

THE HIGH COURT OF TRIPURA
AGARTALA

W.P. (C) 483 of 2014

Mukul Malakar (Deb)
W/O. Shri Swapan Malakar,
Upa-Pradhan, Harinakhala Gram
Panchayats under Mohanpur R.D.
Block, P.O. Mohanpur,
PS – Sidhai, West Tripura.

..... *Petitioner*

- Vs. -

1. The State of Tripura,
Represented by the Secretary to the
Panchayats Department,
Government of Tripura,
PS – New Capital Complex,
P.O. Kunjaban, Agartala,
West Tripura.
2. The Director,
Panchayats Department,
Government of Tripura,
PS – New Capital Complex,
P.O. Kunjaban, Agartala,
West Tripura.
3. The District Panchayat Officer,
West Tripura District,
Panchayats Department,
Government of Tripura,
PS – New Capital Complex,
P.O. Kunjaban, Agartala,
West Tripura.
4. The Sub-Divisional Magistrate,
Mohanpur Sub-Division, Mohanpur,
P.S. – Sidhai, West Tripura.
5. The Block Development Officer,
Mohanpur R.D. Block, Mohanpur,
P.S. – Sidhai, West Tripura.

6. Smti Rina Sarkar,
Wife of Sri Swapan Sarkar,
Village – Harinakhala, PS – Sidhai,
P.O. Fatikcharra T.E., West Tripura.
7. Smti Gita Rani Sarkar,
Wife of Sri Kanu Sarkar,
Village – Harinakhala, PS – Sidhai,
P.O. Fatikcharra T.E., West Tripura.
8. Smti Sushama Sarkar,
Wife of Sri Ranjit Sarkar,
Village – Harinakhala, PS – Sidhai,
P.O. Fatikcharra T.E., West Tripura.
9. Smti Rupa Shil,
Wife of Sri Ratan Shil,
Village – Harinakhala, PS – Sidhai,
P.O. Fatikcharra T.E., West Tripura.
10. Sri Debasish Ghosh,
Son of Late Ramesh Chandra Ghosh,
Village – Harinakhala, PS – Sidhai,
P.O. Fatikcharra T.E., West Tripura.
11. Sri Adhanya Das,
Son of Sri Amulya Das,
Resident of Tulabagan Chowmuhani,
PO – Mohanpur, PS – Sidhai,
West Tripura District.
12. Sri Utpal Debnath,
Son of Late Umesh Debnath,
Resident of Gopalnagar,
PO – Mohanpur, PS – Sidhai,
West Tripura District.
13. Sri Niranjan Rudrapaul,
Son of Lt. Felu Charan Rudrapaul,
Resident of West Taranagar,
PO – Mohanpur, PS – Sidhai,
West Tripura District.
14. Smti Sushama Debnath,
Wife of Sri Dinesh Debnath,
Resident of Fakirmura,
P.O. Fatikchara T.E.,
PS – Sidhai, West Tripura District.

15.Sri Rakhal Sarkar,
Son of Late Mahendra Sarkar,
Resident of village – Harinakhala Sibir,
P.O. Fatikchara T.E.,
PS – Sidhai, West Tripura District.

16.Sri Sanjit Sabar,
Son of Late Surendra Sabar,
Resident of Gopalnagar T.E.,
P.O. Mohanpur, PS – Sidhai,
West Tripura District.

17.Smti Manika Debnath,
Wife of Sri Haribilash Debnath,
Resident of village – Harinakhala Sibir,
P.O. Fatikchara T.E.,
PS – Sidhai, West Tripura District.

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S. TALAPATRA

For the Petitioner	: Mr. P.K. Biswas, Sr. Advocate. Mr. P. Majumder, Advocate.
For the respondent Nos.1 to 5.	: Mr. B.C. Das, Advocate General. Mr. T. Datta Majumder, GA.
For the respondent No.6.	: Mr. A. Bhowmik, Advocate.
For the respondent Nos.7 to 11.	: Mr. S. Deb, Sr. Advocate.
Date of hearing & delivery of Judgment & order	: 16.01.2015.
Whether fit for reporting	: Yes.

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ.)

This is an interesting petition which shows to what extent people can change their stands just to attain their ambitions.

2. Briefly stated the facts of the case are that the petitioner is a Member of Harinakhala Gram Panchayat, Mohanpur Block. There are 13 Members in this Gram Panchayat. Respondent No.6 is also one of its Members. The petitioner No.1 belongs to the Indian National Congress which had 7 Members in this 13 Member Panchayat. All the 13 Members were administered oath by the Presiding Officer i.e. the Panchayat Officer, Mohanpur R.D. Block. After administering oath to all the 13 Members, as per the rules, elections to the post of Pradhan and Upa-Pradhan were to be conducted. The post of Pradhan was reserved for a woman Scheduled Caste candidate i.e. the candidate should not only be a female, but should also belong to the Scheduled Caste category.

3. First the election of Upa-Pradhan was conducted. The name of respondent No.6, Smt. Rina Sarkar was proposed for the post of Upa-Pradhan by Smt. Sushama Sarkar, a Member of the CPI(M). The name of Smt. Mukul Malakar (Deb) was proposed by Sri Utpal Debnath, both Members of the Indian National Congress (INC). The petitioner was declared elected as Upa-Pradhan obtaining 7 votes with 6 against.

4. Thereafter, elections to the post of Pradhan were held. The name of Smt. Sushama Sarkar [CPI(M)] was proposed by Sri Adhanya Das [CPI(M)] and the name of Smt. Rina Sarkar was proposed by Sri Utpal Debnath, a Member of the Indian National Congress. The voting is open and the list of votes shows that Smt. Rina Sarkar obtained 7 votes all of the Members belonging to the Indian National Congress and Smt. Sushama Sarkar obtained 6 votes including the vote of her opponent Smt. Rina Sarkar, respondent No.6 who belongs to the CPI(M), but voted for her opponent Smt. Sushama Sarkar. Smt. Rina Sarkar was also declared elected as Pradhan of the Harinakhala Gram Panchayat by the Presiding Officer Sri Biswajit Majumder.

5. On the same date, Smt. Rina Sarkar after the elections were over gave a handwritten note to the Presiding Officer which when translated reads as follows:-

"I Smt. Rina Sarkar have been elected as the member of Harinakhola Gram Panchayat. I am unwilling to take the responsibilities of the post of Pradhan and I, accordingly, sign this note".

6. Thereafter, Smt. Rina Sarkar, respondent No.6 herein submitted a complaint to the Returning Officer on the same date i.e. 07.08.2014, which as translated reads as follows:-

***"To
The Returning Officer,
Panchayat Election***

**Mohanpur R.D Block
Tripura West**

Sub: Appeal against the Presiding Officer due to his favoritism for election to the office of Pradhan and Upa-Pradhan and resignation from the Office of Pradhan of Harinakhola Gram Panchayat.

Sir,

With humble submission it is to inform you that I am an elected member of C.P.I.(M) Party of Harinakhola Gram Panchayat under Mohanpur R.D. Block. Oath or affirmation of elected members of Gram Panchayat is held today on 07/08/2014. Since the starting of election process of Pradhan and Upa-Pradhan, Sri Biswajit Majumdar, Presiding Officer started favouring the congress party and working at the behest of Ratanlal Nath. I rejected the proposal taken by INC party for the office of Pradhan and informed in writing to the Presiding Officer about my unwillingness for office of Pradhan. In spite of my objection in this regard, the Presiding Officer announced my name ex-parte as Pradhan and I left the meeting without taking Oath as Pradhan. As I am an elected member set up by CPI(M) party, I acted according to the WHIP of the Party and proposed the name of Smt. Sushma Sarkar as a candidate for the office of Pradhan and also supported her candidature. I demand for re-election of the office of Pradhan and Upa-Pradhan in cancellation of previous election for office of Pradhan and demand for taking necessary action against Sri Biswajit Majumder, Presiding Officer. If no action is taken in this regard, I will be compelled to resort to the course of Law. It may be mentioned here that I have announced my unwillingness in mike to become a Pradhan.

Yours faithfully

**Sd/
Rina Sarkar, Member
Harinakhola GP"**

7. A perusal of this complaint shows that now the stand of Smt. Rina Sarkar was that when her name was proposed the Presiding Officer was favouring the Congress Party and though she rejected the proposal taken by the Congress party for the office of Pradhan and informed in writing to the Presiding Officer about her

unwillingness, the Presiding Officer announced her name *ex parte* as a Pradhan and therefore, she left the meeting without taking oath as Pradhan. This part of her complaint on the face of it appears to be false. She had not given any written objection to the Presiding Officer about her unwillingness before the election took place. The note which we have quoted hereinabove clearly indicates that the same was given after the elections were over. She further states that she acted according to the Whip. She also wrongly stated that she had proposed the name of Smt. Sushama Sarkar. As pointed out above, the name of Smt. Sushama Sarkar was proposed by Sri Adanya Das. She, however, did support Smt. Sushama Sarkar and voted in her favour. In this complaint, she has demanded that reelection of the office of Pradhan and Upa-Pradhan be conducted and the previous election to the office of the Pradhan and Upa-Pradhan be cancelled. She also prayed that action be taken against Sri Biswajit Majumder, Presiding Officer, failing which she would be compelled to approach an appropriate Court of law.

8. On the basis of the complaint of Smt. Rina Sarkar, action was initiated by the Sub-Divisional Magistrate (hereinafter referred 'the SDM') in terms of the rules. The SDM also recorded the statement of Smt. Rina Sarkar on 28.08.2014, which reads as follows:-

"I Smti Rina Sarkar, wife of Sri Swapan Sarkar and a new elected member of the Harinakhola village Panchayat. To this effect I am recording my statement herein as follows:-

That, on 7/8/2014 I myself as well as other 12(twelve) elected members of the Harinakhola village Panchayat have taken an oath. One named Sri Biswajit Majumder has managed this swearing (oath) of us. He is the concerned authority (Panchayat officer) of Mohanpur R.D. Block. After completion of this swearing ceremony we, all the members have gathered in another room of the Harinakhola Panchayat office in connection with election of Pradhan as well as Upa-Pradhan.

That, in the very beginning of the said programme one named Sri Adanya Das has proposed the name of Smti Sushama Sarkar, the elected member of CPI(M) party as a Pradhan of the said Panchayat. Then and there another elected member (Probably Sri Rakhal Sarkar) has proposed the name of mine as Pradhan. At that time, I had refused the proposal made by the member of Congress party. As my party (CPI(M)) had instructed to us(all the members) to make support the name of Smti Sushama Sarkar as Pradhan, for which, I have refused the said proposal as made. Therefore, I also have given vote in favour of Smti Sushama Sarkar as Pradhan supporting her. Be it noted herein that, the Congress party has proposed my name as Pradhan orally and in writing the rejection letter was also submitted before the Presiding Officer but still the process for electing the Pradhan was completed lawfully and accordingly, I was declared elected as a Pradhan.

That, after completion of this process the Presiding Officer named Sri Biswajit Majumder has stated to me for taking an oath (swearing) as a Pradhan. And I told him (i.e. Presiding Officer) that later on I will take oath after thinking and deciding in this respect. On that very day after the incident I had submitted my resignation letter to the Returning Officer (Block Development Officer). As my party earlier warned me to remain with the party, for this reasons, I have done this act. But I desire to be Pradhan. Today dated 28/8/2014 at 1230 o'clock noon giving my statement on the above and as noted earlier, I Smt. Rina Sarkar submitted the same before the Mohanpur Sub-Divisional officer in sound mind by my own hand."

9. Again in the statement, she states that when somebody proposed her name as Pradhan she had refused the proposal made by the Congress party since her party [CPI(M)] had

instructed all its Members to support the name of Smt. Sushama Sarkar. She again states that she had given her objection in writing, but still the process for electing the Pradhan was completed lawfully and accordingly, she was declared elected as Pradhan. She further states that she was elected as Pradhan lawfully. She further stated that when the Presiding Officer asked her to subscribe the oath to the Office of Pradhan, she (Rina Sarkar) informed the Presiding Officer that she would first deliberate on the matter and decide whether to take oath or not. She also states that on that very day she had submitted her resignation letter to the Returning Officer. She further states that she had been warned by her party to remain with the party and therefore, she had done the act. She, however, further states that she still desires to be Pradhan.

10. Her statement is highly contradictory. In the first part of the statement she states that she objected to her name being proposed for Pradhan, but since elections were held she was declared Pradhan lawfully. She also states that she told the Presiding Officer that she would decide after thinking over whether she wanted to take oath as Pradhan or not. However, in the very next breath she says that she had submitted her resignation to the Block Development Officer. She has also stated that since her party had warned her to remain with the party for this reason she has done this act.

11. After this statement of the petitioner was recorded, an order was passed on 17th September, 2014 whereby the Sub-Divisional Magistrate held that the process of election of Pradhan of Harinakhola Gram Panchayat should be treated to be null and void for the reasons stated in the order and further action be taken in accordance with law.

The relevant portion of this order reads as follows:-

"Whereas, on examination of all the statements, it reveals that the Presiding Officer has conducted the aforesaid Election following the due procedure of law as laid down in the Tripura Panchayat Acts, 1993 & the Tripura Panchayat (Election of Officer Bearers) Rules, 1994 but he has not (sick) consented his mind about expression of unwillingness of proposed candidate to become a Pradhan;"

"...Whereas, the instant issue is that the proposed candidate is present and also expressed her unwillingness to become a Pradhan of the Gram Panchayat. Further, it appears that the proposed candidate has not casted her vote in favour of herself also;"

"...Now, in pursuance of the provision as laid down in sub-rule (1) of Rule-29 of the Tripura Panchayats (Election of Office bearers) Rules, 1994, the undersigned communicate the decision that the process of Election of Pradhan of Harinakhola Gram Panchayat shall be treated as null & void due to the reasons as stated above and the appropriate authority may take further course of action in this matter as per the provision of the Tripura Panchayats (Election of Office Bearers) Rules, 1994.

12. Thereafter, notice for holding fresh elections was issued on 29.09.2014 to elect the Pradhan of the Gram Panchayat Harinakhola and the meeting was scheduled to be held on 15.10.2014. The petitioner on 10.10.2014 sent a reply to the

District Panchayat Officer opposing the move to hold the election on the ground that in terms of Rule 9(2) of the Tripura Panchayats (Election of office Bearers) Rules 1994, a time of 3 months is given to the Pradhan to take oath and since this time of 3 months had not elapsed no fresh elections could be held or conducted. On 15.10.2014, the date of the elections, no Member of the Indian National Congress was present. Therefore, the meeting was adjourned for lack of quorum to 25th October, 2014.

13. On 25th October, 2014, the name of Smt. Rina Sarkar was proposed by Sri Utpal Debnath, a Member of the Indian National Congress and the name of Smt. Sushama Sarkar was proposed by Sri Adanya Das both of the CPI(M). In this election, Smt. Rina Sarkar again got 7 votes all of Members of the Indian National Congress. Smt. Sushama Sarkar got 5 votes and Smt. Rina Sarkar did not cast her vote. The result was that she was declared elected and oath was administered to her. Thereafter, the petitioner who was the Upa-Pradhan filed the present petition on 01.12.2014 challenging the order dated 17th September, 2014 as well as the elections held on 25th October, 2014.

14. We have heard Mr. P.K. Biswas, learned senior counsel for the petitioner. Mr. B.C. Das, learned Advocate General along with Mr. T. Datta Majumder, learned GA on behalf of the State, Mr. S. Deb, learned senior counsel for the respondent Nos. 7 to 11 and

Mr. A. Bhowmik, learned counsel for Smt. Rina Sarkar, respondent No.6.

15. The main contention of Mr. Biswas is based on Rule 6(2) of the Tripura Panchayats (Election of office Bearers) Rules 1994 (hereinafter referred to as 'the Rules'). It is contended by Mr. Biswas, learned senior counsel that the material on record clearly indicates that Smt. Rina Sarkar had not objected to her name being proposed as a candidate for the post of Pradhan of the Harinakhola Gram Panchayat at the time when the elections were conducted. He submits that it was only after she was declared elected that she did not take oath. His further submission is that if all her statements are read together they show that she was still willing to hold the post of Pradhan and that she had never objected to her being elected as Pradhan on the first date i.e. 7th August, 2014. He submits that since the election of Smt. Rina Sarkar on 7th August is valid and she had further stated that she will think over the matter and decide whether she wants to take oath or not, fresh elections could not be held before a period of 90 days had expired from 7th August, 2014.

16. Mr. A. Bhowmik, learned counsel for respondent No.6 Rina Sarkar supported the contentions of Mr. P.K. Biswas. He also submitted that the respondent No. 6 was ready and willing to contest the elections on 7th August, 2014. According to Mr.

Bhowmik, learned counsel, it was only when she was pressurized and threatened by the party that the respondent No.6 had given the subsequent letters and statements wherein she had stated that she had told the authorities that she was not willing to take part in the election.

17. On the other hand, Mr. T. Datta Majumder, learned GA and Mr. S. Deb, learned senior counsel for the respondents submit that Smt. Rina Sarkar has been taking a wavering stand. Her statement cannot be relied upon and that the Presiding Officer wrongly conducted the elections on 7th August, 2014 because Smt. Rina Sarkar had expressed her unwillingness to contest the election. Mr. T. Datta Majumder, learned GA also contends that the Presiding Officer should have obtained the consent in writing of Smt. Rina Sarkar. He also contends that Smt. Rina Sarkar has been making different statements with a view to avoid disqualification which she would entail in terms of Section 16 of the Tripura Panchayats Act.

18. We had called for the records of the case. We shall in the latter part of the judgment comment on the manner in which records have been kept and handled. Para 9 of the report purported to be sent on 7th August, 2014 issued by the Presiding Officer i.e. the Panchayat Officer of the Harinakhala Gram Panchayat reads as follows:-

"Shri Adanya Das member belonging to CPI (M) Party proposed the name of Smt. Susama Sarkar member belongs to CPI (M) Party who was present in the meeting for the office of the Pradhan of Harinakhola Gram Panchayat. Further Shri Utpal Debnath an elected member belongs to INC Party, proposed the name of member Smt. Rina Sarkar belonging to CPI (M) Party. Both the candidates were found eligible for being elected as Pradhan as per reservation status declared by the State Government. Smt. Rina Sarkar of CPI (M) party whose name has been proposed by Sri Utpal Debnath of INC party expressed her unwillingness to be a candidate for the office of Pradhan verbally to the Presiding officer. Since more than one candidate have been nominated duly, conduct of election become essential. For this purpose, the member present are called upon to cast their votes by raising their hands. Accordingly, it is found that Smt. Rina Sarkar got 07 nos. votes of 07 nos. elected members and Smt. Sushama Sarkar got 06 nos. votes of 06 nos. of elected members. As per Sub-Rule (4) of Rule-6 of the Tripura Panchayats (Election of Office Bearers) Rules, 1994 lists of contesting candidates and number of votes secured by them have been recorded in Form-5. After recording these facts Smt. Rina Sarkar belonging to CPI(M) Party, is declared as Elected for Office of the Pradhan of Harinakhola Gram Panchayat in prescribed Form No.-4 as she has secured highest number of votes. Then Smt. Rina Sarkar gave her unwillingness to become Pradhan of Harinakhola Gram Panchayat in writing to the Presiding Officer. Smt. Rina Sarkar refused to accept the Certificate of Election (Form-6)."

As per para 9 of the report of the Presiding Officer, when the name of Smt. Rina Sarkar was proposed by Sri Utpal Debnath, she expressed her unwillingness to be a candidate for the Office of Pradhan verbally to the Presiding Officer. However, since more than one candidate had been nominated in accordance with law, the conduct of election became essential. Thereafter, voting was conducted.

19. We are unable to accept this statement made in the report to be correct. We had directed the Presiding Officer to be present in the Court and when we had asked him why he had conducted the elections if Smt. Rina Sarkar was unwilling to contest the same, he had answered that he was under some misconception of law. We are unable to accept this explanation of a fairly senior officer that he does not even know how elections are to be conducted.

20. India is a democracy. It is now a well settled principle of law that democracy is a part of the basic structure of the Constitution. Even Parliament cannot amend the basic structure of the Constitution. Democracy starts at the grass root level, from elections to the Gram Panchayats. These elections must be conducted fairly and strictly in accordance with law to ensure people that they have faith in the electoral process. We fail to understand how a person who is directed to conduct and preside over an election will hold elections when one of the persons whose name is proposed is unwilling to contest. It may be true, that the Rules are silent in this regard, but common sense itself dictates that no person can be forced to hold a post which he or she is unwilling to hold. Therefore, if Smt. Rina Sarkar had in fact objected to her name being proposed and objected to contest the elections, the Presiding Officer should have recorded this immediately even prior to the recording of the minutes later in the

day and should have asked her to either gave her consent or her objection in writing so that there would be no dispute at a later stage. No rules can envisage of every factual situation which may arise. The Officer conducting the elections has to use his common sense, follow well settled principles and take action accordingly. We are clearly of the view that if, in fact, Smt. Rina Sarkar had objected to her name being proposed by the Member of the Indian National Congress and had expressed her on willingness to contest the election for Pradhan, no election would have been conducted at all. The fact that elections were conducted militates against the report of the Presiding Officer that Smt. Rina Sarkar had raised such objection before the elections were conducted.

21. While taking this view, we are supported by what is stated by Smt. Rina Sarkar in her first note handed over to the Presiding Officer immediately after the election. In that note she has not stated that she had expressed her unwillingness to contest the election. She has only stated that she is unwilling to take the responsibilities of the post of Pradhan.

22. It appears that later, Smt. Rina Sarkar gave a much more detailed note not to the Presiding Officer, but to the Returning Officer. This was more in the nature of the complaint against the Presiding Officer and she also made a statement before the SDM who inquired into the matter at a later stage. It has been

urged by Mr. Bhowmik, learned counsel that the representation made to the Returning Officer as well as the statement made before the SDM were made under pressure of her party. We cannot accept such submission. Smt. Rina Sarkar has not complained at any stage about any such pressure. She has not made any complaint either to the police or to any other authority that any pressure was put upon her to make such a statement. We expect that persons who are elected as Members of Gram Panchayat are strong enough to withstand such pressures. If the Members of elected bodies cannot withstand pressures then the democratic system of the country is at peril.

23. The manner in which Smt. Rina Sarkar has behaved leaves much to be desired. It was on her complaint that the SDM initiated action. It was on her complaint that the impugned order dated 17.09.2014 was passed. Thereafter, fresh elections were notified for 15th October, 2014. Smt. Rina Sarkar did not deem it fit and proper to challenge that order either before this Court or any other authority. The elections were then postponed to 25th October, 2014. Not only did Smt. Rina Sarkar acquiesce in the process of elections, but she fought the election for the post of Pradhan and was admittedly elected to the post of Pradhan.

24. Since on the second occasion she had abstained from the voting, a notice was issued to her under Section 16 of the Act

on 26th November, 2014 and thereafter, the present petition was filed on 1st December, 2014. Though there is no direct evidence to prove this fact, but a reasonable inference can be drawn that this petition has been filed with a view to protect the interest of Smt. Rina Sarkar. Otherwise the petitioner has nothing to gain from this petition. As far as the first elections are concerned, Smt. Rina Sarkar had voted for her opponent even though she had contested against her. Whether this would amount to disobedience of Whip or not is not for this Court to decide in these proceedings. As far as the second occasion is concerned, notice has been issued to Smt. Rina Sarkar and she has a right to defend herself in those proceedings and therefore, we are not expressing any opinion one way or the other whether she has disobeyed the Whip or not and whether she is liable for disqualification or not. However, one thing is clear that even assuming for the sake of argument that Smt. Rina Sarkar had willingly fought the elections on 7th August, 2012 and had been duly elected, she due to her subsequent acts and conduct, is now disentitled from claiming that she should be permitted to take oath as Pradhan on the basis of the first election alone.

25. Coming to Rule 9(2) which we had referred to above, the question is in what situation will this Rule apply. A bare perusal of this Rule shows that it deals with the oath of allegiance to be taken by the Pradhan and Upa-Pradhan. Sub-Rule (1) of Rule 9

prescribes the form of oath. Sub-Rule (2) provide that any person who has been elected as Pradhan or Upa-Pradhan must subscribe to the oath within 3 months from the date of election, failing which, he shall cease to hold such office and his seat shall be deemed to have become vacant and the casual vacancy shall be deemed to have occurred in the Office of Pradhan or Upa-Pradhan as the case may be. The State Government, however, is empowered to condone the delay even beyond 3 months and permit a Pradhan or Upa-Pradhan to take oath even after the period of 3 months has expired. A reading of this sub-Rule shows that even without taking oath of office, the person is deemed to have been elected to the office and he can within 90 days subscribe to the oath of office. This sub-Rule, in our opinion, may deal with various situations. For example by way of illustration, we may state that if the elected person who is absent, but has given his consent in writing may not be available in the country, may be ill, may be in jail or for any other reason cannot make the oath within time. However, if the person who has been elected not only does not subscribe to the oath, but also expresses his view that he is unwilling to hold the post to which he has been elected and clearly states that he is not interested in holding the post then it is not incumbent on the higher authority to wait for 90 days to hold the elections. In a democracy, the elected offices should be kept vacant for as less a period as possible and if the person who has been elected not only does not subscribe to the oath, but also

expresses his unwillingness to hold the post then the Returning Officer would be justified in directing that the fresh elections to the said post be held.

26. As far as the present case is concerned, not only did Smt. Rina Sarkar express her unwillingness, but she by not challenging the order dated 17.09.2014 and by contesting the elections on 25th October has clearly indicated that she was not interested in taking oath pursuant to the elections held on 7th August, 2014 and therefore, no relief can be granted to her in these proceedings which have been filed by the petitioner who himself directly has virtually no interest in the matter except to say that he as Upa-Pradhan is entitled to discharge the duties of Pradhan till the elections are held.

27. Earlier in another matter relating to elections to the Gram Panchayat i.e. **W.A. No. 17 of 2012, Md. Hachan Ali vs. State of Tripura & Ors.**, this Court had expressed its concern with regard to the manner in which files were being maintained by the electoral officers. In that case we had in our judgment clearly indicated the shocking state of affairs where senior officers had dealt with important notices in such a casual and cavalier fashion. Reference may be made to paras 19 and 20 of the judgment which reads as follows:-

"[19] We are constrained to observe that this shows a shocking state of affairs, where a senior officer has dealt with important notices like no confidence motions against the duly elected Pradhan and Upa-Pradhan in such a casual and cavalier fashion. We have seen the file produced before us. It contains no noting sheet. The no confidence motions were received by respondent No. 3 on 14.05.2010 at 10.55 am and 10.57 am respectively. There is an endorsement on the notices in this behalf. We are clearly of the view that thereafter these notices should have been placed on a file and a noting file should have been started mentioning that such no confidence motion had been received and the District Panchayat Officer had decided to take action on the notice. What we find is that on 18.05.2010 a letter was sent to the Block Development Officer, Gournagar enclosing therewith 20(twenty) notices to all the members of the Gram Panchayat, Noorpur. The notices are under Section 23(1) of the Act for removal of the Pradhan and Upa-pradhan. All the members of the Gram Panchayat were directed to attend the meeting fixed on 08.06.2010 at 10.30 am in the office of the Noorpur Gram Panchayat. Before issuing such notices the District Panchayat Officer should have made a noting on the file that the notice was in order, signed by the requisite number of people and confirmed to the provisions of Section 23 of the Act. Only after coming to this prima facie opinion could he have issued notice.

[20] Thereafter, there is an order on file dated 22nd May, 2010 whereby the respondent No. 5 Sri Debasish Datta Roy was authorized to preside over the meeting. There is no noting in file even with regard to this order. Without making any noting on the file, the respondent No. 3 thereafter sent a communication to the Officer-in-charge, Kailashahar Police Station on 22nd May, 2010 directing him to deploy adequate police personnel required for maintaining law and order during the period of meeting on the no confidence motion. Did the respondent No. 3 apprehend any breach of peace and if so on what basis? There is no material on record to show as to on what basis he made the request for deployment of Police force. On 22nd May, 2010 Sri G. R. Das, the District Panchayat Officer sent a letter to Shri Debasish Datta Roy, Panchayat Extension Officer enclosing the two notices but no whip was enclosed. Thereafter, there is the authorization issued by Sri Surajit Dutta which has been diarised at Sl. No. 2223 on 20th May, 2010. Then there is the whip allegedly issued by Md. Badruzzaman but the same is dated 24th May, 2010. On 28th May, 2010 Sri Das sent the whips to Sri Debasish Datta Roy for taking necessary action."

28. Parting with the case we had observed as follows:

"[24] We record our displeasure and direct the Chief Secretary of the State of Tripura to hold an inquiry into the matter as to why the file was not maintained properly. We may also add that though the Pradhan and Upa-Pradhan have not challenged the correctness of the motion whereby they were removed, we find that there is virtually no decision on the file showing application of mind by Sri G. R. Das for convening the meeting to consider the no confidence motion. This may even lead to invalidation of such motions.

[36] A copy of this order be sent to the Chief Secretary to the State of Tripura who shall ensure that instructions are issued to all officials in the State to maintain files properly containing both communications and noting sheets. He shall also hold an inquiry against Mr. G. R. Das as to why the file was not maintained properly in the present case. This inquiry be completed within a period of 3(three) months from today and thereafter affidavit of compliance be filed in Court."

29. As far as this case is concerned, it depicts an even worse state of affairs. We may first take up the file of the Panchayat Officer, who was the Presiding Officer. The said file does not contain any noting sheet whatsoever. There is not even a note that the Panchayat Officer has been directed by the higher authority to conduct the election and what action he has taken thereafter. Even more shocking is the fact that when we had originally called for the record of the case, a photocopy of the proceedings of the Panchayat Officer were placed before us along with the file of the Block Development Officer. The photocopy of the file of the Panchayat Officer was not paged. Neither the photocopy nor the original file of the Presiding Officer bears any

sign of authentication relatable to the date on which the documents were prepared. There are no noting sheets. There is no letter or number showing the date when the file was dispatched from the office of the Panchayat Officer who was the Presiding Officer. There is no letter or stamp to show the date on which these documents or files were received by the Block Development Officer who collected similar documents from 17 other Gram Panchayats i.e. 18 Gram Panchayats in which elections were held and forwarded the same to the District Panchayat Officer. Even the office of the District Panchayat Officer has not diarised the documents. There are no signs or marks to show that what were the documents received by the office and when they were received. There is no record to show how many pages were there in each file and what were the documents placed in each record. The files are neither indexed nor paged.

30. This is a shocking state of affairs. Under Section 114 of the Indian Evidence Act, a presumption is raised that Government acts are done properly. We are clearly of the view that the State can take benefit of this presumption only if the files are maintained properly and in accordance with law. The District Panchayat Officer has filed an affidavit stating that he has received no instructions whatsoever from the office of the Chief Secretary pursuant to the directions issued in ***Md. Hachan Ali's (supra)*** case. He has stated that pursuant to the directions issued by this Court in Writ

Appeal No. 17 of 2012 (Md. Hachan Ali vs. State of Tripura & Ors), the then Chief Secretary to the Government of Tripura had issued Communication to all Additional Chief Secretaries, Principal Secretaries, Secretaries, Director General of Police, Principal Chief Conservator of Forest, Director, Planning & Coordination, to ensure that files are maintained properly and along with that Memorandum dated 28th March, 2014, an extract of the office manual relating to the manner of maintenance of files was communicated to all these officers.

31. We are clearly of this view that these officers pursuant to the directions of the Chief Secretary as well as the directions issued by us were required to send the intimation of these orders to the officers under them and they in turn were to send these documents to the officers under them and so on till each and every officer in the State was aware of the office Memorandum. It is not for this Court to give lessons in office management to the officers of the State. This is the duty of the State Institute of Public Administration and Rural Development (SIPARD) as well as all the senior officers of the State to ensure that files are maintained properly. We may clearly indicate that every file must be properly paged and numbered. The documents in each file should be paged serial wise in a chronological order. Whenever any correspondence is received or sent or any memorandum issued there should be a note in the noting portion of the file indicating why and when such

letter or document has been issued or received. All these matters are contained in the office manual. It is for the State to ensure that this procedure is followed in letter and spirit.

32. Time and again files are being produced before this Court which are not paginated. Loose papers are there in the files. If the office procedure is not followed then we will not place reliance on the documents produced by the Government in future. They must follow the office procedure, maintain the files properly because if the files are not maintained properly then any note, document can be inserted at any stage and on the other hand any document or note can be taken out since there is no pagination and the files are not being maintained properly.

33. As far as elections are concerned, time and again, we are faced with situations where serious allegations and counter allegations are made. Even in the present case, though we have taken one view of the matter it is possible that something else may be the truth. Therefore, we direct that in future whenever any election to the post of Pradhan or Upapradhan of Gram Panchayat is held in the State of Tripura, the Proceedings shall be videographed and the record of the videographed proceeding shall be kept for at least one year or till any petition with regard to such elections are disposed of finally. We are passing this order because today it is very easy to videograph the proceedings. They can be

videographed on a mobile phone or any small camera and there is no expense on the State. If we have to establish a foolproof system of elections, where the people have faith in the electoral process, we must introduce such new methods. Today when the Election Commission is ensuring that there are videographers in each and every polling booth we see no reason why the elections to the post of Pradhan and Upa-Pradhans and other such similar elections cannot be videographed. These directions shall be followed in letter and spirit in the future.

34. With these observations, this writ petition is disposed of.

JUDGE

CHIEF JUSTICE

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