

06.05.2021
Ct. No.9
S/L No.1&2
BM/KS

(Via Video Conference)
W.P.A. 9652 of 2021
Aminur Alam & Ors.
-Vs.-
The State of West Bengal & Ors.
With
W.P.A. 9873 of 2021
Tinkur Rahaman Biswas
-Vs.-
The State of West Bengal & Ors.

Mr. Chitta Ranjan Chakraborty
Mr. Dip Jyoti Chakraborty
.....For the Petitioners (W.P.A. 9652 of 2021)
Mr. Arabinda Chatterjee
Mr. Pradyat Saha
Mr. Mounick Ghosh
.....For the Respondents (W.P.A. 9652 of 2021)
Mr. Arabinda Chatterjee
Mr. Pradyat Saha
Mr. Mounick Ghosh
.....For the Petitioner (W.P.A. 9873 of 2021)
Mr. Chitta Ranjan Chakraborty
Mr. Dip Jyoti Chakraborty
.....For the Respondents (W.P.A. 9873 of 2021)

W.P.A. 9652 of 2021

The petitioners as many as 12 in numbers of W.P.A. 9652 of 2021 have sought for the issuance of a writ commanding the respondents and their agents to hold the adjourned meeting on 10th May, 2021 for removal of Sabhapati Kaliachak – II Panchayat Samiti as per notices being Annexure – P/1 and Annexure P/4 with appropriate police arrangement for security of attending

members of the Kaliachak – II Panchayat Samiti in the said meeting for removal of Sabhapati. Accordingly, the direction has been sought for upon the prescribed authority being the S.D.O., Malda Sadar to hold the meeting on 10th May, 2021 as adjourned by him with appropriate police arrangement.

The petitioners being the members of the said Panchayat Samiti and villagers were not satisfied with the functioning of Sabhapati of Kaliachak – II Panchayat Samiti for a considerable period of time and, as such, the petitioners being majority members have issued notice of motion on 30.03.2021 for removal of Sabhapati, Kaliachak – II Panchayat Samiti to the prescribed authority being the Sub-Divisional Officer, Malda Sadar.

On being satisfied with the notice of motion, the S.D.O. issued a notice on 1st April, 2021 for removal of Sabhapati on 10th May, 2021 at the said Panchayat Samiti office and for that purpose a copy of the said notice was issued to B.D.O., Kaliachak – II Panchayat Samiti as well as the I.C. Mothabari Police Station. It is submitted on behalf of the petitioners that the S.D.O. Malda all on a sudden issued an order on the same day stating, *inter alia*, that the notification in form no.1 issued on 01.04.2021 stands cancelled since, nomination process for election to West Bengal Legislative Assembly (W.B.L.A. Election, 2021) will commence from that date and counting of the vote for

the same will be done on 2nd May, 2021 and election process will be completed by 4th May, 2021. So, the entire machinery will be busy and engaged in the election process and, as such, the police authority has shown their inability to provide sufficient police force which compelled the S.D.O. the prescribed authority to cancel the meeting of removal of Sabhapati to be convened on 10th May, 2021.

Mr. Ghosh, learned counsel for the respondent no.6/present Sabhapati submits that real factual aspects have not been narrated in the writ application. On this score on 1st April, 2021, the S.D.O. prescribed authority cancelled the meeting but yet he passed the order for holding the meeting on 10th May, 2021 at 12 noon at Kaliachak – II Panchayat Samiti office.

The Sub-Divisional Officer, Malda being the competent authority as it appears from the Memo that by an order dated 01.04.2021 has adjourned the meeting stating that the situation is beyond his control which the prescribed authority can do under the provision of Section 101(4) of the Panchayat Act, 1973 but again rescheduled the date on 10th May, 2021 for removal of the existing Sabhapati, the respondent no.6 herein on the same day and the time fixed on 10th May, 2021 at 12 noon in Kaliachak – II Panchayat Samiti office. It would be apt to take note of the order passed by the Sub-Divisional Officer dated 01.04.2021 vide

his Memo No.603(22)/SDO(S)/MLD wherein the prescribed authority has given the notice for meeting of the Kaliachak – II Panchayat Samiti to be held on the date shown in the schedule of the said order, in pursuance of the provision under sub-Rule 2 of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975, but, it was ordered on the same day vide his Memo No.595/SDO(S)/MLD dated 01.04.2021 that since the General Election of WBLA Election, 2021 is in force and the entire machinery is required to remain engaged in election and will be busy with executing vulnerability mapping, confidence building measures among voters, arrangement of polling stations, covering of political party meetings and nomination activities among other activities, the police authority has expressed their inability to provide sufficient police force for arranging the meeting due to engagement in pre-poll arrangements and this was the reason that the prescribed authority had to defer the meeting to a date on 10.05.2021 as it was beyond control of the prescribed authority and for that the meeting was adjourned for removal of Sabhapati of Kaliachak – II Panchayat Samiti.

Now, it has been pointed out on behalf of the respondent no.6 that such meeting had been cancelled and the prescribed authority could not pass such order cancelling the date of meeting in view of the provisions of Section 101(4) of the West

Bengal Panchayat Act, 1973 which provides for motion of no confidence or removal of Sabhapati or Sahakari Sabhapati. It would be profitable to reproduce the provision of Section 101 of the said Act as follows:-

“101. Motion of no confidence or removal of Sabhapati or Sahakari Sabhapati.-

- (1) Subject to other provisions of this section the Sabhapati or the Sahakari Sabhapati of a Panchayat Samiti may, at any time, be removed from his office by the majority of the existing members of the Panchayat Samiti, referred to in clause (ii) of sub-section (2) of Section 94, expressing their lack of confidence against the Sabhapati or the Sahakari Sabhapati or recording their decision to remove the Sabhapati or the Sahakari Sabhapati, at a meeting specially convened for the purpose.*
- (2) For the purpose of removal of the Sabhapati or the Sahakari Sabhapati, one-third of the existing members referred to in sub-section (1) shall sign a motion in writing expressing their lack of confidence against the Sabhapati or the Sahakari Sabhapati or recording their intention to remove the Sabhapati or the Sahakari Sabhapati, indicating party affiliation or independent status of each of such members and either deliver the motion in person through any of the members or send it by registered post to the prescribed authority; one copy of the motion shall be delivered to the concerned office bearer either by hand or by registered post at the Panchayat Samiti office and another copy shall be sent by registered post at his residential address.*
- (3) The prescribed authority on receipt of the motion shall satisfy himself that it conforms to the requirements 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 Panchayat Samiti 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.

(4) The meeting referred to in sub-section (3) shall be held on a working day which shall not be 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."

The provision of Section 101(4) provides that the meeting referred to in sub Section 3 shall be held on a working day which shall not be later than 15 working days from the date of receipt of 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. In this context the learned counsel for the respondent no.6 points out that the meeting ought not have been cancelled or deferred beyond 15 days and accordingly the order passed by the prescribed authority being SDO has been assailed by respondent no.6 in his writ application being, W.P.A. 9873 of 2021. Contrary to said contention Mr. Chakraborty, learned counsel

for the petitioner contends that the language of the provision of sub Section 4 of Section 101 of Act, 1973 is very clear to hold that the prescribed authority for the reasons beyond control can very well cancel or adjourn the meeting fixed for removal of the Sabhapati as provided in Section 101. I understand from the plain reading of the provision in reference to the impugned order passed by the prescribed authority that the authority has mentioned the reasons and circumstances beyond its control in holding the meeting on 10th May, 2021 in his order dated 01.04.2021 that compelled him to adjourn the requisitioned meeting for removal of Sabhapati at Kaliachak-II Panchayat Samity on 10.05.2021 because of General Election to WBLA Election, 2021 which was in force and notification in Form No.1 was issued on 31.03.2021 and nomination process for intimation to WBLA Election, 2021 was started from the date and counting of vote shall be done on 2nd May, 2021 and election process shall be completed on 4th May, 2021. As such, entire machinery including the Police authority would not be in a position to extend their assistance in holding of the meeting as on the date fixed. Therefore, the meeting was adjourned to 10.05.2021.

The petitioners' contention in their writ application is that they became perplexed with the notice having received from the SDO, Malda as they wanted that the meeting scheduled on 10th

May, 2021 should be held with appropriate Police help; so the petitioners submitted representation on 8th April, 2021 for holding the meeting on 10th May, 2021 with appropriate Police arrangement so that the meeting can be held peacefully.

In the given facts of the case and in consideration of the provisions and the orders passed by the prescribed authority being the SDO and now upon hearing learned counsel for the petitioners and the respondents, I do not find any illegality in the action taken on behalf of the prescribed authority being SDO, Malda Sadar, Malda in postponement of the meeting for removal of Sabhapati until further order.

For the reasons stated above, this Court is of the view that the prayer of the writ petitioner for direction upon the respondent authority and their agent to hold meeting on 10th May, 2021 for removal of Sabhapati, Kaliachak-II Panchayat Samity is not feasible and cannot be countenanced to, in view of the prevailing pandemic situation due to Covid-19 second wave. However, whenever the date of a meeting for removal of Sabhapati is fixed by the prescribed authority, the meeting be held with the appropriate Police arrangement for the security of all the attending members.

Thus, the writ application being WPA 9652 of 2021 is disposed of.

Re : WPA 9873 of 2021

This writ application is taken up for hearing analogously with W.P.A. 9652 of 2021 in view of this Court's order dated 5th May, 2021.

This writ application has been filed on behalf of the Tinkur Rahaman Biswas who is the existing Sabhapati of Kaliachak-II Panchayat Samity, Malda Zilla Parishad, District-Malda and respondent no.6 of the writ petition being, W.P.A. 9652 of 2021. He is an elected member of three tier Panchayat under the guidance of the West Bengal Panchayat Act, 1973. The petitioner received a notice on 30th day of March, 2021 being the notice of motion for removal of the petitioner from the office of the Sabhapati, Kaliachak-II Panchayat Samiti, Malda. It is contended that twenty two (22) members have formed the Panchayat Samiti whereas the said notice of removal dated 30.3.2021 has been signed by only twelve members out of twenty two Panchayat Samiti members addressed to the prescribed authority.

It is submitted that the respondent no.3 has passed an order dated 1st day of April, 2021 being Memo No.595/5DO(S)/MLD by which the authority has indicated that the General Election to WBLA Election 2021 is in force and notification in Form-I already been issued on 31.03.2021 and

nomination process for election to WBLA Election 2021 has been started from that date and counting of vote for the same will be done on 2nd May, 2021 and the election process will be completed by 4th May, 2021. Accordingly being aggrieved person, the petitioner has challenged the impugned Memo being No.602/SDO(S)/MLD dated 01.04.2021 by which the order dated 10.04.2021 vide letter/memo No.595/SDO(S)/MLD was reviewed by the respondent no.3 on the ground, *inter alia*, that the prescribed authority cannot defer the date of meeting beyond the period of 15 days as per the provision of Section 101(4) of the West Bengal Panchayat Act, 1973.

At this stage, the petitioner does not want to press this writ application in view of the substantial decision taken in the writ petition being, W.P.A. 9652 of 2021.

Thus, the writ application being, WPA 9873 of 2021 is dismissed and disposed of as not pressed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis after compliance with all necessary formalities.

(Shivakant Prasad, J.)