

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 6911 of 2020

With

CAN 1 of 2020

Maser Ali

Versus

State of West Bengal & ors.

For the petitioner	: Mr. Md. Sarwar Jaha Mr. Md. Ashraful Huq Advocates
For the State	: Mr. Sirsanya BandhapadhyayAdvocate
Heard lastly on	: 09.09.2020
Judgment on	: 25.09.2020

Jay Sengupta, J.:

1. The petitioner has challenged the impugned notice bearing Memo No. 1237/ KCK – III dated 24.08.2020 issued by the Prescribed Authority and the Block Development Officer, Kaliachak– III, Malda whereby a meeting for the election of Pradhan of Krishnapur Gram Panchayat was convened on 07.09.2020.

2. Learned Counsel appearing on behalf of the petitioner submitted as follows. In 2018 the petitioner contested for the post of Gram Panchayat member of Krishnapur Gram Panchayat under Kaliachak – III Panchayat Samity, Malda as a candidate affiliated by the All India Trinamul Congress Party. He was elected there. Thereafter a meeting was held for election of Pradhan. His name was proposed by a member and seconded by another and the petitioner was finally elected as the Pradhan. Soon thereafter, an application for disqualification under Section 213A of the West Bengal Panchayat Act, 1973 was filed by the respondent number 6. The petitioner in the meantime filed a writ application being WP 6509 (W) of 2020, inter alia, challenging the application for disqualification. Subsequently, the Prescribed Authority disqualified the petitioner by an order dated 17.08.2020, which was communicated to the petitioner on 20.08.2020. The petitioner preferred an appeal against the order of disqualification. But, the same was not taken up for hearing. A reference was made to Sub-section (12) of Section 213A of the Panchayat Act. It was contended that a person

can be declared as disqualified only after the Appellate Authority rejected the appeal against a disqualification. The procedure for appointing a new Pradhan should not have started when the appeal period had not expired. In other words, the filing of an appeal shall act as an automatic stay on any further proceeding. On this, reliance was placed on an unreported decision of the Hon'ble Bombay High Court passed in WP 1014/2014: Tata Tele Services (Maharashtra) Limited Versus The Ministry of Finance, Department of Revenue and Others. Moreover, no formal order of removal was passed in respect of the present petitioner. Besides, an Upo-pradhan, if appointed in the meantime, could very well discharge the duties of a Pradhan and in view of the same, there was no question of the work of the Panchayat getting adversely affected.

3. Learned Counsel appearing on behalf of the State submitted as follows. Section 213A (12) of the Panchayat Act dealt with the finality as regards the disqualification of a member in case an appeal was moved and decided. However, it was Section 213A (2) that dealt with the finality of a disqualification so far as the proceeding before the Prescribed Authority was concerned. The term appearing in Sub-section (2) that the same was subject to the provision of Sub-section (12) of Section 213A only indicated that in the event the Appellate Forum overturned the disqualification ordered by the Prescribed Authority, the same would prevail over such disqualification. But, it did not indicate that by preferring an appeal, the petitioner could enjoy an automatic stay. Unlike in the case of Section 357 (2) of the Code

Criminal Procedure, the present statute did not provide for any such automatic stay in the event an appeal was filed. On the point that a mere filing of an appeal did not amount to stay, reliance was placed on the decisions of this Court in *Golam Momen vs Assistant Commission of Income Tax & Ors.*, (2003) 263 ITR 69, of the Hon'ble Delhi High Court in *Kiran Lohia vs State*, 2020 SCC Online Del 1 and of the Hon'ble Madras High Court in *S.P.A. Suruliappa Nadar Versus Collector of Central Excise & Customs, Madurai and Others*, 1974 SCC Online Mad 364. Moreover, it was not that an Upo-pradhan was not appointed in the instant case. The Upo-pradhan had taken charge on 18.06.2020. However, for a proper running of a Panchayat it was absolutely necessary that a full-fledged Pradhan was appointed. In the event the petitioner succeeded in his appeal, he would be reinstated as a member and if he enjoyed majority support he could become a Pradhan. There was no legal or justifiable reason for the petitioner to seek intervention of this Court at this stage.

4. I heard the submissions of the learned counsels appearing on behalf of the parties and perused the writ application.

5. First, let the relevant portions of Section 213A of the West Bengal Panchayat Act, 1973, be set out as under -

“213A. Disqualification on change of political party by Members of Panchayats.

(1) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, the prescribed authority for such Panchayat as may be specified by notification in his behalf, may, subject to the other provisions of this section, declare, for reasons to be recorded in writing, a member of such Panchayat to be disqualified for being a member thereof, if –

(a) he is an elected member set up by a recognised political party and has –

(i) voluntarily given up his membership of such recognised political party, or

(ii) exercised the voting right contrary to the manner of voting of the majority members set up by such recognised political party in such Panchayat; or

(b) he is an elected member not set up by any recognised political party and he has joined a recognised political party on the expiry of six months from the date of election:

Provided that the prescribed authority shall not declare any member to be disqualified under this section without giving to such member a reasonable opportunity to represent his case and to be heard in person:

Provided further that an elected member referred to in sub-clause (ii) of clause (a) shall not, on the prescribed authority being satisfied in this behalf, be declared to be disqualified, if –

(a) the action of such member was taken on obtaining prior permission of, or was condoned by, such recognised political party, or

(b) such member claims that he and any other members of such recognised political party in the Panchayat constitute a group representing a faction consisting of not less than one-third of the total number of members set up by such recognised political party in the Panchayat and that all the members of such group have voluntarily given up their membership of such recognised political party, or

(c) the former recognised political party of the member merges with another recognised political party, and he claims that he and other members of his former recognised political party –

(i) have become members of such other recognised political party or of a new recognised political party formed out of merger, as the case may be, or

(ii) have not accepted the merger, and from the time of such merger, he and such other members constituting not less than one-third of the total number of members set up by the former recognised political party in the Panchayat, have opted to remain members of the former recognised political party or have formed a new recognised political party.

(2) On being declared to be disqualified under sub-section (1), a member shall, subject to the provisions of sub-section (12), stand removed from the Panchayat from the date of such declaration.”

.....

“(7) The Leader of any recognised political party referred to in sub-section (3) may at any time file a petition endorsed by the General Secretary, or, if there is no General Secretary, the Secretary, of the district unit of such

recognised political party to the prescribed authority referred to in sub-section (1), stating that –

(a) one or more members of such recognised political party have –

(i) voluntarily given up his or their membership of such recognised political party, or

(ii) have exercised the voting right contrary to the manner of voting of the majority members set up by such recognised political party in the Panchayat, or

(b) the member referred to in sub-section (4) has voluntarily given up his membership of the recognised political party that set him up, or

(c) the member referred to in sub-section (5) has joined a recognised political party on the expiry of six months from the date of election, and that such member or members should be declared to be disqualified under sub-section (1) and should be removed from the Panchayat.”

.....

“ (12) Any member of a Panchayat declared disqualified under sub-section (1) or the Leader of the recognised political party referred to in sub-section (7), if aggrieved by the decision of the prescribed authority, may, within thirty days from the date of the order, appeal to such authority as the State Government may appoint in this behalf, and, thereupon, the authority so appointed may stay the operation of the order till the disposal of the appeal and may, after giving notice of the appeal to the prescribed authority, and after giving the appellant and the opposite parties an opportunity of being heard, set aside or confirm the order or declare any member or members to

be disqualified in the manner referred to in sub-section (1) and, upon such declaration, the member or members shall stand removed from the Panchayat.

(13) The order passed by the authority appointed under sub-section (12) on the appeal shall be final.”

6. It appears from the above that once an order is passed by the Prescribed Authority disqualifying a member under Section 213A (1), the member stands removed from the Panchayat under sub-section (2). This is so far as the finality of the proceeding before the Prescribed Authority is concerned. But, in the event an appeal is filed under sub-section (12) and the same is decided by such Appellate Authority, then that order shall be the final one. Either this proposition or the submission that the result in sub-section (2) is subject to the provision of sub-section (12) does not necessarily imply that there should be an automatic stay of the order passed under sub-section (1) merely upon an appeal being filed. If the Legislature had so intended, it would have specifically provided for such an automatic stay as is contained in Section 357 (2) of the Code of Criminal Procedure, 1973. In fact, sub-section (12) makes grant of stay by the Appellate Authority discretionary. Therefore, either a final order of reversal or a specific order of stay has to be obtained from the Appellate Authority in order to stall any proceeding initiated in pursuance of an action taken under sub-section (1) of Section 213A of the said Act.

7. Whether the consequential proceeding as contemplated above takes place within the statutory period of appeal or not is quite inconsequential in as much as such statutory period only prescribes a limitation for filing such an appeal.

8. Although the decisions relied upon by both parties relate to different provisions of law, most of them nevertheless pertain to the moot question at hand about whether merely by filing an appeal one can claim an automatic stay of the original order. After carefully perusing the decisions relied upon by the parties, going through the present facts and for the foregoing reasons, I intend to follow the course charted by the Hon'ble Madras High Court in *S.P.A Suruliappa Nadar (supra)*.

9. If the Appellate Authority finally reverses the decision of the Prescribed Authority, the petitioner's disqualification as a member would be set at naught or if the petitioner's earlier writ application is allowed, necessary consequences would follow. However, at this stage and on the present facts, I find no reason to interfere with the impugned notice or to intervene in the consequent proceeding.

10. In view of the above discussions, the writ application is dismissed and the connected application is disposed of.

11. However, there shall be no order as to costs.

12. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)