

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

WP(C) No.743 of 2023

Habib Uddin

.....Petitioner

_V_E_R_S_U_S_

The State of Tripura & Others

.....Respondents

For Appellant(s) : Mr. Somik Deb, Sr. Advocate.

Mr. P. Chakraborty, Advocate.

For Respondent(s) : Mr. K. De, Addl. P.P.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

HON'BLE MR. JUSTICE BISWAJIT PALIT

_F_I_N_A_L_O_R_D_E_R_

19.03.2024

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. P. Chakraborty, learned counsel appearing for the petitioner also heard Mr. K. De, learned Addl. G.A. appearing for the respondents. Despite notices have been served, there is no representation on behalf of the respondent Nos.6 & 7 but, further opportunity was given to the respondents No.6 & 7 on 18.03.2024. Today, when the case is called none appears for the respondents No.6 & 7. Since the matter came up for final hearing and counter affidavit is also filed by the respondents in respect of the impugned order dated 24.08.2023, today the matter is taken up for final disposal.

[2] The present petition has been filed under Article-226 of the Constitution of India directing the respondents to transmit the records relevant to the subject matter of the petition for rendering substantive and conscionable justice to the petitioner and for quashing the impugned order dated 24.08.2023 also to forthwith revoke the impugned order dated 24.08.2023 and to remove the disqualification of the petitioner and restore his status as an elected Member of the Srinathpur Gram Panchayat, Under Gournagar RD Block. Further, restraining the respondents from acting in any manner in furtherance of the impugned order dated 24.08.2023.

[3] The petitioner has prayed for the following reliefs:

“i. Issue Rule, calling upon the respondents and each one of them to show cause as to why a writ of certiorari and/or in the nature thereof, shall not be issued, for directing them, to transmit the records, appertaining to this writ petition, lying with them, for rendering substantive and conscionable justice to the petitioner and for quashing/setting aside the impugned order dated 24.08.2023 (Annexure-10 supra).

ii. Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, for mandating/directing them, to forthwith revoke/rescind the impugned Order dated 24.08.2023 (Annexure-10 supra), and thereupon, for directing/mandating them, to remove the disqualification of the petitioner, and restore his status as an elected Member of the Srinathpur Gram Panchayat, under Gournagar RD Block;

iii. Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Prohibition and/or in the nature thereof, shall not be issued, for restraining/prohibiting them, from acting in any manner, in furtherance of the impugned Order dated 24.08.2023 (Annexure-10 supra);

iv. In the Ad-interim, and thereafter, on hearing the parties, in the Interim, an Order, in terms of relief (iii) supra;

v. Call for the records appertaining to this petition;

vi. After hearing the parties, be pleased to make the Rule absolute in terms of i. to iv. above;

vii. Costs of and incidental to this writ proceeding;”

[4] The facts in brief are that the petitioner is a resident of Srinathpur Gram Panchayat, falling under Gournagar RD Block. The petitioner was fielded as a candidate, from the political party, namely, Communist Party of India (Marxist), for contesting the election, as a Member of Srinathpur Gram Panchayat under Gournagar RD Block. After the elections were over, the petitioner was elected as a Member of Srinathpur Gram Panchayat under Gournagar RD Block. The petitioner was discharging his functions with utmost sincerity, dedication & devotion. On 07.07.2023, the Secretary. CPI(M). Kailashahar Sub-divisional Committee issued a Whip, under Section 16 of the Tripura Panchayat Act, 1993, in the name of five persons, including the petitioner. It may be pertinent to mention herein that even though, the said Whip was issued, but at no point of time, the same was served or caused to be served on to the petitioner, and therefore, the petitioner had no idea about the issuance of the said purported Whip dated 07.07.2023. Thereafter, on the strength of the Minutes of the proceedings, the petitioner was served with a Show Cause Notice dated 14.08.2023, as to why he shall not be disqualified, from being a Member of Srinathpur Gram Panchayat, under Section 16(1)(b) of the Tripura Panchayats Act, 1993, thereby directing the petitioner, to furnish his Reply, within a period of seven days. Pursuant thereto, on 21.08.2023, the petitioner submitted his Reply, inter alia stating that he was never served with any Whip from political party, neither before nor during the election process. In pursuance thereof, the Block Development Officer, Unakoti District, Government of Tripura issued an Order dated

24.08.2023, thereby disqualifying the petitioner, under Section 16(1)(b) of the Tripura Panchayats Act, 1993, allegedly on the ground for voting contrary to the direction of the political party, to which he belonged. Hence, this writ petition is presented.

[5] Mr. Somik Deb, learned senior counsel assisted by Mr. P. Chakraborty, learned counsel appearing for the petitioner has submitted that it is an admitted fact that the petitioner has been disqualified as a Member of the Gram Panchayat solely on the ground that in the meeting he has acted contrary to the Whip, issued to him. Even though, in the minutes it has been noted that the District Panchayat Officer had received the Whips issued by the political parties, namely CPI (M) & INC, therein nothing is on record to suggest the said Whip was ever served on the petitioner or that a copy of the said Whip was ever read over in the said meeting of election.

[6] There is nothing on record to establish that the Whip was ever served on to the petitioner or that the said Whip was shown, read over and explained to the petitioner, prior to the holding of the meeting for election. On the contrary, the petitioner having represented on 21.08.2023 categorically stating that neither the Whip was served on him nor the same was read over by the Presiding Officer, at the time of meeting, the impugned order dated 24.08.2023 is grossly unsustainable.

[7] A plain reading of Section-16(1)(b) of the Tripura Panchayat Act, 1993 would lead to the following irresistible conclusions viz (i) i. a direction must be issued, on to an elected Member, for voting or abstaining from voting on to an election of the Gram Panchayat, by the - a. political party to which the elected Member belongs, or b. by any person or authority, authorized by such political party in this behalf; ii. The conferment of authority, on to such authorized person, by the political party, must therefore, be express; iii. The elected Member would stand disqualified, if he votes or abstains from voting in the Gram Panchayat, contrary to the direction so issued: iv. The disqualification may be removed, by way of condonation by the political party.

[8] Even though, from a plain reading of the Whip dated 07.07.2023 it has been noted that the issuing authority has been authorized by the President of the Tripura Pradesh Congress Committee, to issue a Whip, but no supporting document, in support of the said statement of the authority to issue a Whip has been appended, and therefore, the said Whip cannot be construed to be a valid Whip, within the

meaning of Section 16 of the Tripura Panchayats Act, 1993. The Whip having been never served on to the petitioner, nor the same having been read out & explained to the petitioner, prior to the meeting of the Gram Panchayat, as would be evidently clear that from the Minutes of the Meeting (Annexure-7 supra), the show cause notice dated 14.08.2023 and the final order dated 24.08.2023 coupled with the letter of the petitioner dated 21.08.2023, whereby he has succinctly contended that neither the Whip was served to him, nor the same was read over to him, prior to the meeting of the Gram Panchayat, by the Presiding Officer.

[9] Even if it is construed that the said Whip was within the province of the knowledge of the petitioner, then also, taking the said Whip to its logical end, the direction that was issued to the petitioner, was to abstain from voting on the date mentioned therein, i.e., 23.08.2023 AD, and that a Whip must be strictly construed, and purposive construction has no manner of application. the impugned Order of disqualification dated 24.08.2023 is contrary to the Statutory prescriptions & the Constitutional mandate, and further that the same is in gross defiance of the cardinal principles of natural justice, existence of any alternative remedy would not impede the adjudication of this petition. The impugned Order of disqualification dated 24.08.2023 is grossly unsustainable on account of the above mentioned reasons.

[10] Mr. K. De, learned Addl. G.A. appearing for the respondents has submitted that the BDO has passed the impugned order dated 24.08.2023 on the strength of the record and on the fact that the petitioner has acted against the Whip thus, the order which is passed is strictly in conformity in law and prayed to dismiss the petition.

[11] In view of above this Court is of the opinion that the petition is filed assailing the orders passed by the Block Development Officer [BDO for short] holding the petitioner disqualified. The petitioner is a member of Panchayat and conducting his responsibility strictly in conformity in law. To their surprise, a meeting was conducted and accordingly, they have participated and exercised their franchise. The petitioner received a show cause notice in the form of memorandum dated 14.08.2023 to which the petitioner has submitted his explanation to the show cause notice on 21.08.2023 and categorical statement has also been made that neither such authorization of issuing any Whip or copy was read over nor served on the petitioner and there is no proof of the same and in absence of that, the petitioner has

participated in the meeting. The respondents finding fault though the petitioner is not at fault passed the impugned order dated 24.08.2023 which is *ex-facie*, illegal and contrary to the law.

[12] Further, counsel for the petitioner placed reliance upon Section-16(1) (b) of the Tripura Panchayat Act and Rule-27 of the Tripura Panchayat (Election of Officer Bearers) Rules, 1994. Learned senior counsel appearing for the petitioner has also drawn our attention to a judgment of this Court passed in WP(C) No.929 of 2021 and submitted that the present petition is also covered by the same judgment and prayed to allow the petition.

[13] For the purpose of reference, Section-16 of the Tripura Panchayat Act, 1993 may be reproduced hereunder:

“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.”

[14] Further, the procedure to disqualify any Panchayat member on the ground of defection is laid down in Rule-27 of Tripura Panchayat (Election of Office Bearers) Rules, 1994 [for short, the Rules, 1994) which reads as under:

“27. (1) In any meeting of a Gram Panchayat, or a Panchayat Samiti 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 Samiti or a Zilla 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 a 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 Samiti or Sabhadhipati or Sahakari Sabhadhipati in case of Zilla 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 abstained 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 thirty 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 fifteen 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 and after making such enquiry 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 Samiti or the Zilla Parishad and make declaration in Form 6B, or 12B, or 17B as the case may be, that the member has ceased to be the member of that Gram Panchayat or, as the case may be, the Panchayat Samiti or the Zilla Parishad.”

[15] 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.

[16] Rule-27 of the Rules, 1994 demonstrates that in any meeting of Gram Panchayat where vote is taken for election, the Presiding Officer of the meeting shall, if his attention is drawn to the fact that any elected member of the Panchayat in such meeting has voted or abstained from voting contrary to the direction of the political party to which he belongs and has thereby earned disqualification under the Act, record the facts in the proceedings of the meeting and after obtaining clarification from the members, shall refer the matter to the BDO. Under Sub-section-(3) of Section-27 of the Rules, the concerned member who is alleged to have earned such disqualification by reason of voting or abstention from voting contrary to the Whip issued from his party can defend his case by submitting to the BDO a letter or prior written permission of his party or condonation by such party within 30 days and the BDO shall take up the question of disqualification only after expiry of the said period of 30 days and decide the matter within 15 days thereafter. Under Sub-section-(4) of Section-27 of the Rules, if the authority, aforesaid, is satisfied on the basis of the report of the Presiding Officer and his own inquiry that such member has become disqualified for the reason aforesaid, he may record his decision and communicate it to the concerned Panchayat and make a declaration in prescribed form that the member has ceased to be a member of the Gram Panchayat.

[17] As per the statutes of the Act and Rules made thereunder, it is essential to communicate party Whip prior to the commencement of the election process. Mere reading loudly of the Whip does not come within the purview of the said Act and Rules. Further, there is no evidence on record that any written intimation of the party Whip was ever served upon any of the petitioner. There is no evidence also on record that such a Whip, in any manner, being communicated to the petitioner by any of the authorized members of the party.

[18] As per the provisions of Section-16 of the Panchayat Act and Rules-27 of the Panchayat Rules, even a meeting is said to be convened for removal of the office bearers of the Gram Panchayat, reasonable opportunity needs be given and in the place where Whip has been issued under the Acts and Rules, service of Whip is an essential ingredient. In the present case, the counsel for the petitioner submits that no such Whip has been served upon the petitioner herein. To this, learned counsel for the respondents in their counter affidavit has submitted that the said Whip was read out in the meeting. The said contention, unless is established, cannot be taken for granted. More so, when the law does not permit the said reading over of the Whip,

this court is of the *prima facie* view that doctrine of *audi alteram partem* has been grossly violated by the respondents.

[19] Admittedly, it is seen from the record that the meeting was held and there was no authorization and proof of service of any Whip is placed on record by the respondents and the argument advanced on behalf of the respondents is for legal requirement. Insofar as the specific reply which is made by the petitioner to the memorandum dated 14.08.2023 indicating that no authorization or proof of service of any Whip ever serve on them, the BDO who has passed the impugned order dated 24.08.2023 has not dealt with this fact.

[20] From the above analysis, it is abundantly clear that disqualification of the petitioner from being member of the Gram Panchayat is wholly disproportionate to the default committed by the respondents under Section-16 of the Act and under Rule-27 of the Rules. In view of the above, this Court has no hesitation to say that the impugned proceeding is *ex-facie* and the same is violative of principle of natural justice and is liable to be set aside. On examining the judgment passed by this Court in WP(C) No.929 of 2021, this Court feels that the same is also squarely fixed into the present facts and circumstances of the case and thus, the petitioner herein is entitled for the same reliefs. Accordingly, the present writ petition stands allowed consequently, the impugned order is set aside. The petitioner is declared to continue as elected Office Bearers till his tenure, if not, facing any other dis-qualification. The writ petition, therefore, stands allowed and thus disposed of. Pending application, if any, shall stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

A. Ghosh

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