

D/L
Item No. 10
13.06.2022
KOLE

**MAT 671 of 2022
With
IA No. CAN 1 of 2022
With
IA No. CAN 2 of 2022

Mamtaj Molla & Anr.
-Vs.-
The State of West Bengal & Ors.**

*Mr. Ushananda Sana,
Mr. S. Bhattacharyya,
Mr. S. Chatterjee,*

...for the appellants.

*Mr. Lalit Mohan Mahata, Addl. Govt. Pleader,
Mr. S. Dhar,*

...for the State.

*Mr. Atarup Banerjee,
Mr. S. Ghosh,
Mrs. P. Ray,*

...for the added respondent.

By consent of the parties the appeal and the applications are taken up for hearing together.

The writ petitioner was the Pradhan of the concerned Gram Panchayat. It is not in dispute that she tendered her resignation on April 11, 2022. Learned Advocate for the writ petitioner/appellant says that she resigned on health grounds. Be that as it may, a hearing was held by the prescribed officer on April 19, 2022 as contemplated in sub-Section (3) of Section 10 of the West Bengal Panchayat Act, 1973. An order was passed by the Prescribed Authority on April 19, 2022 where it was recorded, *inter alia*, as follows:-

“Whereas the Pradhan of Moydah Gram Panchayat appeared before the Prescribed Authority and Block Development Officer, Joynagar – II Development Block, South 24 Parganas on 19/04/2022 and the resignation of the Pradhan, Moydah Gram Panchayat was accepted after hearing under Sub-Section 3 & 4 of Substitution of new Section for Section 12 of the West Bengal Panchayat (Amendment) Act, 2010. As a result the post of Pradhan, Moydah Gram Panchayat stands vacant from today i.e. 19/04/2022.”

A notice was issued by the prescribed authority on April 19, 2022 for holding of a meeting on April 28, 2022 for election of a new Pradhan. At this juncture, the writ petitioner approached the learned Single Judge to restrain the respondent authorities from holding the proposed meeting for election of new Pradhan.

The learned Judge heard the parties at length and came to a conclusion that there was no infraction of any provision of the West Bengal Panchayat Act, 1973 or the Rules framed thereunder. It was urged before the learned Judge on behalf of the writ petitioner that the hot haste in which the meeting for election of new Pradhan had been scheduled, indicates malice and *mala fides* on the part of the authorities. It was also argued that there was no proper acceptance of the resignation tendered by the writ petitioner. All points argued on behalf of the writ petitioner were negated by the learned Single Judge. The writ petition was dismissed. Hence this appeal.

We have heard the learned Counsel for the parties. Learned Advocate for the appellant has drawn our attention to Sections 9, 10 and 12 of the 1973 Act. We have considered

the said Sections which pertain to election of Pradhan and Upa-Pradhan, resignation of Pradhan and Upa-Pradhan and member and motion of no confidence or removal of Pradhan or Upa-Pradhan respectively.

We see that undisputedly the writ petitioner tendered her resignation as Pradhan. A hearing was held by the prescribed authority after giving her sufficient notice in terms of the provisions of Section 10 of the 1973 Act. It was ascertained from her whether she wanted to withdraw her resignation. She stated she did not want to continue as Pradhan. In fact, in all fairness, learned Counsel for the appellant has also said before us that the appellant does not wish to continue as Pradhan on medical grounds. After hearing the writ petitioner/appellant, the prescribed authority declared that the post of Pradhan had fallen vacant upon the resignation of the writ petitioner being accepted. The election of a new Pradhan is to be completed within thirty days of the post falling vacant as per Rule 6 of the West Bengal (Constitution) Rules, 1975. Thirty days is the outer limit. One cannot fault the authorities if the election of new Pradhan is completed much before that. In this case, new Pradhan was elected on April 28, 2022. We are in agreement with the learned Single Judge that there appears to be no violation or breach of any of the provisions of the 1973 Act or the Rules framed therein.

Learned Advocate for the appellant has argued that the conduct and action of the respondent authorities indicate that there was legal malice on their part. We, however, are

not able to accept such submission. We do not find any *mala fide* or malice, whether in fact or in law, on the part of the respondent authorities. In any event, we fail to understand as to how the writ petitioner is affected since she admittedly does not wish to continue as Pradhan. The *locus standi* of the writ petitioner to maintain the writ petition is also doubtful.

For the reasons aforesaid, we find no ground to interfere with the order impugned. The appeal and the connected application are, accordingly, dismissed. The application for addition of parties is also disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Rai Chattopadhyay, J.)