

Item No.146

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

09.03.2021
Ct-24

W.P.A.6711 of 2021
Nargis Sekh
v
The State of West Bengal & Ors.

Mr. Sarwar Jahan
Mr. Asraf Mondal
Mr. Firoz Hossain
... for the petitioner.

Ms. Sonal Sinha
... for the respondent nos. 3 & 4.

Mr. Amal Baran Chatterjee
Mr. Alokesh Dalai
... for the respondent nos.9, 11 to 20 & 28.

Mr. S. Bandopadhyay
Mr. Subhenddu Sengupta
... for the State.

A notice of meeting for removal of Pradhan of the
Dhananjoypur Gram Panchayat has been issued on
March 3, 2021 and the date of the meeting has been
fixed on March 11, 2021.

The grievance of the petitioner is that since the
general election of the State of West Bengal has been
declared on February 26, 2021 then the Model Code of
Conduct published by the Election Commission of India

in March, 2019 will come into play and no meeting other than the official meeting by the Ministers or political functionaries can be called for.

According to the petitioner if the meeting is permitted to be held then there will be a chance of influencing the voters of the said Gram Panchayat.

The petitioner relies upon the provision of the guidelines at page 118 number 19.1.2 and page 124 number 19.5.1 of the Model Code of Conduct published by the Election Commission of India in March, 2019.

Code number 19.1.2 mentions that though a government official serves under the government of the day but during elections he is expected to perform the duty with impartially and commitment towards democratic values. The government officials are not to act for candidates or to influence voting. The Election Commission has put restriction even on a private meeting between a government servant and a political functionary during the period of Model Code.

Code number 19.5.1 mentions that the Election Commission has issued instructions to the effect that government officials shall not be called for any meeting other than the official meeting by Ministers or political functionaries.

A direction has been sought for postponing the said meeting till the elections are over.

The learned advocate representing the requisitionists opposes the prayer of the petitioner. The instruction from the Election Commission of India dated February 2, 2021 relating to the application of Model Code of Conduct has been relied upon. No bar has been mentioned therein for holding the statutory meetings. A further instruction under serial no.12 from the Compendium of Instructions on Model Code of Conduct published by the Election Commission of India has been paced before the Court.

It appears that a writ petition being WP No. 4766(W) of 2011(Sri Sujit Roy vs. The State of West Bengal & Ors.) was filed before this Court for seeking a declaration that no meeting of the Councillors of Kulti Municipality should be held during the period when the Model Code of Conduct is in force. The writ petition stood dismissed by order dated March 11, 2011 with the observation that the question would be for the Commission to decide. The Commission decided the issue and was of the opinion that there would be no objection on their part to hold statutory meetings which cannot be avoided by the Municipality, Panchayat and other Local Bodies, subject to the condition that no political decisions and announcements shall be made in such meetings till the elections are over and only the decisions related to routine day to day management

issues and emergency issues may be taken in such meetings.

The aforesaid case number has been verified from the official site of this High Court by the learned advocate for the petitioner and it has been submitted that no such case with the aforesaid order is available.

From the submissions made on behalf of the parties and upon perusal of the documents placed before this Court it appears that the meeting has been called as per the statutory provisions of the Panchayat Act, 1973.

Section 12(2) of the Panchayat Act mentions that for the purpose of removal of the Pradhan or the Upa-Pradhan, one-third of the existing members subject to a minimum of three members shall sign the motion in writing expressing their lack of confidence against the Pradhan to remove the Pradhan and send copy of the same to the prescribed authority.

Section 12(3) lays down that the prescribed authority on receipt of the motion shall satisfy himself that it conforms to the requirement of sub-section (2) and on his satisfaction shall specially convene, by issue of notice, within five working days of the receipt of the motion, a meeting of the Gram Panchayat to be held in its office fixing date and hour of the meeting and sending such notice at least before clear seven days to each of its

existing members for consideration of the motion and for taking a decision on it.

Section 12(4) mentions that the meeting shall be held on a working day not later than fifteen working days from the date of receipt of the motion by the prescribed authority and the meeting so convened shall not be adjourned or cancelled except in pursuance of an order or direction of a competent Court or for any other reason beyond control of the prescribed authority.

From the aforesaid it appears that the time limit prescribed in law is extremely vital. The meeting as referred to above ought not be cancelled as there is no specific bar in the Model Code of Conduct that is prevailing at present.

Accordingly, the prayer of the petitioner for postponing the meeting cannot be acceded to.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(**Amrita Sinha, J.**)