

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA No. 530 of 2019

Muktesh Kumar Barman

Vs.

The State of West Bengal & Ors.

With

WPA 869 of 2019

Mazibar Miya & Ors.

Vs.

The State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Subir Sanyal, Adv. Mr. Partha Sarkar, Adv. Mr. Abhijit Basu, Adv.
For the private respondents	:-	Mr. Jagriti Mishra, Adv.
For the State respondents	:-	Mr. Debabrata Dhar, Adv. Mr. Bikramaditya Ghosh, Adv. Ms. Paramita Sahu, Adv.
Heard on	:-	19.02.2020
Judgment on	:-	27.02.2020

Amrita Sinha, J.:-

Since the issues involved in both the writ petitions are similar to each other the writ petitions are taken up for hearing analogously and disposed of by this common order.

The term 'petitioners' hereinafter appearing shall mean and include the petitioners in both the writ petitions and the term 'private respondents' hereinafter

appearing shall mean and include the respondent nos. 10 to 14 in both the writ petitions.

The petitioners are aggrieved by the order passed by the appellate authority and District Magistrate, Cooch Behar upholding the order of removal of membership passed by the prescribed authority under Section 11(1)(f) of the West Bengal Panchayat Act, 1973 hereinafter referred to as 'the Act'.

The brief facts of the case are as follows:

The petitioners and the private respondents are the elected members of the Kurshamari Gram Panchayat. They were declared elected on 17th May, 2018 and the certificate of election in Form-24 was issued in their favour on the said date. The Block development Officer being the prescribed authority issued the notice of meeting dated 4th September, 2018 for taking of oath and/or for election of Pradhan/Upa-Pradhan of the Gram Panchayat. The date of the meeting was fixed on 13th September, 2018 at 11 am.

The case of the petitioners is that they attended the meeting on the scheduled date but they were prevented to enter into the room where the meeting took place.

The private respondents locked the door of the room where the meeting was conducted and it was only upon the intervention of the prescribed authority that the door was opened at around 11.05 am/11.08 am. By that time the oath of office was administered to the private respondents and the Pradhan was elected amongst the members who were present inside the room.

The Presiding Officer submitted his detailed report to the prescribed authority on 14th September, 2019 wherein he mentioned that the election process started sharp at 11 am and as the quorum was present the Pradhan was elected. He further mentioned that while he was writing/preparing necessary documents one of the members present in the meeting room suddenly closed the door of the room

from inside and after about two minutes that is at about 11.08 am some persons knocked the door from outside. According to his direction the door was opened and seven elected members entered into the meeting room. He requested the members who arrived late to take oath after showing their identity proof and to put their attendance but the said members refused to take oath or participate in the election of Upa-Pradhan. A scuffle broke out between the members and the situation went beyond control. He along with other officials was compelled to leave the room to save their lives.

As the petitioners did not subscribe an oath or affirmation within a period of six months from the date of election the prescribed authority initiated proceeding against the petitioners under Section 11(1)(f) of the Act, and a show cause notice was issued to the petitioners as to why they shall not be removed from office for not taking oath within six months from the date of the election.

The proceedings of the meeting held on 13th September, 2018 and the election of Pradhan was challenged by the parties in diverse writ petitions. The court took up all the writ petitions for consideration analogously and by an order dated 3rd January, 2019 passed in WP 24570 (W) of 2018 with WP 19375 (W) 2018 with WP 19807 (W) of 2018 disposed of all the writ petitions by setting aside the proceeding of the meeting dated 13th September, 2018. The prescribed authority/Block Development Officer was directed to call a second meeting of the Gram Panchayat in accordance with law. The court also set aside the show cause notice issued against the petitioners under Section 11(1)(f) of the Act.

In compliance of the order passed by the learned Single Judge the prescribed authority by a notice dated 22nd January, 2019 called for a meeting to be held on 4th February, 2019 for taking of oath and/or for election of Pradhan/Upa-Pradhan. The petitioners participated in the said meeting and took oath on 4th February, 2019.

The order of the learned single judge was taken up in appeal and by a judgment dated 25th February, 2019 passed in MAT 71 of 2019 the Hon'ble Division Bench passed an order that the prescribed authority should issue fresh show cause notice in terms of Section 11(1)(f) of the Act and proceed in the matter strictly in accordance with law.

In compliance of the aforesaid order a fresh show cause notice was issued to the petitioners. The petitioners replied to the same. By an order dated 18th March, 2019 the prescribed authority considered the case of the petitioners and passed an order that the petitioners did not take and subscribe oath or affirmation and acted in violation of the provision of Section 197 of the Act by not taking the oath within six months from the date of the election. The prescribed authority passed order of removal of the petitioners with immediate effect.

Being aggrieved by the order of removal passed by the prescribed authority the petitioners preferred an appeal before the appellate authority and the District Magistrate, Cooch Behar. By the impugned order dated 15th July, 2019 the appellate authority affirmed the order of removal passed by the prescribed authority.

The petitioners are aggrieved by the same.

The petitioners submit that the prescribed authority as well as the appellate authority failed to act in accordance with the provisions of the Act and the West Bengal Panchayat (Constitution) Rules, 1975. It has been submitted that the appellate authority failed to take note of the fact that the petitioners took oath on 4th February, 2019 and once the said oath was administered there is no scope to remove them on the ground of not taking oath.

The department of Panchayats and Rural Development by a notification dated 9th August, 2018 fixed the date for holding the first meeting between 16th August,

2018 and 29th August, 2018. The prescribed authority fixed 13th September 2018, as the date of the first meeting for taking oath as well as for election of Pradhan/Upa-Pradhan. Oath is administered by the prescribed authority and the date and time for taking the oath is fixed by the said authority. As the petitioners were forcefully prevented by the private respondents to take oath on 13th September 2018 accordingly oath was administered to the petitioners on 4th February, 2019. Though the petitioners approached the prescribed authority by representation dated 20th September 2018 and 24th September, 2018 for administering the oath the prescribed authority called for the meeting for administering oath on 4th February, 2019. The petitioners ought not to suffer on account of delay in administering oath by the prescribed authority.

The petitioners submit that the fact of administering the oath on 4th February, 2019 was not at all taken into consideration either by the prescribed authority or by the appellate authority. The appellate authority though recorded in its order that the petitioners made representation on 20th September, 2018 and 24th September, 2018 for holding fresh meeting but erroneously came to the conclusion that the petitioners never approached the competent authority for taking oath or subscribing an affirmation between 13th September, 2018 i.e the date of the first meeting of the Gram Panchayat and 16th November, 2018 i.e the date of expiry of six months from the date of election.

It has been submitted that time and again the petitioners have represented before the prescribed authority to take steps for convening the meeting for administering the oath but the said authority intentionally and deliberately refused to administer oath within the prescribed time limit.

It has been strenuously contended that the impugned order passed by the appellate authority is perverse, unreasonable and biased.

The petitioners pray for setting aside the impugned order passed by the appellate authority.

The private respondents submit that the respondent authorities acted in accordance with the provisions of the Act and the Rules. As the petitioners did not take oath within the prescribed period of six months from the date of election, their memberships are liable to be cancelled. It has been argued that the petitioners were so engrossed in litigations that they missed out the timeline within which they ought to have taken the oath.

According to the private respondents the prescribed authority fixed the statutory first meeting within the time as specified in the Act but the petitioners intentionally and deliberately did not take oath on the date fixed. The six months' time period as mentioned in the Act cannot be extended and as the petitioners have admittedly not taken oath within 16th November, 2018 accordingly they have lost their opportunity to remain as members and have been rightly removed by the authority.

The respondents pray for dismissal of the writ petition.

The learned advocate appearing on behalf of the State respondents submits that they have acted in accordance with the direction passed by a Co-ordinate Bench of this court on 22nd August, 2019 in WPA 245 of 2019 whereby the court directed the respondents to take steps for filling up the vacancy of eight members of the Kurshamari Gram Panchayat and to convene a fresh meeting for appointment of Pradhan and Upa-Pradhan. It has further been submitted that the authorities have also acted in terms of the direction passed by the Hon'ble Division Bench on 25th February, 2019 in MAT 71 of 2019 and have taken steps against the petitioners in accordance with the provisions laid down in Section 11(1)(f) of the Act.

The State respondents defend the decision taken by the prescribed authority, affirmed by the appellate authority and pray for dismissal of the writ petition.

I have heard the rival contentions on behalf of all the parties.

It appears from record that the notice of holding the statutory first meeting was issued by the prescribed authority pursuant to the direction passed by the department of Panchayats and Rural Development in terms of memo no. 7260(23)/PN/O/I/1E-1/2017 dated 9th August, 2018. According to the said memorandum the first meeting of the Gram Panchayat was supposed to be convened between 16th August, 2018 and 29th August, 2018. In the instant case the statutory notice for holding the first meeting was issued on 4th September, 2018 and the meeting was fixed on 13th September, 2018. Admittedly the petitioners were present on the date of the meeting i.e, 13th September 2018.

The Presiding Officer in his report recording the proceedings of the meeting dated 13th September 2018, stage by stage, indicate that the private respondents insisted the Presiding Officer to start the meeting at 10.30 am but as the meeting was fixed at 11 O' clock the Presiding Officer waited till 11 am to start the meeting. The Presiding Officer further records that while he was preparing the necessary documents one of the members who was present inside the room locked the door of the room. At about 11.08 am the petitioners who were outside the room knocked the door and it was upon the instructions of the Presiding Officer that the door was opened and the petitioners were allowed to enter the room. Thereafter a scuffle broke out and no further proceeding could be conducted. The petitioners thereafter applied before the prescribed authority for conducting fresh meeting by letter dated 20th September, 2018 and 24th September, 2018.

The court by an order dated 13th January, 2019 set aside the proceedings of the meeting held on 13th September, 2018. The court also set aside the show cause

notice issued to the petitioners. The Hon'ble Division Bench did not interfere with the direction passed by the learned Single Judge setting aside the proceedings of the meeting but permitted the prescribed authority to take steps for issuance of fresh show cause notice against the petitioners in terms of Section 11(1)(f) of the Act. The order not being appealed against attained finality. The same implies that there is no existence of the proceedings held on 13th September 2018 and the election of Pradhan was set at naught.

Accordingly the prescribed authority issued fresh notice on 22nd January, 2019 in Form-1 fixing 4th February, 2019 as the date for taking oath and/or for election of Pradhan. Admittedly the oath was administered to the petitioners on 4th February, 2019. The prescribed authority being aware that the six months' time period lapsed on 16th November, 2018 issued the notice in Form-1 for taking oath on 4th February, 2019. The petitioners applied before the prescribed authority way back in September, 2018 for holding the meeting. The prescribed authority delayed the matter from September and fixed 4th February 2019 as the date for taking the oath. No reason has been put forth by the prescribed authority as to why it waited so long from September 2018 to February 2019 for fixing a date for administering the oath.

Section 197 of the Act clearly lays down that every member of a Gram Panchayat shall, before taking his seat make and subscribe before such authority as may be specified by the State Government, an oath or affirmation according to the form set out for the purpose. It was the statutory duty of the prescribed authority to issue notice in the prescribed form for the purpose of taking oath within the time as specified in the Act.

The delay on the part of the prescribed authority in taking steps for administering oath to the elected members within specified time should not form the basis for cancellation of membership of the petitioners. There is nothing on

record to substantiate that the prescribed authority took steps to fix a time in the intervening period between 13th September, 2018 and 16th November, 2018 for administering oath to the petitioners.

The petitioners all along showed their interest to take the oath, as prior to taking oath they would not be eligible to participate in any meeting of the Gram Panchayat. The election of the petitioners by public mandate would be of no consequence if oath is not taken within the prescribed period of six months from the date of the election.

As several litigations challenging the general elections to different Panchayat Bodies held on 14th May, 2018 were pending adjudication before the Hon'ble Supreme Court the State Government could not take steps in proper time for holding the statutory first meeting. It was only in terms of the order passed by the Hon'ble Supreme Court in the Special Leave Petition being Appeal(c) 12590 of 2018 a notification was published by the Panchayats and Rural Development Department on 9th August, 2018 for holding the first meeting of the Panchayat Bodies. It is only after the aforesaid notification was published in August, 2018 that the prescribed authority issued notice in Form-1 in September, 2018 for holding the statutory meeting on 13th September, 2018.

In view of the pendency of the special leave petitions the date of holding the statutory first meeting got delayed for a period of nearly three months i.e from May, 2018 to August, 2018.

Moreover, the process of taking oath involves two parties, one who administers the oath and the other who takes the oath. In the instant case the authority to administer the oath to the petitioners sat tight since September, 2018 till February, 2019. The petitioners expressed their eagerness and willingness to take oath but until and unless the authority to administer oath took steps in

accordance with the Act the petitioners were helpless. The petitioners could not have taken the oath unilaterally.

The members of the Panchayat are elected through general ballot and the elected members have certain duties and obligations to the electorate. The members of the Panchayat have a very active role to play in the society. They are responsible for socio-economic development and for securing social justice to the residents of the Panchayat. The petitioners being the elected Panchayat members did not get any opportunity to serve the electorate who voted them to power. Not allowing the elected Panchayat members to perform their statutory duties stands in the way of proper socio-economic development of the Panchayat. The ultimate sufferers are the electorate who are unable to get the service from the elected members.

The provision for removal of a Panchayat member ought not to be considered in isolation. All the relevant facts have to be taken into consideration prior to passing an order of removal of a Panchayat member. A wrong test ought not to be applied with the sole view of removing the member. The mandate of the electorate has to be kept in mind.

One cannot be unmindful of the fact that the petitioners were elected by the electorate consisting of a large number of voters. His removal will certainly have serious repercussions. The right to hold the post is statutory and an elected member can be removed only in accordance with the provisions of law. The law cannot be read in such a manner so as to defeat the purpose of the Act itself. The law lays down that elected members have to take oath within a period of six months. The petitioners being declared elected will have no earthly reason for not taking the oath within the specified time. The fact that the petitioners contested the election is enough indication that they wanted to be the members of the elected body and serve the public.

Apart from the recording of the Presiding Officer in his report dated 14th September, 2018 that the petitioners refused to take oath there is nothing on record to suggest that the petitioners intentionally and/or deliberately did not take oath on the prescribed date. Admittedly there was some problem on 13th September, 2018 which prevented the petitioners from taking the oath on the said date but thereafter the petitioners all along expressed their intention to take oath because not taking the oath would imply that the petitioners were not interested to remain as members of the elected bodies.

The order of the appellate authority is absolutely silent with regard to the notice issued by the prescribed authority fixing 4th February, 2019 as the date for taking oath of the members of the Panchayat. The said order also does not mention that the oath administered to the petitioners on 4th February, 2019 was bad in law. As the petitioners were administered oath on 4th February, 2019 by the prescribed authority it has to be presumed that the said oath had a legal sanction and after that the petitioners had every right to participate in the proceedings of the Gram Panchayat.

None of the parties have challenged the action of the prescribed authority in fixing up 4th February, 2019 as the date for administering oath. None of the parties have advanced submission on the point that administering the oath on 4th February, 2019 was impermissible. Accordingly, the reason put forth by the prescribed authority and the appellate authority to remove the petitioners from their membership for not taking oath falls flat. The only conclusion that follows is that the petitioners were validly administered oath on 4th February, 2019 and their membership cannot be removed on the ground of not taking the oath within the prescribed time limit.

As per the provisions of Rule 3 of the West Bengal Panchayats (Constitution) Rules 1975 the prescribed authority has the power to extend the time for taking

oath. As the prescribed authority itself fixed the date of administering the oath on 4th February, 2019 accordingly it has to be presumed that the said date was fixed upon extension of time for calling the meeting for administering the oath and the oath administered on 4th February, 2019 was legal and valid in the eye of law.

In view of the discussions made hereinabove the impugned order of the appellate authority affirming the order of the prescribed authority cannot be sustained and is liable to be set aside and quashed. The said order is accordingly set aside and quashed. The petitioners continue to remain as elected members of the Kurshamari Gram Panchayat.

WPA 530 of 2019 and WPA 869 of 2019 are disposed of.

No costs.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Amrita Sinha, J.)