

11.03.2021
Item No.1
Crt.No.11
K.B.

**M.A.T. 349 of 2021
with
I.A. No. CAN 1 of 2021**

**Nasrin Bibi Sekh
-Versus-
The State of West Bengal & Ors.**

with

WPA 6715 of 2021

**Nasrin Bibi Sekh
-Versus-
The State of West Bengal & Ors.**

Md. Sarwar Jahan
Md. Asraf Mandal
Md. Firoze Hassan
.... For the appellant.

Mr. Subhendu Sengupta
.... For the State-respondents.

Ms. Sonal Sinha
.... For the Respondent Nos.3 & 4.

Mr. Amal Baran Chatterjee
Mr. Alokesh Dalai
Mr. Mayukh Maitra
.... For the Respondent Nos.9, 11-20, 28.

This matter was fixed on grounds of urgency as expressed by Learned Counsel for the appellant. The urgency arose out of the implementation of the order of the Hon'ble Single Bench dated 9th March, 2021 being WPA 6715 of 2021 permitting the Private Respondents to the writ petition/who are also the Private Respondents in this appeal to go ahead with the meeting of the Gram

Panchayat in issue called for the removal of the *Upa Pradhan* of the said Gram Panchayat who is also the present appellant/the writ petitioner.

The appellant is represented by Mr. Jahan, Learned Counsel.

The State Respondents are represented by Mr. Sengupta, Learned Advocate.

The Private Respondents are represented by Mr. Chatterjee, Learned Senior Counsel with Mr. Moitra, Learned Counsel.

Ms. Sinha, Learned Counsel, represents the State Election Commission.

All the parties are therefore represented before this Court except another necessary party, which is the Election Commission of India.

It is an admitted position that the Model Code of Conduct (*MCC*) in so far as the present factual context requires has been issued by the Election Commission of India and therefore the response of the Election Commission of India to this appeal is necessary.

The appellant is accordingly granted leave to add the Election Commission of India as a Party Respondent to this appeal and its connected application.

Leave is also granted to the appellant to file the certified copy of the judgement and order impugned.

Necessary copies shall be served on the added Respondents and a comprehensive affidavit of service shall be filed by the appellant on the next date.

Next, Mr. Jahan produces an order dated 9th March, 2021 issued by the Block Development Officer (BDO), Nakashipara, Nadia.

The order reads as follows:

“ORDER

Whereas twelve members out of Twenty-One members of the Dhananjoypur Gram Panchayat signed a motion in writing expressing their lack of confidence against (1) Nargis Sekh, Prodhan of the concerned Gram Panchayat and (2) Nasrin Bibi Sekh, the Upa-Prodhan of the said Gram Panchayat indicating party affiliation and independent status of each of such members and delivered the motion to the undersigned as Prescribed Authority on 26.02.2021.

And

Whereas Model Code of Conduct has already been initiated on 26.02.2021 in c/w WBLAGE-2021, the undersigned were requested to guide the undersigned regarding further course of action on the above matter vide this office memo no-1607/NKP, dated-27.02.2021. The District Panchayat & Rural Development Officer, Nadia vide his office memo no-287/P&RD dated 02.03.2021 replied

And

Whereas the undersigned as Prescribed Authority on receipt of the motion satisfied himself after fulfilling the criteria as mentioned in para-8 and verifying the signature of all members of the concerned Gram Panchayat that it conformed to the requirement of Sub-section (2) of the above Act and on his satisfaction specially convened by issuing notice, within five working days of the receipt of the motion, a meeting of the Gram Panchayat to be held in its office on 11.03.2021 at 12.30 PM and 02.00 PM vide this office memo no.-1571/1(21) and 1572/1(21) dated

03.03.2021 respectively for consideration of the motions and for taking a decision on it.

And

Whereas the District Panchayat Election Officer & District Magistrate, Nadia has directed to explain regarding motion of no confidence or removal of Prodhan and Upa-Prodhan of Billwagram Gram Panchayat as well as Dhananjouypur Gram Panchayat and the undersigned replied vide his office memo no.1602/NKP dated-04.03.2021.

And

Whereas the District Panchayat Election Officer & District Magistrate, Nadia requested the Additional Chief Secretary to the Government of West Bengal, Panchayat & Rural Development Department for clarification about inviting meeting for removal of Prodhan, Upa-Parodhan as the MCC has been in force since 26.02.2021 in c/w the West Bengal Legislative Assembly General Election-2021 vide his office memo no.-313, dated 04-03-2021.

And

Whereas the District Panchayat Election Officer & District Magistrate, Nadia directed the undersigned to take steps in this regard after clarification is received vide his office memo no-313/1(3), dated 04.03.2021.

In view of above circumstances, the undersigned as Prescribed Authority is hereby kept the said meeting to be held on 11.03.2021 in abeyance until further direction from the District Panchayat Election Officer & District Magistrate, Nadia.

Sd/-

9/3/2021

*Block Development Officer,
Nakashipara, Nadia.”*

It is therefore submitted by Mr. Jahan that since the meeting, which was scheduled to be held at 2.00 PM today, has been kept in abeyance awaiting clarification on the meeting itself, this Appeal Court can be further assisted after obtaining such clarification.

Mr. Chatterjee, Learned Senior Counsel, however urges this Court to examine the point of existence of a bar on the meeting falling within the scope of the *MCC*.

It is reiterated that the Hon'ble Single Bench did not notice any bar to such meeting imposed by the *MCC*. It is submitted that unless there are clear legal reasons not to depart from the decision of the Hon'ble Single Bench, at least the meeting should be allowed to be held.

Having heard the parties and considering the materials placed, this Court notices that the *BDO*/the Respondent No.7 is also the Prescribed Authority (*PA*) under the statute in question competent to call a meeting or, adjourn such meeting.

The Order dated 9th March, 2021 placed by Learned Counsel for the appellant is by the *PA*/the *BDO* himself and, at this stage, this Court finds no reason as to why the *PA/BDO* should not be granted the opportunity to obtain the clarification as sought for by him.

Accordingly, the Order of the *PA*/ the *BDO* dated 9th March, 2021 is allowed to be brought on record by the appellant as germane to the cause of action espoused in this writ petition.

Parties shall be entitled to respond to the Order dated 9th March, 2021 on the basis of appropriate instructions on the next date.

Liberty to mention as soon as the clarification arrives, however, strictly upon notice to each other.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

(Subrata Talukdar, J.)