

S/L 2
16.09.2021
Court. No. 19
GB

WPA 14582 of 2021

Satya Bhusan Mallik
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

*Mr. Srijib Chakrobarty,
Mr. Aditya Mondal.*

...for the Petitioner.

*Mr. Jahar Lal De,
Mr. Jahar Dutta.*

...for the State.

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

...for the Respondent No.5.

The petitioner is the leader of the Bharatiya Jananta Party in the District of Malda especially of the area under Jajolia Gram Panchayat. It is the contention of the petitioner that the respondent no.5 had voluntarily given up his membership in the Bharatiya Janata Party and expressed his allegiance to the Trinamool Congress, by a letter dated September 10, 2021 written to the petitioner.

Mr. Chakrobarty, learned advocate appearing on behalf of the petitioner submits that the petitioner made an application under Section 213A of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act') praying for disqualification of the respondent no.5.

According to Mr. Srijib Chakrobarty, as the respondent no.5 is liable to be disqualified in terms of the provisions of law, the prescribed authority should be directed to decide the issue within a short time, that is before the meeting is held for removal of the Pradhan. He submits that the decision in the meeting will be impacted by the decision of the prescribed authority under Section 213A. It is

contended that before the removal proceedings are concluded within 30 days from receipt of the requisition, the decision should be taken.

Mr. Srijib Chakrobarty further submits that the single vote of the respondent no.5 would have a serious impact on the result of the meeting to be held for removal of the Pradhan, inasmuch as, if the vote of the respondent no.5, who has defected, is taken into account, then the entire complexion of the office of the Gram Panchayat will change.

Mr. De, learned advocate appearing on behalf of the State respondents submits that until and unless the respondent no.5 is disqualified in a proper proceeding as envisaged under the provisions of Section 213A of the said Act, the said respondent cannot be prevented from participating in the meeting. It is further submitted by Mr. De that the prescribed authority has not yet decided even the maintainability of the application under Section 213A of the said Act, inasmuch as, whether the same is in the prescribed form in terms of the Rules and whether the same has been addressed to the correct authority as per the government notification.

Mr. Chitta Ranjan Chakraborty, learned advocate appearing on behalf of the respondent no.5 submits that the impugned letter by which the respondent no.5 has said to have defected, is not genuine. It is a forged letter and an F.I.R. has been lodged by the respondent no.5 on the ground of alleged forgery and as such, the allegation of shifting allegiance to the Trinamool Congress from the Bharatiya Janata Party is completely incorrect. He further submits that the application under Section 213A of the said Act is not in the prescribed form and issued to the wrong authority and is liable to be rejected.

It is the specific case of the respondents that the application not being according to Rules and not addressed to the prescribed authority, cannot be looked into and no preventive order can be passed with regard to the meeting,

which is scheduled to be held on September 20, 2021. They submit that the court cannot confer jurisdiction.

Having heard the rival contentions of the parties, this Court is of the opinion that the respondent no.5 cannot be prevented from voting in view of the fact that the disqualification proceeding has not yet been initiated. An application has been filed before the Sub-Divisional officer, Malda Sadar only on September 13, 2021 and the same is yet to be disposed of. The meeting is scheduled to be held on September 20, 2021 and until and unless the respondent no.5 is disqualified in accordance with law by appropriate authority in an appropriate proceeding, no preventive order can be passed stopping the respondent no.5 from voting.

Under such circumstances, the meeting as scheduled to be held, will be held on September 20, 2021. The respondent No.5 will cast his vote. However, the authority before whom the application has been made, shall dispose of the same in accordance with law within three weeks from date of communication of this order and decide the issue including his jurisdiction.

This time period is being fixed mandatorily by the Court in view of the fact that the decision in the meeting for removal of the Pradhan may be impacted. This order shall not be construed as an observation on the maintainability of the application under Section 213A filed by the petitioner, as it is the specific case of the learned advocates for the respondents that the said application merits no consideration as the same is erroneous, not in form and addressed to the wrong authority. The Sub-Divisional officer to whom the application has been addressed shall decide whether such application could be entertained and is maintainable in the eye of law or suffers from non-compliances of the rules and government notification. The authority shall communicate the order to the petitioner as also the respondent no.5 and the Gram Panchayat within three weeks mandatorily.

This court has not decided any of the points raised by the parties and the SDO Malda Sadar shall decide the issues independently.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)