

S/L 8
06.09.2021
Court. No. 19
GB

WPA 13737 of 2021

Rojina Khatun & Ors.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Chitta Ranjan Chakraborty,
Mr. Dip Jyoti Chakraborty.

...for the Petitioners.

Mr. Gangadhar Das,
Mr. Swarvanu Saha.

...for the Respondent Nos.1 to 14.

Mr. Raja Saha,
Ms. Rupsha Chakraborty.

...for the State.

The writ petition has been filed by the Pradhan and some other members of the Mahishbathani Gram Panchayat. The only ground of challenge in this writ petition is that the meeting scheduled to be held on September 8, 2021 for removal of the Pradhan cannot be held during the pendency of a complaint under Section 11(1)(c) of the West Bengal Panchayat Act, 1973, before the S.D.O., Malda Sadar against the respondent no.9.

It is a settled law that even if an application for disqualification and/or removal of a member is pending, until and unless the said member is removed or disqualified, the said member shall be allowed to participate in the meeting.

Mr. Chakraborty, learned advocate appears on behalf of the petitioners and relies on the decision of *Binay Adhiari*

& Anr. versus The State of West Bengal in MAT 71 of 2019.

The decision is not applicable in this case, inasmuch as, before the Hon'ble Division Bench the question was whether the elected persons, who sought to participate in the meeting not having taken the oath or affirmation before the competent authority in terms of Section 197 of the West Bengal Panchayat Act, 1973 within six months from the date of their election could take part in the meeting. It was the opinion of the Hon'ble Division Bench that as the existence and membership in these members in the gram panchayat was in question, their votes cast at the meeting should be kept in a sealed cover. In this case, the requisitionists are the members. An application has been filed for disqualification of one of them for reasons as provided under Section 11(1)(c) of the said Act. The facts are distinguishable.

The meeting is not interfered with. The meeting shall be held on September 8, 2021 in accordance with law and reached to its logical conclusion. All the requisitionists shall participate as per their choice. Disposal of this writ petition without any interference, shall not prevent the prescribed authority i.e. SDO Malda (Sadar) from proceeding against the respondent no.9 on the basis of the application, strictly in accordance with law. If the prescribed authority SDO Malda (Sadar) is of the opinion that the application filed against the respondent no.9 is maintainable in law, then the same shall be proceeded with and reached to its logical conclusion upon affording an opportunity of hearing to all

the parties. A reasoned order should be passed and communicated to all concerned.

The entire exercise shall be completed within a period of two months from date of communication of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)