

MAT 555 of 2021
with
IA No. CAN 1 of 2021
(Via Video Conference)

Kutub Uddin Molla & Ors.
vs.
The State of West Bengal & Ors.

Mr. Subhrangsu Panda
Ms. Rima Das
...for the appellants

Mr. Sarwar Jahan
.....for Respondent No. 6

In support of the appeal Ms. Rima Das, learned Counsel, appears with by Mr. Subhrangsu Panda, learned Counsel.

On behalf of the Respondent No. 6 in this appeal, representation is put in by Mr. Sarwar Jahan, learned Counsel.

Although Affidavit-of-Service is filed, none appears for the State-respondents. At the very outset this Court must observe that, in the facts of this litigation, the assistance of the Respondent No. 5/Block Development Officer and Prescribed Authority (for short *BDO/PA*), Kulpi through learned Counsel was clearly necessary.

At issue in this writ petition is a Notice under Section 12 of the West Bengal Panchayat Act, 1973 (for short the 1973 Act) seeking the convening of a meeting to consider the removal of the Pradhan/ the Respondent No. 6. It is argued on behalf of the appellants that no effect to the Notice was given by the Respondent No. 5/ *BDO/PA*.

It is also submitted that the Hon'ble First Bench fell in to error by directing affidavits to be exchanged to the writ petition by the order impugned dated 3rd May, 2021 citing the reason that no immediate urgency could be found to intervene at the interim stage.

The attention of this Court is drawn to an adjudication of the Hon'ble Appellate Bench on a parity of issue relating to the requirement of convening a meeting pursuant to a Notice under Section 12 of the 1973 Act. Such issue was decided by the Hon'ble Division Bench *vide* its final order dated 12th April, 2021 by directing the *BDO/PA* of the concerned Panchayat to convene a meeting under Section 12 (*supra*) since such meeting was a statutory meeting not barred by *Instruction Serial No. 12* of the Model Code of

Conduct (*MCC*) as issued by the Election Commission of India (*ECI*).

However, by the said final order dated 12th April, 2021, considering the then subsisting authority of the *ECI* to conduct the Election to the State Assembly, this Court made it clear that it would be open to the *ECI* to take appropriate steps in the event such restrictions/conditions connected to such statutory meeting are violated and brought to its notice.

Today, when this appeal is taken up for consideration, the *ECI* has become *functus officio* inasmuch as the elections have been held and completed.

In the above view of the matter, this Court is of the view that the Notice dated 25th February, 2021 be taken to its logical conclusion in accordance with law by the respondent No. 5/ *BDO/PA*.

It is accordingly so directed.

In view of the discussion as above, this Court is unable to agree with the conclusion reached by the Hon'ble Single Bench *vide* its order under

challenge dated 3rd May, 2021 that there is no reason to intervene in the writ petition at this stage. Accordingly, the order impugned dated 3rd May, 2021 stands set aside.

Furthermore, having regard to the direction upon the *BDO/PA* to take the Notice dated 25th February, 2021 to its logical conclusion, both the writ petition and appeal need not be detained.

Accordingly, the appeal being **MAT 555 of 2021** with the application being **IA No. CAN 1 of 2021** as well as the writ petition being **WPA 6834 of 2021** stand **disposed of**.

Affidavits-of-Service filed in Court today be kept with the records.

Parties to act on a server copy of this order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Saugata Bhattacharyya, J.) (Subrata Talukdar, J)