

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.454/2023

Mr. Raju Miah, S/O. Arif Ali, Resident of Village-Jubaraj Nagar, Kailashahar,
P.O.:Babur Bazar, P.S.:Irani, Sub-Division:-Kailashahar, District:-Unakoti,
Age-41 years.

..... Petitioner(s).

V E R S U S

1. The State of Tripura, to be represented by the Secretary, Department of
Water Resource, Government of Tripura, New Secretariat Complex, P.S.-New
Capital Complex, Agartala, District-West Tripura, PIN-799010.

2. The Chief Engineer, (R&B), PWD, New Secretariat Complex, P.S.-New
Capital Complex, Agartala, District-West Tripura, PIN-799010.

3. The Executive Engineer, Water Resource Division No.VI, Government of
Tripura, Kailashahar, Unakoti, Tripura.

4. The Superintendent Engineer, Water Resource Circle No.II, Government of
Tripura, Kumarghat, Tripura (U).

5. The Assistant Engineer (P), Water Resource Division No.VI, Government of
Tripura, Kailashahar, Unakoti, Tripura.

6. Md. Nurul Islam, Barband, Tilabazar, Kailashahar, Tripura (U).

7. M/S. Bhaskar Roy, East Gobindapur, Kailashahar, Tripura (U).

(Notice upon the Respondent Nos.-6 & 7 be served through the O/o the
Executive Engineer, Water Resource Division No.VI, Government of Tripura,
Kailashahar, Unakoti, Tripura.

.....Respondent(s).

For Petitioner(s)	: Mr. P. Roy Barman, Sr. Advocate, Mr. Samarjit Bhattacharjee, Advocate, Mr. Kawsik Nath, Advocate.
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For Respondent(s)	: Mr. Mangal Debbarma, Addl. G.A.
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**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Date of hearing and judgment: **25th September, 2024.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr.
Samarjit Bhattacharjee, learned counsel appearing for the petitioner and Mr.

Mangal Debbarma, learned Additional Government Advocate appearing for the respondents-State.

2. Petitioner was a Panchayat member of Jubarajnagar Gram Panchayat, Gournagar R.D. Block, Unakoti, Tripura during the term 2019-2024. He participated in 3(three) tendering process issued by the Executive Engineer, Water Resource Division No.VI, Kailashahar, Tripura (U). His tenders were not accepted by the Executive Engineer as communicated by the impugned letter dated 02.06.2023 as per the guidelines contained in Section 15(1)(c) of the Tripura Panchayats Act, 1993 and Section 22(1)(c) of the Act as engaging in a contract of work with the Government is considered to be an office of profit for a member of Panchayat. Petitioner made representation on 27.06.2023 before the Executive Engineer, *inter alia*, submitting that the provisions of the Tripura Panchayats Act, 1993 do not disentitle him from participating in any tendering process issued by the Government. Therefore, it should not act as a disqualification.

3. This was replied vide letter dated 30.06.2023 (Annexure-6) by the respondent-Executive Engineer stating that though the term of office is not defined in the Tripura Panchayat Act nor in the Constitution of India but the State legislature has the power to make law to declare the offices, holder of which shall be exempted from such disqualification. According to the Tripura State Legislature Members (Removal of Disqualifications) Act, 1972 and the schedule attached thereunder, there are 7(seven) offices which are not considered as office of profit. Rest offices not enlisted are considered as office of profit. Earning anything under a contract of work with the Government, therefore, shall be considered as an office of profit for a member of Panchayat.

On this basis, the respondents have also opposed the prayer of the writ petitioner seeking quashing of the letter of non-acceptance of his tender dated 02.06.2023 (Annexure-4) despite being L-1. Petitioner has also sought quashing of the communication dated 30.06.2023 issued in response to his representation. Petitioner has also asked the respondents to accept his tenders. The term of the petitioner as Panchayat member has come to an end by now.

4. Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel appearing for the petitioner, submits that the provisions of the Tripura Panchayats Act, 1993 does not provide for disqualification of any member of the Gram Panchayat for entering into a contract with the Government and that too the contract not relating to the area of the Panchayat in which he is a member. As such, the impugned action is violative of the provisions of the Act of 1993 and also infringes his right to carry on occupation, trade or business in terms of Article 19(1)(g) of the Constitution of India. Such restriction, if any, upon a member of the Gram Panchayat would be unreasonable and beyond the conditions enumerated under Article 19(6) of the Constitution of India. Learned senior counsel for the petitioner further submits that at least an opportunity of show-cause should have been given to the petitioner before not accepting his tender. Therefore, impugned action is violative of principles of natural justice.

5. Mr. Mangal Debbarma, learned Addl. Government Advocate appearing for the State, submits that the petitioner being a holder of elected office under the Tripura Panchayats Act, 1993 cannot be allowed to indulge in such business which disqualifies him for being either appointed as a member of the Panchayat or to continue as the member of the Panchayat since engaging in

contract with the Government is not one of the offences exempted from the category of disqualification under the Tripura State Legislature Members (Removal of Disqualifications) Act, 1972. It would also not be proper for a Panchayat member to engage in profitable activity with the government even in an area beyond his Panchayat as it would be unethical. It is submitted that no action of disqualification of the petitioner was taken for his participation in the tender. But being an elected member of the Panchayat, his tender could not have been accepted, otherwise it would have amounted to allowing a member to engage in office of profit which could lead to his disqualification. Besides the above, it is submitted that the petitioner has been duly informed of the reasons for non-acceptance of his tender both by the impugned letters dated 02.06.2023 and 30.06.2023 (Annexures-4 & 6 respectively). Therefore, there is no violation of principles of natural justice. It is nowhere implicit that even for non-acceptance of tender, an opportunity of hearing has to be given in compliance of the principles of natural justice to a tenderer. Therefore, the impugned action is perfectly legal and justified and needs no interference.

6. We have considered the submissions of learned counsel for the parties and also taken into consideration the grounds of challenge urged by the petitioner against the non-acceptance of his tender based on the relevant averments placed on record.

7. Participation in the tendering process itself does not confer a right upon a prospective bidder to be allotted the work. In the present case, the tender submitted by the petitioner while holding the office as a member of Panchayat under the Tripura Panchayats Act, 1993 would not fall in the category of office of profit as exempted from disqualification under the Tripura State Legislature

Members (Removal of Disqualifications) Act, 1972. The member of a local body constituted in terms of the 73rd amendment to the Constitution by the Tripura Panchayats Act, 1993 would also be guided by the spirit of the Act of 1972 like the elected members of the legislature.

8. Though the Tripura Panchayats Act does not specifically enumerate categories of office of profit which incur disqualification for an elected member but the spirit of the Tripura State Legislature Members (Removal of Disqualifications) Act, 1972 can definitely be relied upon as the relevant provisions of Section 15(1)(c) and 22(1)(c) speak of disqualification of a member of the Gram Panchayat on the enumerated grounds including holding any office of profit under the Central Government or any State Government or Autonomous District Council or any Zilla Parishad or any Panchayat Samiti or a Gram Panchayat. Petitioner was at risk to incur disqualification, had the tender been accepted and the work allotted in his favour by the respondent-State. Non-acceptance of his tender, therefore, saved him from likely disqualification as an elected member as entering into the contract with the Government could be termed as an office of profit.

9. Right to freedom under Article 19(1)(g) to carry on business or occupation is hedged with reasonable restrictions. The statutory restriction under the Act of 1972 and the Panchayat Act, 1993 have a salutary purpose that elected members of the legislature or for that matter local body do not engage in acts which could be termed as an office of profit leading to their disqualification. Otherwise such a course may lead to unethical practices. It is likely that a member of Gram Panchayat may engage in acts constituting office of profit in another Panchayat while similar reciprocal acts can be committed

by the members of same or other Panchayats. This could lead to an unholy nexus.

10. Therefore, in exercise of our writ jurisdiction, we are satisfied that no prerogative writ can be issued to interfere in the impugned action of the respondents. Accordingly, the writ petition is dismissed.

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

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ



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