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18.10.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 20175 of 2023

**Phani Bhusan Guchhait & Ors.
-versus
The State of West Bengal & Ors.**

**Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Payel Shome,
Ms. Sampriiti Saha,
Mr. Avijit Kar,
Ms. Mohona Das.
...For the petitioners.**

**Mr. Pantu Deb Roy
Mr. Subrata Guha Biswas
...For the State.**

**Mr. Jayanta Kumar Mitra,
Mr. Ashit Kumar Chakraborty,
Mr. Sunanda Mohan Ghosh.
...For the Respondent
Nos. 10 to 20.**

The matter relates to the election of Pradhan of Sitalpur Paschim Gram Panchayat. The petitioners are 12 in number. The private respondents are 11. The office of Pradhan is reserved for OBC category candidate. The petitioner no. 12 is the OBC category candidate from the set of the petitioners. The respondent no. 14 is the OBC category candidate from the set of the private respondents.

An FIR was lodged against the petitioner no. 12 on 5th July, 2023. The said candidate contested the Panchayat General Election by submitting his

nomination in person and he was declared elected on 11th July, 2023 and he personally collected the certificate of election.

The date for election of the Pradhan was fixed on 11th August, 2023. On the said date, the police arrested the petitioner no.12 from the office of the Panchayat when he was present there for casting his vote.

In view of the arrest of the reserved category candidate from the side having the majority members, the two sides were left with 11 candidates each.

At the time of election of the Pradhan, the name of the private respondent no.14 who happens to be the member of the other backward classes was proposed and being seconded by the members of her political party, the private respondent no. 14 was elected as the Pradhan.

Specific contention of the petitioners is that the arrest of the petitioner no. 12 was deliberate only to give a chance to the respondent no. 14 to be elected.

Learned advocate appearing for the private respondents submits, upon instructions, that the respondent no. 14 was the only eligible candidate who could have been elected as Pradhan and, accordingly, her name was proposed and seconded. The private respondents are not aware of the arrest of the petitioner no. 12 and they are in no manner responsible for the arrest of the petitioner no. 12.

Learned advocate appearing for the State respondents submits that the petitioner no. 12 could not be arrested earlier as he was absconding. On the

day of the election of the Pradhan a tussle broke out at the time of election and it was at that point of time that the petitioner no. 12 was arrested.

It has been submitted that the petitioner no. 12 was arrested at the very first instance when he was available and there is nothing wrong in arresting him from the Panchayat premises as a complaint alleging cognizable offences was filed against him.

It has been submitted that the petitioner no. 12 was unable to obtain bail on the first date but thereafter, the petitioner no. 12 was enlarged on bail by the order passed by the Court on 25th August, 2023.

After hearing the submissions made on behalf of both the parties and upon perusal of the materials on record, especially the report which has been filed by the Officer-in-Charge, Nandakumar Police Station, it appears that the stand of the police is that the petitioner no. 12 was evading police arrest since lodging of the case.

The aforesaid statement of the police cannot be accepted.

The petitioner no. 12 contested the Panchayat General Election by submitting his nomination in person. He was all along present at the time of campaigning. He was present during the election and after being elected, he collected the election certificate in person.

The police, according to their convenience, did not arrest the petitioner no.12. Only on the date and time of the election, the police deliberately arrested the

petitioner no. 12 so that the election of the Pradhan remains uncontested as the private respondent no.14 was the only reserved category candidate available.

The said action on the part of the police appears to have been in aid and assistance of the members of the minority group.

The Court cannot miss the fact that the minority group is supported by the ruling dispensation and the action of the police as per the dictates of the ruling dispensation cannot be ruled out.

After the candidates were elected, everybody should have got a level playing ground to contest for election of Pradhan. On account of arrest of one of the reserved category candidates, the other one merely gets a walkover. The same cannot be accepted as a healthy practice. A very bad precedent may be set if such conduct is supported or overlooked by the Court.

The Court is convinced that the time and place of arrest of the petitioner no.12 was intentional and was a mala fide attempt to put the members of the rival political party in the backfoot.

In view of the above, the election of Pradhan which was conducted on 11th August, 2023 is liable to be set aside. The same is, accordingly, set aside.

All the elected members of all the political parties ought to get a chance to contest the seat of Pradhan.

The prescribed authority is directed to conduct fresh election of Pradhan and permit all the elected members to contest for the seat of Pradhan.

The prescribed authority is directed to take steps in the matter at the earliest, but positively within a period of six weeks from the date of communication of this order.

The case diary submitted by the Nandakumar Police Station is returned to Mr. Pantu Deb Roy, learned advocate representing the State respondents.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)