

AD. 35.  
April 27, 2022.  
MNS.

WPA No. 7600 of 2022

Mamtaj Molla and another  
Vs.  
The State of West Bengal and others

Mr. Bijoy adhikary,  
Mr. Ushananda Jana,  
Ms. Susmita Adhikary

...for the petitioners.

Mr. Lalit Mohan Mahato,  
Mr. Supratim Dhar

...for the State.

Affidavit-of-service filed in Court today be kept  
on record.

The grievance of the petitioners is that, in violation of Sections 9 and 10 of the West Bengal Panchayat Act, 1973 (1973 Act), the respondent authorities have fixed an election for the post of Pradhan in respect of the Moydah Gram Panchayat tomorrow, that is April 28, 2022.

Learned counsel appearing for the petitioner places reliance on Section 9(4) of the 1973 Act, which stipulates that when the office of the Pradhan falls vacant by reason of death, resignation or otherwise, the Upa Pradhan shall exercise the powers, perform the functions and discharge the duties of the Pradhan only till the new Pradhan is elected and assumes office or until the Pradhan resumes his duties as the case may be.

Learned counsel appearing for the respondent authorities places reliance on Rule 6 of the West Bengal Panchayat (Constitution) Rules, 1975 (1975 Rules) and indicates that as soon as may be but not later than 30 days from the date of any casual vacancy in the office of Pradhan or Upa Pradhan etc., or within such further time as may be allowed by the District Panchayat Election Officer for reasons to be recorded by him in this behalf, the prescribed authority as referred to in sub-rule (I) of Rules 3 mentioned therein shall call a meeting of all the members for the election of a Pradhan or an Upa Pradhan etc.

It is contended that, in the present case, the resignation tendered by the petitioner no. 1, that is, the Pradhan on April 11, 2022 was accepted, upon hearing the Pradhan, vide order dated April 19, 2022. It is further contended that a hearing of the said notice was intimated to the Pradhan, that is, the petitioner no. 1 vide Memo No. 862 dated April 12, 2022. In support of such contention, a photocopy of an order of the Prescribed Authority and Block Development Officer, Joynagar-II Development Block, dated April 19, 2022 is handed up in court, with a copy to learned counsel appearing for the writ petitioners, which photocopy is kept on record.

It is evident that there is sufficient evidence to indicate that the Pradhan of Moydah Gram

Panchayat, that is, the petitioner no. 1 in the present writ petition, had tendered resignation and the same was duly accepted. In fact, there is nothing contrary to the materials on record to indicate that any of the provisions of law were violated in so far as the acceptance of the Pradhan's resignation is concerned.

Moreover, the petitioner no. 2, that is, the Upa Pradhan is only empowered to act on an ad hoc basis as the Pradhan under Section 9(4) of the 1973 Act, till the Pradhan is elected and assumes office.

As such, the continuance of the Upa Pradhan in office in view of the Pradhan is statutorily limited to the assumption of office of the new Pradhan upon election.

Since Rule 6 of the 1975 Rules, as rightly pointed out by learned counsel appearing for the respondent authorities, stipulates that the new Pradhan shall be elected as soon as may be but not later than 30 days of casual vacancy, which occurred in the present case on the acceptance of the resignation of petitioner no. 1 on April 19, 2022, no infraction of the statutes or the Rules was perpetrated by the respondent authorities in declaring the elections and calling for the meeting, which is scheduled for tomorrow, that is, April 28, 2022.

At this juncture, learned counsel appearing for the petitioners contends that the hot haste in which

the election was scheduled by the respondent authorities is suspect and ought to be set aside.

However, upon consideration of the submissions of the parties and the relevant law governing the election of the Pradhan, it is evident that there is no infraction or violation of any law or rule on the part of the respondent authorities since Rule 6 of the 1975 Rules clearly stipulates that as soon as but not later than 30 days from the date of casual vacancy, steps will be taken for election to be held. As such, no illegality was committed by the respondent authorities in scheduling the election on April 28, 2022, upon acceptance of the resignation of the Pradhan on April 19, 2022, leaving a week in between. The stipulation of 30 days is evidently the outer limit for taking such action, well within which, that is, leaving a clear week's time the election has been scheduled in the present case.

As such, there is no scope of interference with the impugned action of the respondent authorities.

Accordingly, WPA 7600 of 2022 is dismissed on contest without any order as to costs.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)