

S/L 16
16.12.2022
Court. No. 19
GB

W.P.A. 18317 of 2021

Smt. Samala Rajak
VS
The State of West Bengal & Ors.

Mr. Chitta Ranjan Chakraborty,
Mr. Kashiswar Ghosal.

... for the Petitioner.

Mr. Rudranil De.

... for the Respondent No.6.

Mr. Lalit Mohan Mahata.

... for the State.

The petitioner was the erstwhile Pradhan of Mankiary gram panchayat. The petitioner was removed by a vote of no confidence on August 17, 2021 in term of Section 12(1) of the West Bengal panchayat Act, 1973, when 10 out of 11 members voted against the petitioner and in support of the motion. The 11th member was the petitioner herself.

In this gram panchayat, the post of Pradhan has been reserved for a Scheduled Caste candidate. The petitioner admittedly, is the only Scheduled Caste candidate. After the removal, the prescribed authority fixed September 15, 2021 as the date of election of the Pradhan. The election did not yield any result. No one proposed the name of the candidate to be elected as Pradhan. By the order dated September 29, 2021 the prescribed authority directed that the Upa-Pradhan, Mankiary gram panchayat shall discharge the powers

and functions of the Pradhan until further orders. Such order is the subject matter of challenge in the writ petition.

The petitioner submits as follows:-

- a) As the only candidate from the Scheduled Caste category, she is entitled to be elected as the Pradhan once again, without any proposal from others.
- b) Once the petitioner proposed her own name at the meeting, the question of seconding the name, would not arise.
- c) The prescribed authority did not allow the petitioner to propose her own name, although the petitioner had insisted upon it, in the course of the meeting.

The decision of ***Musuk Rajak versus State of West Bengal and Others*** passed in A.P.O.T. No.262 of 2008 is cited by the petitioner. Reliance has been placed on Rule 3(7)(a) of the West Bengal Panchayat (Constitution) Rules, 1975 and the proviso thereto, in support of such contention.

Mr. Chakraborty, learned advocate appearing on behalf of the petitioner submits that the reservation of the seat of the Pradhan is a mandate of the Constitution. There is no bar under the law which prevented the petitioner from proposing her name. The rule provides that seconding would not be necessary

in case there is only one Schedule Caste candidate. The petitioner, upon proposing her own name, would automatically become the Pradhan.

The learned advocate for the Upa-Pradhan submits that in every election there has to be a proposal by a member in favour of the person to be elected as Pradhan, even if, only one candidate was available for the reserved seat. In this case, when the meeting was held, no one proposed the name of the petitioner. The resolution of the meeting records that there was complete silence for more than two minutes. The prescribed authority repeated the process after a short break, still no one proposed any name.

It is further submitted that neither the minutes of the meeting for election of the Pradhan nor the demand of justice made by the petitioner records that the petitioner had proposed her own name. The contention of the petitioner as stated in the affidavit-in-reply is denied by the said respondent and referred to be an afterthought.

Mr. Mahata, learned Additional Government Pleader appears on behalf of the prescribed authority and submits that at the meeting, no one proposed the name of the petitioner and in terms of Section 9(4) of the West Bengal Panchayat Act, 1973 the Upa-Pradhan was allowed to continue to discharge the functions of the Pradhan. The panchayat could not

function without someone discharging the role of the Pradhan. The Pradhan was removed by a legal procedure and the seat was vacant.

This is a peculiar case where the Pradhan lost support of all the members. She was removed in accordance with law by a vote of no confidence. The prescribed authority called the meeting for election of the new Pradhan in compliance with the statutory mandate. Such meeting for election of the Pradhan was called within the prescribed time limit. No one proposed the name of the petitioner and as such, no election could be held.

If a removed Pradhan by virtue of the proviso to Rule 3(7)(a) of the West Bengal Panchayat (Constitution) Rules, 1975 is allowed to propose her own name and is re-elected as the Pradhan after having lost majority support, the entire exercise of the democratic process as envisaged in Section 12 of the 1973 Act becomes futile and redundant. The rights exercised by the members becomes a nugatory procedure.

In this case, no one proposed the name of the petitioner. The petitioner does not have a single supporter in the panchayat. No one else can be elected to the post of Pradhan because it is a reserved seat and the petitioner is the only reserved candidate. There would be a stalemate condition in the gram

panchayat as no one would support any decision or action of the Pradhan. The Pradhan would not be able to function in a vacuum. The panchayat act states how decisions, developmental works, expenditures including issuance of notices inviting tenders and implementation of schemes, have to be undertaken through several samitis and upa-samitis. The Pradhan is usually the chairman of some of the samitis. When members lose confidence in the Pradhan, they would not cooperate and none of the above activities could either be initiated or implemented.

Thus, the law made a provision in the form of Section 9(4) of the West Bengal Panchayat Act, 1973. It provides that when the office of the Pradhan falls vacant by reason of death, resignation, removal or otherwise or the Pradhan is, by reason of leave, illness or other cause temporarily unable to act, the Upa-Pradhan shall exercise the power, perform the functions and discharge the duties of the Pradhan until a new Pradhan is elected and assumes office or until the Pradhan resumes his duties.

In view of the stalemate condition the prescribed authority did not have any option, but to direct the Upa-Pradhan, Mankiary gram panchayat to exercise the power, perform the functions and discharge the duties of the Pradhan of the concerned gram panchayat.

The order impugned is justified under the facts and circumstances. The said decision is also in accordance with the provisions of law. The order records that all the 11 elected members were present at the meeting dated September 25, 2021 but no proposal was made by the members present at the meeting, in favour of the petitioner for being re-elected as the Pradhan within a few days from her removal. It is not expected that the petitioner would regain the support of the members within less than a month.

It has not been averred in the writ petition that the petitioner had proposed her own name, but the prescribed authority did not honour such proposal. In the affidavit-in-reply, the said plea has been taken.

In any event, for the reasons as aforesaid, the Pradhan who had lost confidence of all the members could not be re-elected as the Pradhan in the absence of any proposal. The order impugned is justified and no interference is called for.

The decision of *Musuk Rajak (supra)* was rendered under different facts and circumstances. In the said case, the Court held that in the presence of a Scheduled Caste candidate, co-opted member from outside by the ruling party, could not be allowed to function as the Pradhan, as the same would be contrary to Rule 3(7)(a) of the West Bengal Panchayat (Constitution) Rules, 1975. The Court also held that if

a member of the Scheduled Caste category was available, the said member should be elected as the Pradhan and no seconding would be necessary.

In the present case, the petitioner was removed by the majority and the post fell vacant. The petitioner was rendered non-functional by virtue of such removal from the post, by the majority members. Such removal was in consonance with the provisions of law.

In the decision of ***Prabhati Sarkar and Ors. versus State of West Bengal & Ors.*** reported in ***(2010) 2 WBLR (Cal) 201***, the Hon'ble Division Bench observed that in such a situation, the only other option available would be that Section 20 of the West Bengal Panchayat Act, 2003 would come into operation and one of the members would be compelled to resign and further election of a Scheduled Caste candidate is held. Paragraph 14 of the said judgment is quoted below:-

“Section 20 of the Act of 2003 so enacted contemplated the situation we are faced with in this case and gives complete answer to the question raised by Mr. Deb Barman before us. If the only available female member of the reserved Scheduled Caste category loses confidence of the majority while acting as a Pradhan thereof, any other female Scheduled Caste person having the qualification of becoming a member of the Gram Panchayat may be co-opted by any of the political parties by

compelling one of its elected members to resign for the purpose of creating a casual vacancy of that body. Such casual vacancy need not necessarily be created in respect of a reserved seat but the person so co-opted from the reserved category by any political party and ultimately elected to that reserved office of the Pradhan should not only be made a candidate for filling up the “casual vacancy” but should also be elected through a by-election for filling up the “casual vacancy” arising due to such co-option within six months from the date of co-option.”

However, the above decision was rendered before the amendment of the Act. The applicability of the said judgment need not be considered at this stage as none of the parties have advanced any argument in this regard.

Moreover, none of the members can be compelled to resign so that another schedule caste member may be co-opted and then re-elected within six months. Neither the Court nor the prescribed authority has the authority to direct how such situation can be overcome. The law is also silent. There has to be a voluntary action by a member.

The prescribed authority had to ensure that the panchayat functions under the Upa-Pradhan in terms of Section 9(4) of the West Bengal Panchayat Act, 1973, till the situation improves. The only practical

and possible solution to overcome the stalemate condition that was faced by the gram panchayat, was to direct the Upa-Pradhan to take over charge and function as the Pradhan.

If the situation changes, the members may approach the prescribed authority for election of the Pradhan at an appropriate stage.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)