

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 22334 of 2023

Supriya Shit
Vs.
State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Sabyasachi Chatterjee, Adv. Mr. Pintu Karar, Adv. Mr. Sabab Uddin Naskar, Adv. Ms. Sayani Manna, Adv.
For the State	:-	Mr. Amal Kumar Sen, Ld. AGP Ms. Sahina Sumi, Adv.
Hearing concluded on	:-	29.09.2023
Judgment on	:-	18.10.2023

Amrita Sinha, J.:-

The petitioner is a reserved category candidate who contested the Panchayat General Elections, 2023 and has been declared as the returned candidate. The seat of Pradhan in the subject Gram Panchayat is reserved for the Scheduled Caste category member. None of the elected members but for the petitioner belongs to the reserved category.

The Board of the Panchayat could not be constituted on the day of election of Pradhan as none proposed the name of the petitioner for the seat of Pradhan.

The petitioner contends that as she is the sole reserved category member, and, as such, she ought to be elected for the seat of Pradhan uncontested, irrespective of the fact whether her name is proposed or not. Prayer has been made for electing the petitioner as Pradhan of the Gram Panchayat.

Learned advocate representing the State respondents has obtained instruction from the Block Development Officer ('BDO' for short), Egra – I

Development Block. Instruction reveals that on the date of the meeting, all the seven directly elected members were present and they ascribed their signature in the resolution book. The quorum being attained, the proceedings of the meeting started. The Presiding Officer administered oath to all the elected members. For election of Pradhan the Presiding Officer called upon all the seven members to propose the names of the candidates eligible for election of Pradhan. None proposed any name of any candidate for the office of the Pradhan. Thus, the election to the office of the Pradhan stood postponed until further order. The election of the Upa-Pradhan was, however, held as per the prescribed guidelines.

The Presiding Officer relies upon Rule 3(7)(a)(ii) of the West Bengal Panchayat (Constitution) Rules, 1975 and the Order no. 4481(22/PN/O/I/1E-03/2023) dated 27th July, 2023 issued by the Panchayat and Rural Development Department wherein it has been mentioned that for election to the offices of the Pradhan, the reservation policy has to be strictly followed. Normally, a proposal shall not be entertained by the Presiding Officer, unless it is seconded by another member. But, when an office is reserved for a specified category and only one member has been elected from a seat reserved for that specified category and also no other member elected from any other category or an unreserved category is proposed for election of such office, it will not be necessary for the proposal in respect of the member elected for the seat reserved for the specified category, to be seconded by another member and on being proposed she or he may be declared uncontested by the Presiding Officer.

As the aforesaid provision requires a proposer in favour of the candidate to be elected as Pradhan and as none proposed any name(s) for the office of Pradhan, accordingly the BDO sought for a clarification from the District Panchayat and Rural Development Officer, Purba Medinipur.

Specific query forwarded by the BDO was whether proposer is mandatory in cases where there is only one member belonging to the reserved category for which the seat of Pradhan is reserved? Whether any member can propose his/her own name in case where he/she is the only member belonging to a reserved category for which the office of Pradhan is reserved, if there is no other proposer proposing his/her name? If proposer is mandatory and the reserved category candidate cannot propose his/her own name and there is no other proposer, then what will be the procedure of election to the office of the Pradhan?

In response to the above queries, the District Panchayat Rural Development Officer forwarded a communication dated 7th August, 2013 by the Department of Panchayats and Rural Development wherein it has been mentioned that in the existing Rules of 1975, there is no provision for a member of a panchayat body to propose her/himself as candidate for election to the office of Pradhan, Upa-Pradhan, Sabhapati, Sahakari Sabhapati.

The District Panchayat and Rural Development Officer also forwarded the memo dated 10th August, 2023 by the Commissioner, Panchayats and Rural Development wherein it has been mentioned that if the procedure of election to the office of the Pradhan cannot be observed for any reason, then the clarification laid down in the letter no. 3816/PN/O/I/1A-6/05 dated 27th August, 2009 of the Joint Secretary, Panchayats and Rural Development Department should be followed.

The letter dated 27th August, 2009 mentions that if none proposes any name for election of Pradhan then the election shall remain stayed and the Upa-Pradhan will hold the charge of the Pradhan. The Presiding Officer, relying upon the order mentioned in the letter dated 27th August, 2009, has adjourned the election of the Pradhan sine die.

The Learned advocate for the State has submitted that a stalemate condition persists in the said Panchayat and a mechanism has to be worked out to resolve the issue.

I have heard the rival submissions made on behalf of both the parties and have perused the documents relied upon by them.

Out of the seven members in the subject gram panchayat, all six members from the general category belong to a particular political party, whereas a single member, who belongs to the reserved category, is from the opponent political party. None of the six members are open to the member from the rival political party to hold the office of Pradhan. It is for this reason that none proposed the name of the petitioner, the sole reserved category candidate otherwise eligible for election to the office of Pradhan.

According to Article 243(d) of the Constitution of India 'Panchayat' means an institution (by whatever name called) of self-Government constituted under Article 243B for the rural areas. Article 243G of the Constitution lays down the powers, authority and responsibilities of Panchayat. The Panchayats are meant to function as institutions of self-Government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to certain conditions as may be specified. The Panchayat is responsible for the preparation and implementation of plans and schemes for economic development and social justice as may be entrusted to them. Article 243H provides power to the Panchayats to impose taxes and funds. The Panchayat is authorized to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with the procedure subject to the prescribed limitations.

The West Bengal Panchayat Act, 1973 was enacted to reorganize, strengthen and expand the activities of Panchayats in rural areas of West Bengal to enable them to act as units of self-Government and to strive for socio

economic development and securing social justice for the people and to provide for matters connected therewith.

Section 9 of the aforesaid Act provides for the Pradhan and Upa-Pradhan. Section 9(1) lays down that every Gram Panchayat shall, at its first meeting in which a quorum is present, elect, in the prescribed manner, one of its members to be the Pradhan and another member to be the Upa-Pradhan of the Gram Panchayat. There is a provision for reserving the office of the Pradhan and the Upa-Pradhan.

Section 19 of the Act mentions the obligatory duties of the Gram Panchayat, Section 20 lays down the transferred duties of Gram Panchayat, Section 21 deals with the regulatory duties of Gram Panchayat, Section 21A prescribes the complementary duties of Gram Panchayat. Funds are provided at the disposal of the Gram Panchayat by the State Government for performance of the functions and duties under Sections 20 and 21.

The above provisions give a fair idea of the importance of the Gram Panchayat. The Panchayat is meant to perform a variety of duties on regular basis for the socio economic development of the constituency of the Panchayat. It implies that the Panchayat is a very vibrant body and is supposed to be functioning normally with the aid and assistance of all its members. The Pradhan is the first member of the Gram Panchayat. The Pradhan has to bear the responsibility of the Panchayat and ensure that the same is functioning smoothly and the residents of the Gram Panchayat are duly taken care of. The grievances and the issues in the Gram Panchayat are required to be addressed by the members of the Gram Panchayat including the Pradhan. The Panchayat is a collective body headed by the Pradhan.

In the instant case the members of the Gram Panchayat have failed to arrive at a consensus for electing the Pradhan. The office of Pradhan being reserved for a particular category of candidate; the majority members are

unwilling to propose the name of the scheduled category candidate as she is from the rival political party. The members/ electors of the constituency may not be able to avail all facilities in the absence of the Pradhan. Though the Upa-Pradhan is in charge of the office of the Pradhan, but the Upa-Pradhan cannot be expected to continue to hold charge of the office of the Pradhan for eternity. An alternative has to be devised so that an elected member can take up the responsibility to perform as the Pradhan. As on date a stalemate condition is prevailing and the Presiding Officer has adjourned the meeting for election of Pradhan sine die.

The Act is not clear whether the said reserved category candidate can propose herself to be elected as Pradhan. The guidelines prescribed by the Government require a proposal for election to the offices of the Gram Panchayat. The guidelines make it very clear that the reservation policy is to be strictly followed. If the guideline of the Government is to be implemented, in that event, the office of the Pradhan is to be filled up by any elected member from the Scheduled Caste category and at the same time the said elected member has to be proposed by any of the other elected member.

The dictionary meaning of the expression 'propose' means to offer or to suggest. The guideline of the State Government does not bar self-proposer. If occasion so arises, an elected candidate otherwise eligible for holding the office of Pradhan, in the absence of a proposer, may propose his/her name for election to any of the offices of the Panchayat. The guidelines mention that the proposal need not be seconded by any other member if the seat is reserved for a specified category and the said candidate may be declared elected uncontested. There is no reason as to why the aforesaid explanation may not be availed of in case none proposes the name of the sole elected member of the specified category for holding the office reserved for that specified category.

The fact that ultimately the decision(s) adopted by the sole reserved category rival member will deliberately not be accepted by the other members who are in majority and issues may be stretched to such extent that the day to day functioning of the Gram Panchayat will become non-workable, is a different matter altogether. If all the members of the Gram Panchayat arrive at a consensus and unanimously elect the reserved category candidate ignoring his/her political affiliation, then the Gram Panchayat may function smoothly and normally but if the situation is contrary, then each and every action of the Pradhan will be opposed by the elected members. A non-functional or non-workable Gram Panchayat will not enure to the benefit of anybody.

Rule 20 of the West Bengal Panchayat Elections Act, 2003 provides a leeway. It lays down that in case of non-availability of persons of reserved category for filling up the office of Pradhan so reserved, a person of that reserved category may be co-opted to fill up that office after swearing in an oath of affirmation and such person so co-opted shall have to be elected within six months from the date of his co-option in regard to that office against a suitable casual vacancy of that body.

If the position of the Gram Panchayat is such that the Pradhan cannot be elected, then provision of co-option may be availed of. The very idea of availing the provision for co-option is to elect the head of the representative body, otherwise there may be several other difficulties in overall functioning of the Panchayat. A headless body ought not to be allowed to continue for long. The electors of the Gram Panchayat will be the worst sufferers for they will be deprived of the benefits of the schemes or projects meant for the socio economic development of the gram panchayat.

Though Section 20 appears to be applicable only in the case of non-availability of an elected member of that specified category, but although in the instant case the scheduled category member is available but it has to be kept

in mind that the sole reserved category member does not enjoy the support of the remaining six members of the Gram Panchayat. If the sole reserved category member does not enjoy the support of the remaining six members of the Gram Panchayat, then conflicts and differences between the rival groups on regular basis cannot be ruled out. It will be an absolutely unhealthy environment within which the members may have to perform. To avoid such an unworkable situation, the option to co-opt a member from the specified category may be a viable one.

The Presiding Officer ought not to shrug off his responsibility by merely adjourning the issue of election of Pradhan sine die. The same is not a solution to the problem faced by the Panchayat. Such a position ought not to be permitted to continue for long. It can also not be expected that the sole reserved category elected member will switch her political affiliation and join the other members. If a mechanism is not evolved soon, then the issue will persist.

The case at hand may not be a solitary instance facing crisis as highlighted hereinabove. There may be several other Gram Panchayats facing identical issues. The State Government ought to adopt a policy decision and formulate guidelines which may be followed by the Gram Panchayats if occasion so arises. It may not be proper for the Court to devise formula to overcome the crisis. Decision ought to be taken by the State Government in the executive level to end the crisis.

In view of the above, the instant writ petition is disposed of by directing the Panchayats and Rural Development Department to formulate a policy and frame supportive guidelines in the light of the discussions made hereinabove so that the same may be uniformly applied to all the three tiers of the panchayat if occasion so arises.

A decision shall be taken in the matter at the earliest but positively within a period of six weeks from the date of communication of this order.

The Presiding Officer shall take steps for election of Pradhan in accordance with the guidelines to be framed by the Department.

The writ petition stands disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)