

25.2.2022
Court No. 19
Item no.3
sn

WPA 3345 of 2022

Kamalika Thokdar Sarkar & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee
Mr. Sandipan Das
Ms. Debolina Sarkarfor the petitioners

Mr. Lalit Mohan Mahata
Mr. Prasanta Behari Mahatafor the State

Mr. Subir Sanyal
Mr. Sutirtha Das ..for the respondent nos.1 to 5

The subject matter of challenge in this writ petition is the proposed election of the Pradhan of Chandrapura Gram Panchayat, which is scheduled to be held today, that is, February 25, 2022 at 11-30 a.m.

It is submitted by some of the members of the gram panchayat that in view of the fact that the seat of the Pradhan in this Gram Panchayat has been reserved for Scheduled Caste candidates and there being only one Scheduled Caste candidate amongst the members, the meeting should not be held because the natural consequences of the meeting would be that the said single SC member will be elected once again as a Pradhan, although removed earlier.

Mr. Chatterjee, learned advocate for the petitioners submits that the said person was removed from his office as Pradhan by due process of law and if the election is allowed to be held, again the said removed Pradhan, shall be elected in view of the reservation policy.

The election of the Pradhan has been fixed pursuant to the direction of this Court in WPA 296 of 2022 dated January 10, 2022. Her Lordship directed that the prescribed authority must take steps for holding the meeting in accordance with law. It is an admitted position that 30 days had elapsed since removal of the erstwhile Pradhan. The prescribed authority had not obtained permission on the earlier occasion for holding the election of a new Pradhan beyond the period of thirty days.

The matter was challenged before this Court and Her Lordship directed the prescribed authority to take necessary steps in accordance with law under Rule 6 of the West Bengal Panchayat(Constitution) Rules, 1975. Accordingly, the prescribed authority, sought permission from the District Election Officer, Malda for extension of time to hold the meeting for removal of the Pradhan and thereafter convened the meeting.

Mr. Mahata, learned Senior Government Advocate appearing on behalf of the prescribed

authority submits that permission was granted by the District Election Officer. The reasons why the said election could not be held within 30 days, has been elaborately discussed in the permission. The District Election Officer held that in the first round of the election there was no quorum, in the second round police personnel were not available and thereafter the meeting could not be held due to pendency of the earlier writ petition before this Court and the interim order passed therein.

Subsequently, when the matter was disposed of by the High Court with a direction upon the prescribed authority to hold a meeting, permission was sought for and the permission was granted by citing the above reasons as good grounds for extension.

Although, Mr.Chatterjee has raised an arguable point as to whether a removed Prahan can automatically be elected once again despite having lost confidence of the members, only because of the reservation policy. Unfortunately, the law does not prohibit such election. The law categorically provides that if a motion for removal of the Pradhan is not carried in the meeting or the meeting fails for want of quorum, no motion for removal of the Pradhan can be brought within a period of one year from the date of the meeting on which the motion failed. However,

the law does not provide an alternative situation which will prevent a removed Pradhan from being elected once again or from participating in the election once again and from holding the same office.

Rule 6 of the West Bengal Panchayat (Constitution) Rules 1976 governs election of the Pradhan in case of a vacancy created by removal of the existing Pradhan. The Rule does not debar the removed Pradhan from participating in the election.

The Court cannot supplement the law framed by the legislature in its wisdom. The reservation policy is a matter of rule, which is not the subject matter of challenge before this Court. The Court can interpret the law or read down the provisions of law, but the Court cannot re-write the law in order to take care of such a situation, as prayed for by the petitioner.

The meeting will be held as scheduled.

The petitioners are always at liberty to challenge the vires of the law or challenge the reservation policy and it is also open for the legislature to take care of such a situation by amending the law by exercising its wisdom, in view of the discussions hereinabove.

This writ petition is disposed of.

There will be however no order as to costs.

Parties are to act on the server copy of this order and/or learned advocate's communication.

(Shampa Sarkar, J.)