HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No. 1351 of 2019

Shri Ranjit Sinha ……..Petitioner(s).

Versus

The State of Tripura & Ors ……...Respondent(s).

W.P.(C) No. 1352 of 2019

Smt. Pramila Sinha ……..Petitioner(s).

Versus

The State of Tripura & Ors. ……Respondent(s).

W.P.(C) No. 1353 of 2019

Shri Mridul Sinha ……..Petitioner(s).

Versus

The State of Tripura & Ors. ……Respondent(s).

B E F O R E

HON'BLE THE CHIEF JUSTICE MR.AKIL KURESHI

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

For the Petitioner(s)	: Mr. P.Roy Barman, Advocate. Mr. Samarjit Bhattacharjee, Advocate. Mr. K.Nath, Advocate.
For the Respondent(s)	: Mr. D. Bhattacharjee, Govt. Advocate, Mr. R. G. Chakraborty, Advocate.
Date of hearing	: 28.09.2020
Date of delivery of Judgment and Order	: 01.12.2020

Whether fit for reporting	Yes	No
	✓	

Judgment & Order

[*S.G.Chattopadhyay, J*]

[**1**] These three writ petitions being factually and legally similar have been heard together and they would be disposed of by this common judgment.

[**2**] For convenience, the basic facts and controversy brought before this court may be noted from W.P.(C) No.1351 of 2019 which are as under:

By this writ petition, the petitioner, who is an elected member of Fultali Gram Panchayat under Chandipur R.D.Block in Unakoti Tripura District has challenged the order dated 20.09.2019 whereby the Block Development Officer ('the BDO') of Chandipur R.D.Block, Unakoti Tripura, in the purported exercise of powers under sub-section (3) of Section 16 of The Tripura Panchayats Act, 1993('the Act' herein after) and sub-rule (1) of Rule 27 of The Tripura Panchayats (Election of Office Bearers) Rules, 1994 ('the Rules' herein after) declared that the petitioner earned disqualification under Section 16 of the Act for violation of party whip and the consequential declaration dated 24.09.2019 declaring that the petitioner had ceased to be a member of the said gram panchayat with effect from the date of such declaration.

[**3**] The said petitioner was elected as a member of Fultali Gram Panchayat from Seat number 06 as a candidate set up by the Bharatiya Janata Party (BJP

herein after) in the Panchayat General Election of 2019 which was held on 27.07.2019. Similarly, petitioner of W.P.(C) No.1352 of 2019 was elected from seat number 07 and petitioner of W.P.(C) No.1353 of 2019 was elected from seat number 04 in the said Panchayat also as BJP candidates. The Returning Officer of the said election duly declared them to have been elected and issued Certificate of Election dated 31.07.2019 in Form Number 25 in favour of the candidates. Said Fultali Gram Panchayat has 09(nine) elected members in all and 07(seven) among them were sponsored by BJP and 02(two) were sponsored by Indian National Congress (INC in short). The first meeting after the said election was convened on 16.08.2019 for administering Oath of Affirmation to the elected candidates followed by election of Pradhan and Upa Pradhan of the said Gram Panchayat. The Inspector of Schools of the Education Inspectorate, Chandipur R.D.Block, was specified by the State Government in terms of sub-section (1) of Section 217 of the Act as the authority to administer Oath to the elected members of the Panchayat and he was also nominated

by the District Panchayat Officer to preside over the first meeting of the newly elected panchayat.

[**4**] In the minutes of the proceedings of the said meeting dated 16.08.2019, **Annexure-R/2 of the respondents**, it has been recorded that after administering oath to the elected members, the Presiding Officer read out the whip of the party to the elected members of the party including the petitioners for casting their votes in favour of Smt. Abha Sharma for the post of Pradhan and Shri Atish Malakar for the post of Upa Pradhan and he also informed the members that violation of the party whip was likely to disqualify them from the membership of the Gram Panchayat. The said Presiding Officer of the meeting after reading out the party whip also procured signatures of the members whereby the members admitted to have heard and understood the party whip, Annexure-R/3 of the respondents. During the election process, Atish Malakar, a BJP member proposed the name of Smt. Abha Sharma for the post of Pradhan in accordance with the party whip. But, Shri Mridul Sinha, petitioner of W.P.(C)No.1353 proposed the name of Smt. Pramila Sinha, petitioner of W.P.(C)No.1352 for the post of

Pradhan in violation of the party whip and all the 03 petitioners namely Shri Ranjit Sinha, Smt. Pramila Sinha and Shri Mridul Sinha cast their votes by raising their hands in favour of Smt. Pramila Sinha for the post of Pradhan violating the whip of the party. As a result, Smt. Abha Sharma, party nominated candidate, got only 04 votes of elected BJP members whereas Smt. Pramila Sinha of BJP supported by the petitioners got 05 votes including 02 votes of INC and got elected to the post of Pradhan. Similarly, for the post of Upa Pradhan of the said Gram Panchayat, Smt. Arati Das, a BJP member, proposed the name of Shri Atish Malakar in accordance with the party whip but Shri Ranjit Sinha, present petitioner proposed the name of Shri Mridul Sinha, petitioner of W.P.(C)No.1353 for the said post of Upa Pradhan and the 03 writ petitioners cast their votes in favour of Mridul Sinha against the party whip. As a result, Atish Malakar, party nominated candidate for the post of Upa Pradhan got only 04 votes and Mridul Sinha got 05 votes including 02 votes of INC and got elected to the post of Upa Pradhan.

[**5**] At this juncture, it would be appropriate to take note of the entire proceedings of the said meeting held

on 16.08.2019 minutes of which were drawn by the Presiding Officer as under:

"

ANNEXURE-R/2

PROCEEDING OF THE MEETING OF FULTALI PANCHAYATS UNDER SUB-RULE(1) OF RULE 6 OF THE TRIPURA PANCHAYATS (ELECTION OF OFFICE BEARERS)RULES,1994:-

After completion of General Election to the three tier Panchayats, 2019, the names of Elected members of Gram Panchayats have been duly published in the official Gazette on 2/8/2019 under Section 17(50) of the Tripura Panchayats Act, 1993 by the State Election Commissioner, Tripura and after publications of the same Gram panchayats is deemed to be duly constituted.

The first meeting of Fultali Gram Panchayat under Chandipur R.D.Block has been convened by the District Panchayat Officer Unakoti District vide noF.4(5)DPO(4)ELEC/ 2014 – 15/375-80 date 9/8/2019, as the prescribed authority by giving notice under sub-rule (1) of Rule 6 of the Tripura Panchayats (Election of Office Bearers) Rules, 1994 which appears to have been duly served upon the elected members of the Gram Panchayat, Self being appointed as Specified Authority under Section 217(1) of the Tripura Panchayats Act, 1993 by the State Government vide notification No.F.3(1-94)-GL/PR/2019/10164-174 dated 15th July, 2019 for administering Oath of Affirmation of allegiance to the constitution of India to the newly elected members of the aforesaid Gram Panchayat. I have also been nominated by the District Panchayat Officer Unakoti District preside over this meeting, today on 16/08/2019 and is present there in specified date & time. In pursuance of the Notification issued by the State Govt. appointing the undersigned to administer oath as Specified Authority. Out of total 09(Nine) nos newly elected members of Fultali GP 9(Nine) Nos members were present. All members present were administered oath and accordingly the prescribed form duly sworn / affirmed and signed by the respective members were collected and enclosed for your reference.

After completion of the above process elected members were called upon to participate in the process of election of Pradhan. Out of 9(Nine) members of Fultali gram Panchayat all members (i.e. 9 Members) were present which forms the quorum of the meeting of

Election of Pradhan as required under sub-rule(2) of Rule of the Tripura Panchayats (Election of Office Bearers)Rules, 1994.

For undertaking the business of election, I apprised the members about the procedure of election of Pradhan, reservation status of the office of the Pradhan as determined by the State Govt. In the Panchayat Department Notification no.F.3(1-79)-GL/PR/2019/52255-259 dated 10th June ,2019.

I received the party whip/directions issued by the authorized person Sri Sudhanshu Das, belonging to BJP Party upon its members belonging to BJP party. In that party whip instructed following members to remain present in the first meeting on 16/08/2019 and to cast their vote in favour of Smt. Ava Sarma and Sri Atish Malakar for Pradhan and Upa Pradhan respectively.

1) Sri Atish Malakar
2) Smt. Abha Sharma
3) Smt.Pramila Sinha(11 / 3)
4) Smt.Arati Das
5) Sri Mridul Sinha
6) Sri Ranjit Sinha
7) Sri Pramila Sinha(IV / 7)

The direction / instruction was read out by me and I have explained the provisions laid down in the section 16 of the Tripura Panchayat act 1993 and Rule 27 of the Tripura Panchayats (Election of Office Bearers) Rules,1994 and informed the members that, if any member may violate the party whip which he/she belongs, his / her membership likely to be ceased as per explained provisions of Tripura Panchayat Act, 1993 and the Tripura Panchayats(Election of Office Bearers)Rules, 1994. The Signature of the above mentioned members enclosed herewith.

Shri Atish Malakar, member belonging to BJP party proposed the name of Smt. Abha Sharma belonging to BJP party who was present in the meeting for the office of the Pradhan of Fultali Panchayat.

Further, Sri Mridul Sinha member belonging to BJP party proposed the name of Smt. Pramila Sinha(IV/7) member beloniging to BJP party who was present in the meeting for the office of the Pradhan of Fultali Gram Panchayat.

Both the candidates were found eligible for being elected as pradhan as per reservation status declared by the state Government

since more than one candidate have been nominated duly, conduct of election became essential. For this purpose, the members present are called upon to cast their vote by raising their hands.

Accordingly, it is found that Smt. Abha Sharma got votes of 4(four) numbers of elected members and Smt. Pramila Sinha got votes of 5(five) numbers 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. Pramila Sinha (IV/7) belonging to BJP party is declared to have been duly elected for office of the Pradhan of Fultali Gram panchayat in prescribed form no.4.

It may be mentioned here that Sri Mridul Sinha, Sri Ranjit Sinha, and Smt. Pramila Sinha (IV/7) elected members of BJP party cast their vote during the process of the conduct of election for the office of the pradhan in favour of Smt. Pramila Sinha(IV/7) violating the whip of authorized person of BJP party.

After completion of the process of election of Pradhan, the process of election of Upa Pradhan was taken up. Total of 09(Nine) members of Fultali Gram Panchayat out of 9(nine)nos members were present which forms the quorum of the meeting of Election of Upa-Pradhan as required under sub-rule(2) of Rule of the Tripura Panchayats (Election of Office Bearers)Rules,1994.

For undertaking the business of election, I apprised the members that office of the Upa Pradhan does not relate to any reservation.

Sri Ranjit Sinha, member belonging to BJP party proposed the name of Sri Mridul Sinha, belonging to BJP party who was present in the meeting for the office of the Upa Pradhan of Fultali Gram Panchayat.

A part from this Smt. Arati Das member belonging to BJP party proposed the name of Sri Atish Malakar member belonging to BJP party who was present in the meeting for the office of the Upa Pradhan of Fultali Gram Panchayat.

Both the candidates were found eligible to contest election. Since more than one candidate have been nominated duly, conduct of election becomes essential. For this purpose, the members present are called upon to cast their vote by raising their hands.

Accordingly, it is found that Sri Mridul Sinha got votes of 5(five) numbers of elected members and Sri Atish Malakar got votes of 4(four) numbers 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 Sri Mridul Sinha belonging to BJP is declared to have been duly elected for office of the Upa Pradhan of Fultali Gram Panchayat in prescribed form no.4.

It may be mentioned here that Sri Mridul Sinha, Sri Ranjit Sinha, and Smt. Pramila Sinha (IV/7) elected members of BJP Party cast their vote during the process of the conduct of election for the office of the Upa Pradhan in favour of Sri Mridul Sinha violating the whip of authorized person of BJP party.

After completion of the above process of election, the elected Pradhan & Upa-Pradhan were called upon to administer Oath or affirmation of his allegiance to the constitution of India in pursuance of letter no dated of District Panchayat Officer, Unakoti District, The newly elected Pradhan & Upa–Pradhan have administered oath as per prescribed form and duly sworn / affirmed and signed copy is also recorded.

With completion of process the meeting is concluded with thanks.

16/08/2019

(Benumadhab Chakraborty)
Presiding Officer
(Inspector of Schools)
Education Inspectorate,
Chandipur RD Block"

[**6**] After this meeting, the petitioner received show cause notice dated 06.09.2019, **Annexure-3**, from the BDO whereby the petitioner was informed that he violated the party whip signed by Shri Sudhangshu Das, MLA, by casting his vote contrary to the direction

of the party in the first meeting of Fultali Gram Panchayat held on 16.08.2019 and since such voting against party whip was not condoned by the party, the petitioner was asked to show cause as to why he would not be disqualified from the membership of Fultali Gram Panchayat and the petitioner was also asked to appear before the BDO on 11.09.2019 at 03.00 P.M and submit his reply in writing. The said notice dated 06.09.2019 is also reproduced hereunder:

"

ANNEXURE-3

GOVERNMENT OF TRIPURA
OFFICE OF THE BLOCK DEVELOPMNET OFFICER
CHANDIPUR R.D.BLOCK: UNAKOTI

No.3259/F.9(16)/BDO/CNP/REMOVAL/2019 Dated Jarultali
The 06/09/2019

To
Sri Ranjit Sinha
Member
Fultali Gram Panchayat
Chandipur R.D.Block, Unakoti Tripura

Subject: **Show Cause notice regarding disqualification of Membership as Member of Fultali Gram Panchayat.**

Sir,

Whereas, reference to the subject I am to inform you that in pursuance of Rule 6(1) & Rule 12 of the Tripura Panchayats(Election of Office Bearers) Rules,1994, during conduct of 1st meeting of Fulatali Gram Panchayat Office on 16/08/2019 where you had casted your vote violating the WHIP signed by Sri Sundangshu Das on behalf of Bhayatiya Janata Party.

AND

Whereas, in pursuance of the sub-section-(3) of the Section 16 of The Tripura Panchayats Act,1993 and sub-rule-(1) of Rule-27 of the Tripura Panchayats (Election of Office Bearers)Rules, 1994 the matter referred to the undersigned by the Presiding Officer of that meeting that, you have violated the whip issued for first meeting held on 16/08/2019 & you have become subject to disqualification from Membership of the Fultali G.P as per sub-section-(1) of Section-16 of the Tripura Panchayats Act, 1993 & sub-rule(3) of the Rule-27 of the Tripura Panchayats(Election of Office Bearers)Rules,1994.

AND

Whereas, no condonation letter in favour you, have been received from the BJP Party to which you belong till date as per provision of sub-rule(3) of Rule 27 of the Tripura Panchayats (Election of Office Bearers)Rules, 1994.

Under such circumstances you are hereby asked to show the reason as to why your Membership will not be ceased to be the Member of the Fultali Gram Panchayats as per sub-rule(4) of the Rule-27 of the Tripura Panchayats(Election of Office Bearers) Rules, 1994 and declaration in FORM-68 would not be declared about disqualification of your Membership from the Fultali Gram Panchayat of Chandipur R.D.Block, Unakoti Tripura.

In this regard you are hereby requested to appear in the Office chamber of the undersigned **on 11.09.2019 at 3.00 P.M** positively and submit your reply in writing signed in front of me. Failing which decision in this regards will be taken exparte.

Yours faithfully

6/9/19
Block Development Officer
Chandipur R.D.Block
Unakoti Tripura"

[**7**] Petitioners of W.P.(C) 1352 and W.P.(C)1353 also received similar notice. Pursuant to the said notice dated 06.09.2019, the petitioners appeared in person before the BDO in his office on 11.09.2019 at 2.30 P.M and filed same written reply dated 11.09.2019, **Annexure-4 of the petitioners**, wherein they pleaded

that they were unaware of the party whip because the party whip was not handed over to them before the election of Pradhan and Upa-Pradhan of the Panchayat and therefore they did not violate any party whip. It was further pleaded by them that in the election, they voted in favour of the members of their own party and therefore they did not show any disloyalty to the party and as such the law of disqualification did not apply to them. The said reply of the petitioners were as under:

"

ANNEXURE-4

To
The Block Development Officer,
Chandipur R.D.Block,
Unakoti, Tripura

Sir,

In response to your show cause notice No.3259/F-9(16)/BDO/CNP/REMOVAL/2019 dated 06/09/2019, I give my version as follows:

That, on 16/06/2019 I was not given / handed over "THREE LINE WHIP" before being held the election of Pradhan & Upa Pradhan of Fultali GP.

That, I have not voted against the Bharatiya Janata Party candidate.

That, I have not broken-myself away from the Bharatiya Janata Party & not joined any other Political Party, till today.

That, I have always remained loyal to the Bharatiya Janata Party.

That, it is not a case of violation of party whip but a floor management of the House.

That, Sub-sec(3) of the section 16 of the Tripura Panchayat Act 1993, do/Does not have the force of law.

I submit my reply today on 11/09/2019 in person & signed in front of you.

Date:11/09/2019 Yours faithfully

(SRI RANJIT SINHA)
Fultali Gram Panchayat
Chandipur R.D.Block
Unakoti Tripura"

[**8**] As noted by us, same reply was given by all the 03 writ petitioners. Thereafter, the BDO, Respondent No.6, issued the impugned order dated 20.09.2019, Annexure-6 of the petitioner, whereby the petitioner was informed that the charge of defiance of party whip was established against him and the next course of action would follow. The said order dated 20.09.2019 is reproduced as under:

" ANNEXURE-6

GOVERNMENT OF TRIPURA
OFFICE OF THE BLOCK DEVELOPMENT OFFICER
CHANDIPUR R.D.BLOCK: UNAKOTI TRIPURA

No.3764/F.9(16)/BDO/CNP/REMOVAL/2019 Date:20/09/2019

To
Sri. Ranjit Sinha
Member
Fultali Gram Panchayat
Chandipur R.D.Block, Unakoti Tripura

Subject- Regarding disqualification of Membership as Member of Fultali Gram Panchayat with the views of the undersigned as per provision of **Tripura Panchayat Act, 1993.**

Sir,

In reference to the subject captioned above I am to inform you that your reply against the show cause notice issued from this end vide this Office letter No.3261 /F.9(16) /BDO/CNP/REMOVAL/ 2019 dated 6th September,2019 which was submitted by you in writings on 11.09.2019 has been carefully perused from this end. I do hereby furnish my findings as follows:

Whereas in your reply as submitted on 11.09.2019, you have stated that you have not received the Whip before holding of the election of Pradhan & Upa Pradhan on 16/08/2019.

AND

Whereas in your written statement dated 11th September,2019 you have stated that, no whip/direction has been received by you for special meeting held on 16.08.2019 for election of both Pradhan & Upa Pradhan of Fultali Gram Panchayat under Chandipur R.D.Block. But the Office of the prescribed authority received the copy of said whip/direction from the authorized person of BJP Party to which you belong and it is mentionable here that the said whip/direction was issued by the authorized person of Bharatiya Janata Party.

AND

Whereas the said whip/direction was also read out by the Presiding Officer of the special meeting on 16.08.2019 in the meeting and explained the provisions laid down in the Section 16 of the Tripura Panchayats Act, 1993 and Rule-27 of the Tripura Panchayats (Election of Office Bearers)Rules,1994 and informed to all present Members that, if any Member would violate the Party whip which he/she belong, his /her Membership is likely to be ceased as per explained provisions of The Tripura Panchayats Act, 1993 and The Tripura Panchayats (Election of Office Bearers) Rules, 1994. This is also mentioned by you in your written reply and the Presiding officer also submitted a written record that you have realized the instructions received from the party regarding election of Pradhan & Upa Pradhan. From the records it has been revealed that you have voted against the motion in that meeting violating the whip /direction of the Party you belong to.

AND

Whereas As per provision of sub-section-(3) of Section 16 of the Tripura Panchayats Act, 1993, and sub-rule-(1) of Rule 27 of the Tripura Panchayats (Election of Office Bearers)Rules 1994 you have become subject to disqualification from Membership of the Fultali G.P. in regards to violation of whip/direction of the Party you belong.

AND

Whereas No condonation letter in favour of you, have been received from the BJP Party to which you belong within the stipulated period as per provision of sub-rule (3) of Rule 27 of the Tripura Panchayats (Election of Office Bearers)Rules 1994, that shows you have not been condoned by your Political Party to which you belong.

Under such circumstances, you are hereby informed that disqualification of Membership from the Member of Fultali Gram Panchayat under Chandipur R.D.Block in regards to violation of whip /direction has been established against you and next course in this regard from the part of the undersigned would be taken as per provision of the Tripura Panchayats Act, 1993 and the Tripura Panchayats (Election of Office Bearers)Rules 1994.

Yours faithfully
(P.Debbarma)
Block Development Officer
Chandipur R.D.Block

Copy to

1. The District Magistrate & Collector, Unakoti District, Tripura for kind information.
2. The Director of Panchayats, Govt. of Tripura, Agartala, Tripura for kind information.
3. The District Panchayat Officer, Unakoti District, Tripura for kind information.
4. The Sub-Divisioinal Magistrate, Kailashahar, Unakoti for kind information.

(P.Debbarma)
Block Development Officer
Chandipur R.D.Block"

[**9**] Similar orders were passed also against the petitioners of W.P.(C) 1352 and W.P.(C)1353 followed by the impugned declaration dated 24.09.2019, **Annexure-7 of the petitioners**, whereby the BDO declared that the petitioner had ceased to be the member of the said Gram Panchayat with effect from the date of the said declaration. The said declaration dated 24.09.2019 is reproduced as under:

"

ANNEXURE-7

FORM-6B

(See sub-rule(4) of Rule 27)

DECLARATION

In exercise of the powers conferred by Section 16 of the Tripura Panchayats Act, 1993 read with sub-rule(2) and sub-rule(3) of Rule -27 of the Tripura Panchayats (Election of Office Bearers)Rules 1994, I, the Block Development Officer, Chandipur R.D.Block, Unakoti Tripura after making an enquiry, have come to the decision that Sri Ranjit Sinha a Member of the Fultali Gram Panchayat has earned disqualification under Section 16 and, therefore, I hereby declare that the said Member has ceased to be a Member of that Gram Panchayat with effect from the date of this order.

Date:24.09.2019 Block Development Officer
Chandipur R.D.Block
Place: Chandipur Unakoti Tripura"

[**10**] Similar declaration was issued in respect of the petitioners of W.P(C)1352 and W.P.(C) 1353 declaring them disqualified from the membership of Fultali Gram Panchayat with effect from 24.09.2019.

[**11**] We have heard Mr. P.Roy Barman, learned counsel appearing along with Mr. S.Bhattacharjee and Mr. K.Nath, learned Advocates for the petitioners as well as Mr. D.Bhattacharjee, learned GA appearing on behalf of the State Respondents and Mr. R.G.Chakraborty, learned Advocate for Respondent No.7.

[**12**] Mr. Roy Barman, learned counsel of the petitioners raised the following contentions:

(i) There is no proof that party whip containing the direction of the party was ever served on the petitioners at any point of time prior to the conduct of the election of Pradhan and Upa Pradhan and the action of the respondent whereby the petitioners were disqualified from membership of Fulatali Gram Panchayat for violation of party whip without serving a copy of the written intimation of such whip on them before the conduct of election is violative of the principles of natural justice and not sustainable in law.

(ii) A blank whip, **Annexure-5 of the petitioners,** without containing any mandate of the party with regard to the manner of voting in the election of pradhan and upa-pradhan was served on the petitioners which cannot be treated as a party whip.

(iii) Finally, it is submitted by learned counsel of the petitioners that the petitioners cannot be treated as defectors because in the election of Pradhan and Upa Pradhan held on 16.08.2019, the petitioners cast their vote in favour of BJP candidates which affirmed their

loyalty to the party and as such they incurred no disqualification under the law.

[**13**] Mr. Debalay Bhattacharjee, learned Government Advocate, has opposed the petitions contending that this is a clear case of defection for violation of party whip by the petitioners for which they incurred disqualification under Section 16 of the Act. It is contended by Mr. Bhattacharjee, learned GA that the party whip was not only served on the petitioners ahead of the meeting, it was also read out by the Presiding Officer of the meeting at the threshold and the petitioners acknowledged such communication of the party whip by putting their signatures on **Annexure-R/3.** Moreover, the Presiding Officer also noted in the record of proceedings of the meeting, **Annexure-R/2,** that the party whip was read out to the elected members before the commencement of the election proceedings. Therefore, the petitioners, in clear terms, violated the party whip by casting their votes contrary to the direction of the party and incurred disqualification and ceased to be members of the Panchayat. According to Mr. Bhattacharjee there is,

therefore, no illegality in the impugned orders issued by the BDO.

[**14**] Mr. R.G.Chakraborty, learned counsel appearing for BJP, Respondent No.7, has contended that that the Respondent will not file any counter affidavit in the case. The Respondent, however, opposed the petitions.

[**15**] The disqualification with which we are concerned is contemplated under Section 16 of the Act 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 recognized 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 recognized 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."

[**16**] The procedure pertaining to disqualification of Panchayat members on the ground of defection is laid down in Rule 27 contained in Chapter–IV of the Rules which is 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 Zill 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."

[**17**] As could be seen from a conspectus of Section 16(1) of the Act, a member of Gram Panchayat belonging to a political party would stand disqualified if he has voluntarily given up his party membership or if

he votes or abstains from voting in the Gram Panchayat disobeying the direction / whip issued by his party without obtaining prior written permission of his party and when such voting or abstention has not been condoned by his party within 30 days from the date of such voting or abstention.

[**18**] In clear terms, an elected panchayat member shall incur disqualification and cease to be a member in terms of clause (b) of sub-section (1) of Section 16 of the Act, if such member votes or abstains from voting contrary to any direction issued by the party to which he belongs unless he can defend his action by showing a prior written permission obtained by him from his party or that such action was condoned by the party within 30 days from the date of such voting or abstention.

[**19**] Sub-section(3) of Section 16 contemplates that whenever question arises as to whether any member of a Gram Panchayat has incurred disqualification in terms of Section 16 of the Act, the question shall be decided by the Block Development Officer having jurisdiction

over such Gram Panchayat whose decision shall be final.

[**20**] As per sub-rule(1) of Rule 27 of the Rules, quoted above, in any meeting of Gram Panchayat where vote is taken for election or for any other purpose, 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 incurred disqualification under the Act, record the facts in the proceedings of the meeting and after obtaining clarification from the member he 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.

And 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.

[**21**] In this legal and factual background of the case, the following question arose for our consideration:

> (i)Whether any written whip containing the direction of the party had actually been served on the petitioners prior to conduct of the election of pradhan and upa-pradhan of the panchayat and inspite of the same, the petitioners voted against the party whip and earned disqualification in terms of Section 16 of the Act and Rule 27 of the said Rules.

[**22**] The main contention of the petitioners is that no written intimation of the party whip was served on them at any point of time prior to the conduct of the

election. In their counter affidavit, the state respondents have asserted that the party whip signed by Sudhangshu Das, MLA, on behalf of BJP was read out by the Presiding Officer to the elected members of the panchayat before the commencement of the election proceedings on 16.08.2019. The fact that the party whip was read out to the petitioners before the commencement of the election proceedings is not denied by the petitioners. According to them, they cannot be disqualified for the alleged disobedience of the party whip in absence of clear cut and substantive proof of service of the written intimation of the whip on them well in advance of the commencement of the proceedings of election of pradhan and upa-pradhan. According to Mr.P.Roy Barman, learned counsel of the petitioners, the burden of proof that the party whip was properly served on the petitioners and despite the service of the whip they disobeyed the direction contained in the whip lies on the respondents and the respondents having failed to prove the fact, the disqualification order cannot be sustained against the petitioners.

[**23**] It is true that neither the Act, nor the Rules made thereunder, provide for a particular method of service of intimation of the whip containing the direction of the party upon the elected members before the commencement of the election proceedings. Section 16(1)(b) of the Act uses the expression ***"....contrary to any direction issued by the political party...."*** Likewise Rule 27(1) of the Rules uses a similar expression ***"....any member has voted or abstained from voting contrary to the direction of the political party ....."*** Thus, the stress is on a member voting contrary to the/any direction issued by the political party to which he belongs. In order to establish this breach, communication of the particular direction would be essential. We therefore cannot brush aside the submission of Mr.P.Roy Barman, learned counsel of the petitioners that even in absence of specific statutory provision in this regard, proper communication of the direction is necessary. According to Mr.Roy Barman, since the failure on the part of the petitioners in complying with the party whip resulted in their disqualification from the membership of the gram panchayat, party whip must have been served on the

petitioners before the commencement of the election proceedings and their disqualification without proof of intimation of the party whip on them is violative of the principles of the natural justice.

[**24**] Although no specific averment has been made in the counter affidavit with regard to service of written intimation of the whip, the respondents have submitted **Annexure-R/1** which is a copy of the written intimation of the whip signed by said Shri Sudhangshu Das, MLA, and which has been allegedly served on Smt. Pramila Sinha, petitioner of W.P.(C)No.1352 of 2019. The petitioner has categorically denied to have received such written intimation. Even, there is no proof of service of the same on the petitioner. The notice is neither dated nor does it carry any acknowledgement of receipt of the same by the petitioner. The other two petitioners have filed copy of a blank format of whip signed by Shri Sudhangshu Das, MLA as **Annexure-5**. According to them, such blank documents were sought to be served on their family members, that too, far after the election was over. Apparently, there is no proof of service of a written intimation of whip on them. **Annexure-R/4** of the

respondents clearly indicates that pursuant to the show cause notice, all the three petitioners appeared before the BDO and raised an objection to the effect that they did not receive any written intimation of party whip in advance. Surprisingly, in the disqualification order dated 20.09.2019 issued by the BDO, no reference to the said objection raised by the petitioners was made.

[**25**] Even though there is no specific provision in this regard, undoubtedly, within the scheme of the statute and the rules made thereunder, the petitioners were entitled to be properly communicated party whip prior to the commencement of the election process since their failure in complying with such whip would render them disqualified from the membership of the panchayat. There is no evidence that written intimation of the party whip was served on any of the petitioners. There is no evidence of such a whip being in any other manner communicated to the petitioners by any authorized member of the party. In the record of proceedings of the meeting dated 16.08.2019, **Annexure-R/2**, it has been noted by the Presiding Officer that after the swearing in of the elected members, he read out the party whip to them in terms

of Section 16 of the Act and Rule 27 of the Rules and also made the members aware that violation of the party whip would disqualify them from the membership of the panchayat. Section 20 of the Act which deals with the procedure of the election of pradhan and upa-pradhan, nowhere provides that it would be the duty of the Presiding officer to read out the party whip to the elected members before the commencement of the election. Similarly, Rules 6 & 7 of the said Rules have laid down the procedure of election of pradhan and upa-pradhan of Gram Panchayat which is as under:

> ***"6. (1) The District Panchayat Officer of the District shall be the prescribed authority for the purpose of sub-section(2) of that Section. Within ten days from the date of constitution of a Gram Panchayat under sub-section(5) of Section 17 or within such further time as may be extended by the District Panchayat Officer, the prescribed authority shall convene the first meeting of Gram Panchayat. For the purpose, the District Panchayat Officer shall give a written notice of first meeting in Form 1 to all members as far as practicable seven days before such meeting. The members shall take oath before the meeting and elect the Pradhan and Upa Pradhan in the meeting. The authority specified under Section 217(1) or any officer nominated by such authority shall administer oath to the members and preside over the meeting.***
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> ***(2) Simple majority of the elected members of a Gram Panchayat shall form the quorum for the first meeting. The first meeting shall be held after the members present have taken oath. If there is no quorum for the first meeting the Presiding Officer shall adjourn the meeting and submit a report to the District Panchayat Officer. The adjourned first meeting shall be convened within 10(ten) days by the concerned District Panchayat Officer in the same manner as in the case of first meeting.***

(3) The Presiding Officer shall, after taking of oath is over and immediately after the commencement of the meeting call upon the members present to propose the names of the candidate for election of the Pradhan of the Gram Panchayat. One member only shall be required to propose same of a candidate. The Presiding Officer shall record the name of each candidate proposed, name of his party, if any, together with the name of the proposer and name of his party. He shall reject a proposal.

(i) If the seat is reserved but the proposal does not conform to reservation requirement; or

(ii) If the proposal has been made after the list of candidates has been finalized by him in Form2. If the candidate, whose name is proposed, is absent, the proposer shall submit the consent paper of the candidate to the Presiding Officer in Form-3

(4) If only one candidate is proposed, the Presiding Officer shall in Form-4, declare him to be duly elected Pradhan of the Gram Panchayat. If more than one candidate have been proposed, the Presiding Officer shall cause to be prepared list of candidates in Form-5 and asked the members to cast their votes in favour of their chosen candidate by showing hands. The Presiding Officer shall call out names of candidates one by one serially as arranged in Form-5 in Bengali alphabetical order and record the number, and names and political party, if any, of the members who have raised their hands in favour of a candidate. He shall obtain signature of the members who raised hands. No member shall cast more than vote. If any member casts more than one vote, all of his votes shall be liable to be rejected. If any member abstains from voting, it shall be recorded in Remark Column for Form-5 against the name of the members by the Presiding Officer. After completion of vote the Presiding Officer shall, in Form-4 declare the candidate who has secured the largest number of votes to be duly elected Pradhan of the Gram Panchayats. In case of equal number of votes being recorded in favour of two or more candidates the Presiding Officer shall decide the result of the elections by lot in such a manner as the Presiding Officer shall deem fit and thereupon the candidate in whose favour the lot falls shall be deemed to have received on additional vote and shall be declared to be duly elected as Pradhan of the Gram Panchayats.

7. After the election of Pradhan, the election of the Upa-Pradhan shall be held in the same manner as provided in sub-rule(4) of rule-6:

Provided that for the office of the Pradhan there shall be no reservation."

[**26**] No duty is cast upon the Presiding Officer under the said rule to read out the party whip to the members before the commencement of the proceedings for the election of Pradhan and Upa-Pradhan. His duty is to conduct the election in accordance with the procedure laid down under the rule. Rule 27 of the said Rules under sub-rule (1) provides that if the attention of the Presiding Officer is drawn to the fact that any member has voted or abstained from voting contrary to the direction of the political party, the Presiding Officer will record the facts in the Remarks Column of the record of proceedings of the meeting and after obtaining a clarification from the erring member, shall refer the matter to the Block Development Officer.

[**27**] Section 217(1) of the Act provides for appointment of presiding Officer to administer oath to the elected members of panchayat. The details of the procedure with regard to administering oath to the elected members and election of pradhan and upa-pradhan and the duties and responsibilities of the

Presiding Officer in this regard have been laid down in chronological order under Rules 6 & 7of the said Rules. Had it been a duty of the Presiding Officer to read out the intimation of whip to the elected members of the panchayat before the commencement of the proceedings for election of pradhan and upa-pradhan in the meeting convened for this purpose, it would have been laid down under the said Rules. Therefore, reading out of party whip in the meeting cannot be substituted for proper communication of the whip on the elected members by the party to which they belonged. Any other view would lead to grave consequences. If the requirement of proper and valid communication of whip is to be substituted by reading out of the whip by the authorized officer which does not form part of his statutory duties, it will open wide possibilities of disputes of authenticity, correctness and reliability of the communication.

[**28**] For the foregoing reasons, we are in agreement with the submission of learned counsel appearing for the petitioners that the intimation of the party whip containing the direction of the party with regard to the manner of franchise for election of pradhan and upa-

pradhan was not properly served upon the petitioners before the commencement of the election proceedings and therefore, the petitioners cannot be disqualified for disobeying the party whip.

[**29**] The Apex Court in ***Tarlochan Dev Sharma vs. State of Punjab and Ors.*** reported in ***AIR 2001 SC 2524*** has succinctly held that in a democracy governed by the rule of law, removal of an elected candidate from his office before the expiry of the statutory term for which he has been elected is a serious matter. Once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the whole term unless his election is set aside by a prescribed procedure known to law. Observation of the Apex Court in paragraph 7 of the said judgment is as follows:

> "**7. In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder**

of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held……."

[**30**] While highlighting on the necessity of strict adherence to the legal requirements and principles of natural justice for removal of a duly elected member of the panchayat and the effect of such removal on the electorate, similar observation was made by the Apex Court in ***Laxmibai vs. Collector, Nanded & Ors.*** reported in ***AIR 2020 SC 3393*** wherein the Apex Court also made a reference to ***Tarlochan Dev Sharma***(supra) and held as follows:

> ***"16. In Tarlochan Dev Sharma v. State of Punjab & Ors.5, this Court has held that holding and enjoying an office, discharging related duties is a valuable statutory right of not only the returned candidate but also his constituency or electoral college. Therefore, the procedure prescribed must be strictly adhered to and unless a clear case is made out, there cannot be any justification for his removal.***
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> ***17. In Ravi Yashwant Bhoir v. District Collector, Raigad & Ors.[(2012) 4 SCC 407 : (AIR 2012 SC 1339)], this Court held that an elected official cannot be permitted to be removed unceremoniously without following the procedure prescribed by law. Where the statutory provision has very serious repercussions, it implicitly makes it imperative and obligatory on the part of the authority to have strict adherence to the statutory provisions. It was held as under:***

"35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide Jyoti Basu v. Debi Ghosal [(1982) 1 SCC 691 : AIR 1982 SC 983], Mohan Lal Tripathi v. District Magistrate, Rae Bareily [(1992) 4 SCC 80 : AIR 1993 SC 2042] and Ram Beti v. District Panchayat Raj Adhikari [(1998) 1 SCC 680 : AIR 1998 SC 1222]).

36. In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency / electoral college is also deprived of representation by the person of their choice."

[**31**] Keeping in view the said observations of the Apex Court and the discussions made above, the disqualification order dated 20.09.2019 and consequential declaration dated 24.09.2019 issued by the BDO disqualifying the petitioners from the membership of Fultali Gram Panchayat for violation of party whip stand quashed and set aside. The writ petitions are allowed and accordingly disposed of.

(S.G.CHATTOPADHYAY), J **(AKIL KURESHI), CJ**

HIGH COURT OF TRIPURA
सत्यमेव जयते

Saikat Sarma, P.A