

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 245 of 2019

**Juljelal Miah and others
Vs.
The State of West Bengal and others**

For the petitioners	:	Mr. Jagriti Mishra
For the State	:	Mr. Bikramaditya Ghosh, Mr. Momenur Rahaman
Hearing concluded on	:	21.08.2019
Judgment on	:	22.08.2019

Sabyasachi Bhattacharyya, J.:-

1. The present writ petition arises from an election held in respect of Kurshamari Gram Panchayat under Mathabhanga-I Development Block. By virtue of an election held in May, 2018, the petitioners and eight others were elected as members of the said gram panchayat. The total strength of the said gram panchayat is of thirteen members. Subsequently, the five petitioners as well as the other eight members of the gram panchayat took out several writ petitions before the principal bench of the Calcutta High Court, giving rise to W.P. No. 19375(W) of 2018, W.P. No. 24570(W) of 2018 and W.P. No. 19807(W) of 2018. The said writ petitions were taken up for analogous hearing and disposed of by a learned Single Judge of the principal bench on January 3, 2019, thereby setting

aside the proceedings of the first meeting of the panchayat dated September 13, 2018. An appeal, bearing M.A.T. No. 17 of 2019, was preferred against such order, which was disposed of on February 25, 2019 by a division bench, inter alia directing the prescribed authority to issue fresh show-cause notices against the other eight members of the gram panchayat than the petitioners, in terms of Section 11(1)(f) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as “the 1973 Act”). Subsequently, proceedings were held by the prescribed authority and ultimately the other eight members were disqualified with immediate effect by an order dated March 18, 2019 passed by the said authority. As a consequence, the petitioners survived as the only remaining elected members of the Kurshamari Gram Panchayat.

2. Subsequently, even after several representations being made and opinions being sought at all levels, the respondent-authorities, it is alleged, are not taking steps for holding a meeting for conducting the election of office bearers to the said gram panchayat. As a consequence, the present writ petition has been filed.
3. Learned counsel for the petitioners argues that the probable sticking points in calling the said meeting are reflected from Memo No. PRD/294(1)/3 issued by the office of the District Magistrate, Cooch Behar (Panchayat & Rural Development Section), that is, respondent no. 4 herein, to the Special Secretary (Policy Cell), Department of P&RD, Government of West Bengal, being the respondent no. 2 herein, seeking clarification regarding election of Pradhan and

Upa-pradhan of the Kurshamari gram panchayat. The said sticking points were formulated by way of questions in the said memo dated May 3, 2019, which are as follows:

- “a) Whether it would be appropriate to constitute the Kurshamari GP with these five members as the majority of the elected members (8 members) have been disqualified and removed from the GP.*
- b) Whether the BDO, Mathabhanga-I/Prescribed Authority can call a fresh meeting for election of Pradhan & Upa-Pradhan of Kurshamari GP with these 5(five) members.*
- c) If yes, what will be the procedure of the said meeting And as the post of Upa-Pradhan is reserved for SC Women and there is no SC Women member amongst these 5 members. Whether the BDO/PA can call the fresh meeting for election of Pradhan only.”*

4. Learned counsel for the petitioners argues that the said questions can be resolved by a bare perusal and plain interpretation of the 1973 Act as well as the West Bengal Panchayat (Constitution) Rules, 1975 (hereinafter referred to as “the 1975 Rules”).
5. Learned counsel for the petitioners refers to Section 4(2) of the 1973 Act and argues that the number of members of a gram panchayat shall not be less than five or more than thirty, as provided therein. Since in the present case the petitioners, being the surviving gram panchayat members, are five in number, such quantitative yardstick is satisfied for the gram panchayat to function.
6. It is further argued on the basis of Section 13 of the 1973 Act, which pertains to filling up of casual vacancy in the office of Pradhan or Upa-Pradhan, it is argued that in the event of removal of a Pradhan or an Upa-Pradhan under Section 12 or

when a vacancy occurs in the office of a Pradhan or an Upa-Pradhan by resignation, death or otherwise, the Gram Panchayat shall elect another Pradhan or Upa-Pradhan in the prescribed manner. It is thus argued that it was incumbent on the authorities to hold an election immediately for the purpose of temporary appointment of a Pradhan and Upa-Pradhan from among the present five members of the gram panchayat, that is, the petitioners.

7. It is submitted that the Block Development Officer, Mathabanga-I Development Block, being the present respondent no. 7, is temporarily functioning as the Pradhan of the said gram panchayat and as such, the functioning of the gram panchayat is being immensely hampered due to the several duties which the respondent no. 7 has to undertake, other than functioning as the Pradhan of the gram panchayat. It is further argued that the area-in-question covered by the gram panchayat was one of the worst flood-affected areas in West Bengal in the recent inundations and proper relief work could also be not carried out due to such stalemate.
8. Learned counsel for the petitioners next argues on the basis of Section 9(5) of the 1973 Act that when the office of the Upa-Pradhan falls vacant by reason of death, resignation, removal or otherwise, or the Upa-Pradhan is, by reason of leave, illness or other cause temporarily unable to act, the Pradhan shall exercise the powers, perform the functions and discharge the duties of the Upa-Pradhan until a new Upa-Pradhan is elected and assumes office or until the Upa-Pradhan

resumes his duties, as the case may be. As such, it is argued that till the appointment of the Upa-Pradhan, an elected Pradhan may very well exercise the powers and perform the functions of the Upa-Pradhan, thereby resolving the issue of the absence of Scheduled Caste women, for whom the post of Upa-Pradhan in the said gram panchayat is reserved.

9. By placing reliance on Sub-section (6) of Section 9, it is further argued that when the office of the Pradhan and the Upa-Pradhan are both vacant or they are temporarily unable to act, the prescribed authority may appoint for a period of thirty days at a time a Pradhan and Upa-Pradhan from among the members of the Gram Panchayat to act as such until a Pradhan or the Upa-Pradhan is elected or resumes duties, as the case may be.
10. On the strength of the said sub-section, it is argued that it was the incumbent duty of the authorities to appoint temporarily the Pradhan and Upa-Pradhan in the gram panchayat-in-question, for thirty days at a time, and thereafter renewing on such appointment after the expiry of each period of thirty days till the said posts are filled up by election.
11. Learned counsel for the petitioners further argues that Rule 6(1) of the 1975 Rules categorically provides that, as soon as may be but not later than thirty days from the date of any casual vacancy in the office of Pradhan or Upa-Pradhan and certain other posts by reason of death, resignation, removal or otherwise, or within such further time as may be allowed by the District Panchayat Election

Officer for reasons to be recorded, the prescribed authority shall call a meeting of all the members eligible to participate in the election of a Pradhan or an Upa-Pradhan or the other posts, as the case may be, by fixing a date, place and time and causing a written notice to this effect as prescribed therein to be served on each such member at least seven days before the day fixed for such meeting. It is submitted that the rest of Rule 6 provides the detailed provisions and modalities of such election. As such, there could not be any confusion as to the procedure of the meeting to be held for appointment to the posts of Pradhan and Upa-Pradhan.

12. The present petitioners being five in number, which is the minimum number required to form a gram panchayat under Section 4(2) of the 1973 Act, there was no bar for the authorities to hold such election immediately. However, the authorities are shirking such duties, thereby causing immense inconvenience to the general public of the area concerned.
13. On the other hand, it is submitted by learned counsel for the State that the filling up of casual vacancy in place of a member of the gram panchayat is governed by Section 14 of the 1973 Act, which requires that if the office of a member of a gram panchayat becomes vacant by reason of his death, resignation, removal or otherwise, the vacancy shall be filled up in the prescribed manner by election of another person under the Act.

14. It is submitted that since the gram panchayat-in-question is at present functioning only with five out of thirteen members, no process of election could be initiated.
15. It is further argued on behalf of the State that Section 4(2) of the 1973 Act has to be seen in its entire perspective, including the second and third provisos thereto, which provide for the reservation of seats for Scheduled Castes, Scheduled Tribes and Backward Classes and as such, since the post of Upa-Pradhan in the Kurshamari Gram Panchayat was reserved for Scheduled Caste women, the same could not be filled up in the absence of such a candidate, since none of the petitioners satisfied such criteria.
16. Upon considering the submissions of the parties, it is seen that it was incumbent upon the prescribed authority, under Section 9(6) of the 1973 Act, to appoint a Pradhan and an Upa-Pradhan from among the members of the gram panchayat to act as such, for a period of thirty days at a time, until a Pradhan or an Upa-Pradhan was elected and assumed office. In the present case, by virtue of the order of the division bench, the entire election was set aside and subsequently eight out of the thirteen originally elected members of the gram panchayat were disqualified from continuing as members of the gram panchayat. Since, in view of such circumstances, the gram panchayat is at present functioning with only five members (the present petitioners) and Section 4(2) fixes the said number as the minimum at which a gram panchayat can operate, the prescribed authority

ought to have appointed a Pradhan and an Upa-Pradhan from among the existing members of the gram panchayat, that is, the petitioners, for thirty days at a time to act as such, until a regular Pradhan or Upa-Pradhan was elected and assumed office.

17. On the other hand, Rule 6 of the 1975 Rules categorically stipulates that, not later than thirty days from the date of any casual vacancy in the office of Pradhan or Upa-Pradhan by reason of death, resignation, removal or otherwise, or within such further time as may be allowed by the District Panchayat Election Officer for reasons to be recorded, a meeting has to be called for the election of a Pradhan or an Upa-Pradhan. The entire modalities of such election process have been set forth in Rule 6.

18. It is further noticed that Section 9(6) of the 1973 Act is not fettered by any restriction as to reservation for women or persons from Scheduled Castes, Scheduled Tribes or Other Backward Classes. This is apparently so because subsection (6) of Section 9 envisages a temporary appointment to enable the gram panchayat to function in case of exigencies where the posts of Pradhan and Upa-Pradhan have suddenly fallen vacant, to prevent the development and administrative work of the rural areas concerned from coming to a stand-still. Such appointments are to be temporary, for a period of thirty days at a time and can be renewed from time to time till a regular Pradhan and Upa-Pradhan is elected and assumes office.

19. As such, there was no bar for the authorities to appoint such a Pradhan and Upa-Pradhan on temporary basis as per Section 9(6) of the 1973 Act from among the petitioners themselves for the time being.
20. However, it is seen from Section 14 of the 1973 Act that if the office of a member of a gram panchayat becomes vacant by reason of his death, resignation, removal or otherwise, the vacancy shall be filled in the prescribed manner by election of an another person under the said Act. In the present case, since eight posts of gram panchayat members were lying vacant in view of the disqualification of eight of the original members, an election ought to be held for the filling up of such vacancies, parallelly, if not prior to, the election of a new Pradhan and Upa-Pradhan by the gram panchayat, as mandated under Section 13 of the 1973 Act.
21. Despite the reliance placed by the petitioners on Section 4(2) for the purpose of impressing upon the court that a gram panchayat can function with a minimum of five members, proceeding further on with the said sub-section, it is seen that Section 4(2) does not stop at enumerating the number of members but provides that the number of members would not be less than five or more than thirty *as the prescribed authority may, having regard to the number of voters in the hill areas and other areas, and in accordance with such rules as may be made in this behalf by the State Government, determine.*
22. As such, the 1973 Act not only stipulates the minimum number of gram panchayat members to be five, but fixes such number subject to the total

strength, to be determined by the prescribed authority having regard to the number of voters in the area concerned. In the present case, such number having been fixed at thirteen upon such a consideration of the number of voters, the gram panchayat cannot continue to function permanently with the five members and an election, as contemplated in Section 14 of the 1973 Act to fill up the other eight vacancies, also has to be conducted at the earliest. Although Section 13 of the said Act precedes numerically Section 14, in the fitness of things and keeping in tune with the spirit of the 1973 Act, a gram panchayat which elects a regular Pradhan or an Upa-Pradhan ought itself to be comprised of its full strength, as contemplated in Section 4(2) of the 1973 Act, not being numerically restricted to a minimum of five but also having regard to the total strength determined by the prescribed authority, keeping in view the number of voters in the area, which strength is numerically thirteen in the present case.

23. As such, although a temporary appointment had to be made within thirty days from the vacancy upon the disqualification of the eight members in the present case, which is long overdue and ought to be undertaken immediately on a temporary basis, thirty days at a time, the election of a regular Pradhan and Upa-Pradhan, till which the temporary Pradhan and Upa-Pradhan shall function, has also to be undertaken. Only upon filling up of the eight vacancies of members by the process of election to the gram panchayat, could the election by such full-

house gram panchayat, as envisaged in Section 4(2), for the posts of regular Pradhan or Upa-Pradhan, be held.

24. As such, W.P.A. No. 245 of 2019 is disposed of by directing the respondent no. 7, being the Block Development Officer, Mathabhanga-I Development Block, to immediately convene a fresh meeting, within a maximum period of thirty days from date, for appointment, for a period of thirty days at a time, of a Pradhan and an Upa-Pradhan for the Kurshamari Gram Panchayat under Mathabhanga-I Development Block from among the present petitioners. In the absence of any women candidate of a Scheduled Castes or Tribes, the appointment has to be made from the available five members, that is, the present petitioners, on a temporary basis. Such appointment shall be made in accordance with the modalities laid down in Rule 6 of the West Bengal Panchayat (Constitution) Rules, 1975.

25. Immediately thereafter, the respondents shall first take steps for filling up the vacancy of eight members of the Kurshamari Gram Panchayat. After such vacancy is filled by an election held in the prescribed manner from the concerned electorate, the gram panchayat, then in its full strength of thirteen members, shall elect a regular Pradhan and Upa-Pradhan. The respondents are directed to expedite the process of such elections, as contemplated under Sections 14 and 13 of the West Bengal Panchayat Act, 1973 respectively and in that order and shall make all endeavours to complete the entire process within a maximum period of

six months from this date. In the meantime, till such eight vacant posts of members of the gram panchayat are filled up and a regular Pradhan and Upa-Pradhan are elected, the appointments of Pradhan and Upa-Pradhan shall continue on a temporary basis, for a period of thirty days at a time, from the present strength of five members, that is, from among the present petitioners, under Section 9(6) of the 1973 Act.

26. There will be no order as to costs.

27. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)