

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA No. 7404 of 2022

Lovely Bibi

Vs.

The State of West Bengal and Ors.

For the writ petitioner	:-	Mr. Arabinda Chatterjee, Sr. Adv. Mr. Biswarup Biswas, Adv. Mr. Probal Sarkar, Adv. Mr. Sk. Kiran, Adv.
For the State	:-	Mr. Jahar Lal De, learned AGP Mr. Rudranil De, Adv.
For the respondent nos. 10 & 11	:-	Mr. Milan Chandra Bhattacharya, Sr. Adv. Mrs. Sulanga Bhattacharya, Adv. Mr. Samrat Das, Adv.
Heard on	:-	07.07.2022
Judgment On	:-	12.07.2022

Amrita Sinha, J.:-

The issue to be decided in the present writ petition is whether the reserved category post of Pradhan of a Gram Panchayat can be filled up by a member who did not possess and/or produce the reservation certificate at the time of filling the nomination.

The petitioner, a reserved category candidate, contested and won the Panchayat General Election 2018 from Akheriganj Gram Panchayat.

There are total thirteen seats in the said Gram Panchayat out of which seat no. 2 is reserved for woman of the Other Backward Classes and the post of Pradhan is reserved for Backward Class woman candidate.

The petitioner being the sole woman candidate belonging to the Backward Class was elected as Pradhan of the Gram Panchayat.

A no confidence motion was brought against the petitioner and the motion of no confidence was carried through by the requisitionists and she was removed from the post of Pradhan. On 8th April, 2022 the petitioner handed over charge of her office to the Upa-pradhan of the Gram Panchayat. Meeting was held on 21st April, 2022 for election of a new Pradhan, wherein Lufta Bibi the respondent no. 10 herein emerged successful. The said Lufta Bibi was elected as a member of the Gram Panchayat under the general category.

According to the petitioner, as the post of Pradhan is reserved for a female backward class member, as such, the private respondent who did not disclose her reserved status and contested the General Election as a general category candidate ought not to be elected to the said post.

The petitioner has averred in the writ petition that the private respondent was elected to the post of Pradhan by giving undue weightage to the reservation certificate procured by her after the Panchayat General Election was conducted in the year 2018.

The petitioner contends that the reservation certificate relied upon by the private respondent cannot be taken into consideration and the said respondent cannot be treated as a reserved category candidate for

being elected to the post of Pradhan reserved for backward class member.

The petitioner has prayed for setting aside the impugned resolution dated 21st April, 2022 whereby the private respondent was declared elected as Pradhan and the subsequent act or acts performed by the respondents on the basis of the impugned resolution.

In support of the aforesaid stand, the petitioner has relied upon the handbook for Returning Officers (Panchayat Election) published by the West Bengal State Election Commission in the year 2018 wherein it has been mentioned that in respect of seats reserved for the scheduled castes and scheduled tribes or backward classes, production of a certificate by the competent authority at the time of filling nomination papers is an essential requirement.

The petitioner further relies upon Section 46 (3) of the West Bengal Panchayat Elections Act, 2003 wherein it has been mentioned that the nomination paper for any seat, reserved for a candidate of the scheduled castes or the scheduled tribes, shall be accompanied by a copy of the certificate of the scheduled castes or the scheduled tribes, granted by a competent authority and the original copy of such certificate shall be produced at the time of making delivery of such nomination paper to the Panchayat Returning Officer.

In support of the above stand the petitioner relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Registrar General, Calcutta High Court vs. Shrinivas Prasad Shah and Ors.*** reported in **(2013) 12 SCC 364** paragraph 9.

The petitioner also relies upon the judgment delivered by the Full Bench of the Bombay High Court in the matter of ***Ashok Kondida Yenpure and Anr. Vs. State Election Commission and Ors.*** reported in ***1998 AIHC 2319*** paragraph 5.

Learned senior advocate representing the State respondents relies upon the provision of Section 9 of the West Bengal Panchayat Act, 1973 which lays down that any member elected from an unreserved seat or from a seat reserved for another category shall be eligible for election to the office of the Pradhan or the Upa-pradhan reserved for a particular category if he belongs to such category and produces the caste certificate issued by the competent authority before the presiding officer in order to establish the claim.

It has been submitted that the petitioner being the reserved category candidate was duly appointed in the post of Pradhan of the Gram Panchayat but after her removal the private respondent has been elected as the Pradhan in accordance with the aforesaid provision of the Act.

It has been contended that the prescribed authority did not commit any error in handing over charge of the post of Pradhan to the private respondent as she was able to produce a valid caste certificate in her favour in support of her reserved category.

The private respondent has relied upon the certificate of Other Backward Classes issued in her favour by the Sub-Divisional Officer on 27th November, 2018. It has been contended that as the private respondent did not contest for a seat reserved for SC/ST/BC

accordingly, she was not required to disclose the caste certificate at the time of filling the nomination paper for contesting the General Election. Later, at the time of contesting for the post of Pradhan, she produced the caste certificate issued in her favour by the competent authority.

It has been argued that after losing confidence of the majority members of the panchayat, the petitioner does not have a chance to contest for the post of Pradhan again. Removal of the present Pradhan will not enure to the benefit of the petitioner in any manner.

The respondents pray for dismissal of the writ petition.

I have heard and considered the rival submissions made on behalf of all the parties.

As per the provision of Section 9 a reserved category candidate is eligible for election to the post of Pradhan or Upa-pradhan reserved for a particular category, provided the candidate produces the caste certificate before the presiding officer to avail the benefit of reservation.

In the present case, the private respondent contested for the post of Pradhan in April, 2022, and by that time, the private respondent was able to procure a caste certificate from the competent authority. The said caste certificate was issued in November, 2018. As the private respondent did not contest for a reserved category seat in the General Panchayat Election, accordingly there was no requirement for filling or producing the caste certificate at the time of submitting her nomination. The moment she contested for the post of Pradhan which is reserved for

backward class, she produced her caste certificate before the presiding officer.

The presiding officer accepted the caste certificate filed by the private respondent and being successful in the election she was appointed as the Pradhan. Provision of the West Bengal Panchayat Act, 1973 permits the same.

Section 46 (3) of the West Bengal Panchayat Elections Act, 2003 relied upon by the petitioner clearly lays down that for contesting in a reserved category seat nomination paper shall be accompanied by a copy of the caste certificate and the original of the said certificate shall be produced at the time of delivery of the nomination paper to the Panchayat Returning Officer. The private respondent never contested for a reserved category seat. She contested for a general category seat and emerged successful.

The aforesaid Section does not mention that whenever a reserved category candidate contests an election, the caste certificate is to be submitted by the candidate. On the contrary, the handbook of the Returning Officers relied upon by the petitioner clearly mentions that, it is not essential that a SC/ST/BC candidate shall fill up the declaration in the nomination paper that he is a member of the reserved category, unless, the benefit of concessional rate of deposit is availed of by him.

The private respondent never sought for reservation at the initial stage when she filed the nomination paper and accordingly as per the aforesaid provision of law she was not required to disclose her caste. It is only after the private respondent contested for the reserved category

post, did she produce the caste certificate which was issued in her favour long prior to the election of the Pradhan in April, 2022.

The State respondents have relied upon the judgment delivered by this Court in the matter of ***Rekha Bibi vs. The State of West Bengal*** reported in ***2018 (1) CHN (Cal) 32*** wherein the Court held that a candidate after his/her election as a member of the Panchayat Samity under general category is entitled to hold the office of the Sabhapati of the Panchayat Samity under reserved category. The same implies that a candidate elected in the general category is entitled to contest the post reserved for the reserved category candidate.

Here, the private respondent contested as a general category candidate at the time of election as member of the panchayat, but at the time of election of Pradhan she disclosed and relied upon her caste certificate. The ratio laid down in *Rekha Bibi (supra)* will apply in the present case and the private respondent is entitled to get the benefit of the same.

The decision relied upon by the petitioner in the matter of *Ashok Kondida (supra)* does not support the stand of the petitioner. In fact, the same supports the stand of the private respondent. In the said judgment the Hon'ble Supreme Court relied upon a decision (*Kasambhai F. Ghanchi v Chandubhai D.Rajput; (1997) Scale 248*) which held that, when as per the roster the President is to be one who, say, belongs to the category of SCs then the members of the Municipality who are SCs, irrespective of the seat to which they had been elected, would be eligible to stand for election.

In Shrinivas Prasad (supra) the Supreme Court held that in the absence of the requisite certificate the Commission was justified to treat him as a general category candidate. The said observation was made as the candidate could not produce the caste certificate from the competent authority when he appeared in the examination held in the year 2007, but produced the same at the time when 2010 examination was held. In such a situation, the candidate was treated as a general category candidate for the 2007 examination but was considered as a reserved category candidate in 2010 examination.

The aforesaid decision will not come to the aid of the petitioner inasmuch as the private respondent never contested for a reserved category seat. Had the private respondent at the time of filing her nomination contested for the reserved category seat, then the requirement of filing the caste certificate was essential. At the later stage, when contesting for the post of Pradhan reserved for BC category member then, the contesting candidate is required to produce the reservation certificate only at the time the said election is held and not prior thereto.

The private respondent duly produced her reservation certificate issued in her favour in the year 2018 at the time of contesting the election for the post of Pradhan in the year 2022. The same is absolutely permissible in law and the Prescribed Authority did not commit any error in accepting the candidature of the private respondent as a reserved category candidate.

Accordingly, the contention of the petitioner cannot be support in law. No relief can be granted to the petitioner in the instant case.

The writ petition fails and is hereby dismissed.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)