation of whip does not arise at all.

3. During arguments, Mr. Roy Barman, learned senior counsel appearing for the petitioners has argued that there was no communication on the part of respondent no. 5 for issuance of party whip. Mr. Roy Barman, learned senior counsel has further argued that mere reading of the party whip cannot substitute the communication of the party whip to the elected members of the gram panchayat. Mr. Roy Barman, learned senior counsel has also argued that since whip was not served upon the petitioners prior to commencement of the election process, the ceasing of the membership of the petitioners cannot sustain as per law. Learned counsel has lastly argued that the impugned declaration order dated 21.10.2022 (Annexure 3 and 4 to the writ petition) followed by the impugned memo dated 12.10.2022 (Annexure

1 to the writ petition) ceasing the membership of the petitioners of the gram panchayat be quashed/set aside.

4. Controverting the submissions of learned counsel, Mr. D. Bhattacharjee, learned GA has submitted that since the petitioners have violated the party whip they have earned disqualification under Section 16 of the Tripura Panchayat Act (for short, the Act). Mr. Bhattacharjee, learned GA has produced the records. Lastly, learned GA has submitted that there is no illegality in the impugned declaration dated 21.10.2022 followed by the impugned memo dated 12.10.2022 passed by the respondent no. 5.

5. We have heard learned counsel appearing for the parties. We have also carefully perused the record, as produced by learned GA in terms of order dated 07.11.2022 passed by this court.

6. The record clearly demonstrates that the Memo dated 08.09.2022 issued by the President, BJP, Tripura State it is seen that the President had authorized one Sri Arun Saha, District General Secretary, Unakoti District, BJP to issue Whip on behalf of the party to the elected members of Srinathpur Gram Panchayat. The petitioner in his writ petition has categorically denied to have received such whip. From the proceeding regarding election of Pradhan and Upa Pradhan of Srinathpur Gram Panchayat held on 12.09.2022, it is evident that the whips were read out loudly in Bengali one by one to make the concern members aware about the contents of the whips. Moreover, members put their signature in the whips issued by the respective political parties after they go through the whips.

7. The record as produced by learned GA clearly demonstrates that the Party Whip was duly served upon the petitioner on 09.09.2022 and the petitioner has duly acknowledged the same by putting his signature which is also verified by this court. In view of the same, the contention of the learned counsel appearing for the petitioner that without serving party whip upon the petitioner, the respondents have taken adverse action against the petitioner, has no merit. This court has also compared the signature of the petitioner on the whip which is found similar to that made in the verification affidavit of the petitioner filed alongwith this writ petition. Further, the entire proceeding was videographed which evidence is also produced with the original record produced by the learned GA.

8. The disqualification of the petitioners and ceasing them to be members of the Gram Panchayat relate to Section 16 of the Tripura Panchayat Act, 1993, which reads as under:-

"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."

9. Section 16 of the Act, clearly says that any member of Gram Panchayat would stand disqualified if he voluntarily gives up his party membership or if he votes or abstains from voting in the panchayat disobeying party whip or direction issued by the party and when such voting has not been condoned by the party within 30 days from the date of such voting. In the instant case, it is evidently clear that the party whip was duly served upon the petitioner which the petitioner has duly acknowledged. Thus, the submission made by the learned senior counsel appearing for the petitioner that no party whip was served upon him has got no merit.

10. From the above analysis, it is abundantly clear that disqualification of the petitioner from being member of the Srinathpur Gram Panchayat is wholly proportionate to the default committed by the petitioner under Section 16 of the Act. Thus, we have no hesitation in holding that the impugned declaration dated 21.10.2022 followed by impugned memo dated 12.10.2022 issued by the respondent no. 5 declaring that the petitioner has earned disqualification and ceased to be the member of the Srinathpur Gram Panchayat is relevant under the statute. This court *prima facie* feels that the impugned action of the respondents against the petitioner needs no interference.

11. In the result, we are of the opinion that the declaration dated 21.10.2022 followed by impugned memo dated 12.10.2022 disqualifying the petitioner from the membership of Srinathpur Gram Panchayat for violation of party whip stands good and is justified. The petitioner is, accordingly, declared to be disqualified as a member of Srinathpur Gram Panchayat. The writ petition, therefore, stands dismissed.

Pending application(s), if any, also stands disposed.

JUDGE

CHIEF JUSTICE (ACTING)



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