

Item No.2
26.04.2023
Court. No. 19
GB

WPA 9994 of 2023

Md. Adut Gazi & Ors.
Vs
The State of West Bengal & Ors.

*Mr. Pratip Kumar Chatterjee,
Mr. Chittapriya Ghosh,
Ms. Priyanka Saha*

...for the Petitioners.

*Mr. Jahar Lal De,
Mr. Bipin Ghosh*

...for the State.

Mr. Shamim Ul Bari

...for the Respondent Nos.8 to 17.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioner no.1 is the erstwhile Pradhan, the petitioner no.2 is the Upa-Pradhan and the petitioner nos.3 to 5 are the members of Netra Gram Panchayat. The writ petition has been filed challenging the notice issued by the prescribed authority and the Block Development Officer, Diamond Harbour-I Development Block dated April 19, 2023.

The said notice has been issued in Form-1 of Rule 3(1) of the West Bengal Panchayat (Constitution) Rules, 1975 (hereinafter referred to as the 'said Rules'). The date for election of the new Pradhan of the concerned gram panchayat has been fixed on April 27, 2023 at 12 noon. The respondent nos.7 to 19 are some of the members of the gram panchayat. The petitioners allege that the notice should be

set aside and the decision to hold the meeting for election of the Pradhan must be cancelled for the following reasons:-

- a) The application for removal of the respondent nos.8, 10, 11 and 12 is pending for a decision by the Sub-Divisional Officer, since long. Without such decision, further steps towards election of the new Pradhan should not be taken.
- b) The West Bengal State Election Commission had already issued the notifications with regard to delimitation of constituencies and as such, the election of the new Pradhan will interfere with the process of the panchayat election likely to be held in May, 2023.
- c) The notice was not in accordance with the rules and 7 clear days had not been provided.
- d) Lastly, April 28, 2023 would be the last date for completion of the term of all the members. Hence, the meeting was redundant.

The erstwhile Pradhan, that is, the petitioner no.1 had sought for removal of four members. The said proceeding has not yet attained any finality. It is alleged that the time prescribed by this Court had expired but the Sub-Divisional Officer did not take steps. The said Pradhan, namely, the petitioner no.1 resigned. No contempt application has been filed by the petitioner no.1 against the alleged non-compliance.

Thus, the proceeding pending before the Sub-Divisional Officer cannot have any deterring effect on the

decision of the authority to hold the election of the new Pradhan in accordance with law, especially because there was already an order of this Court directing that the election of the Pradhan should be held in accordance with law. The said order of this Court dated September 2, 2022 has not been challenged by the petitioners. The order attained finality. When the Court directed that steps should be taken in accordance with law by the prescribed authority for election of the Pradhan, the same must be obeyed. The prescribed authority did not take steps and in a contempt proceeding, the prescribed authority was once again directed to comply with the order dated September 2, 2022.

The law requires that the notice fixing the date and time for election of the Pradhan should be issued at least 7 days before the date of the meeting. In this case, the notice was issued on April 19, 2023 and the meeting has been fixed on April 27, 2023. The Court finds that there has been compliance of the requirement. Moreover, all the parties are aware of the date and time of the meeting.

The contention of Mr. Chatterjee, learned advocate for the petitioner that there should be 7 clear working days from the date of the notice to the date of the meeting, is not accepted. The Panchayat Act and the Rules have made special provisions and timelines with regard to dates and time of the meetings as also the time gap between a notice calling a meeting and the date of the meeting. In case of some meetings, the law prescribes that steps should be taken

within 5 working days. In some cases, it has been mentioned that a notice of 7 days would be sufficient compliance.

Thus, when the law has made a distinction between 7 clear days and 5 working days, the interpretation of Mr. Chatterjee that the expression '7 days' in Rule 3(1) of the said Rules of 1975, should be read as '7 working days', is not accepted. Had it been the intention of the legislature that the notice should be issued at least before 7 working days from the date of the meeting, the legislature would have incorporated the same in the said provision like it has done in other provisions.

Moreover, the Courts have already decided that the idea of 7 days notice is to ensure that all persons and members involved in the process of a meeting under the provisions of the West Bengal Panchayat Act, 1973 and the Rules framed thereunder, were aware that the meeting of such nature was likely to be held. Knowledge would be the pre-requisite.

Mr. Chatterjee's contention that as the elections are imminent and the notification for delimitation had been issued, further steps for election of the Pradhan would be contrary to the idea behind the model code of conduct, is far fetched. Neither has the election been notified nor has the model code of conduct been published.

If such contention of Mr. Chatterjee is accepted, then the notifications which were issued by the West Bengal State Election Commission on and from July 2022 with regard to delimitation of seats, etc., would amount to an embargo on

all developmental activities under all gram panchayats in the State of West Bengal. The administrative directions of the Election Commission with regard to delimitation, reservation, etc., cannot be taken to be at par with the model code of conduct. The election process with regard to delimitation, reservation, allocation of seats, etc., are administrative actions which are guided by a separate set of rules. Such process does not in any way affect the day to day functioning of a gram panchayat and the panchayat authorities are not involved in such process. The delimitation, reservation, etc., are done by the District Panchayat Election Officer, who is not connected with the day to day functioning of a gram panchayat.

The petitioner no.1 resigned from his post as a Pradhan when he realized that he would be removed by majority, through a vote of no confidence. Now, the said petitioner along with the Upa-Pradhan who is discharging the functions of the Pradhan in the absence of the election of a new Pradhan, has come up before this Court trying to stall the process of election which is a mandate of the statute. There is neither any irregularity in the notice nor any impediment under the law for the meeting to go on.

The last contention of Mr. Chatterjee that the term of members of the gram panchayat shall expire on April 28, 2023 and no useful purpose will be served if the election is held on April 27, 2023, is premature and not relevant for the purpose of disposal of the writ petition, especially because from the pleadings it does not appear that the first meeting

of the gram panchayat was held on April 28, 2018. Section 7 of the West Bengal Panchayat Act, 1973 provides as follows:-

“7. Term of office of members of Gram Panchayat.- (1) The members of a Gram Panchayat shall, subject to the provisions of Sections 11 and 213A, hold office for a period of five years from the date appointed for its first meeting and no longer.”

In any event, if the term ultimately expires before the elections are either announced or held, the State respondents will take adequate measures to decide how the gram panchayats will function and it is not for this Court to interfere with such process at this stage.

This order shall not influence the Sub-Divisional Officer and deter the authority from proceeding on the basis of the hearing already held by the said authority, with regard to removal of some of the members.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)