

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**WPA 139 of 2023
Atul Mandal
Vs.
The State of West Bengal and Ors.**

For the Petitioner : Mr. Sabyasachi Chatterjee, Adv.

For respondent No.10-15 : Mr. Arijit Ghosh, Adv.

**For the State : Mr. Bikramaditya Ghosh, Adv.,
Mr. Momenur Rahman, Adv.**

Heard On : 02nd February, 2023

Judgment On : 10th February, 2023.

Bibek Chaudhuri, J.

The petitioner earlier filed an application under Article 226 of the Constitution which was registered as WPA 1665 of 2021 inter alia, certain direction upon the SDO, Jalpaiguri/the competent authority under Section 8 of the West Bengal Panchayat Act to cancel/disqualified respondent No.8 and 10 as members of Salboni-I Gram Panchayat. The said writ petition was disposed of by a Coordinate Bench with the following order:-

*“.....Having considered the rival contentions of the parties,
the writ petition is disposed of with a direction upon the Sub-*

Divisional Officer, Jalpaiguri Sadar to dispose of the complaint of the petitioner dated April 7, 2021 in accordance with law upon giving an opportunity to the parties to appear before the said authority and make their submissions in accordance with law. All points with regard to the maintainability of the said complaint are kept open for the authority to decide. The parties will be at liberty to produce all documents and evidences before the said authority during the course of hearing. On completion of the hearing, a reasoned order shall be passed and communicated to all concerned.

The entire process shall be completed within a period of eight weeks from date of communication of this order.

This Court has not gone into the merits of the claims and counter-claims of the parties and all the issues raised by the petitioner as also the respondent nos. 8 to 11 will be decided by the authority in accordance with law and on the basis of the documents and evidences filed by the respective parties. The respondent nos. 8 to 11 will also be allowed to file their written submission or written version to the said application....”

The SDO, Jalpaiguri vide order dated 7th February, 2022 passed an order rejecting the contention of the petitioner made out in the said petitioner. This has compelled the petitioner to challenge the said order dated 7th February, 2022 by filing the instant writ petition.

It is submitted by Mr. Sabyasachi Chatterjee, learned Advocate for the petitioner that Section 8 of the West Bengal Panchayat Act, 1973

speaks about disqualifications of members of gram panchayat. Section 8(c) states as follows:-

“Disqualifications of members of Gram Panchayat.- Subject to the provisions contained in sections 94 and 97, a person shall not be qualified to be a member of a Gram Panchayat, if-

(c) he has, directly or indirectly by himself or by his partner or employer or an employee, any share or interest in any contract with, by or on behalf of, the Gram Panchayat, or the Panchayat Samiti of the Block comprising the Gram concerned, or the Zilla Parishad of the district, or the Mahakuma Parishad, or the Council:

Provided that no person shall be deemed to be disqualified for being elected a member of a Gram Panchayat by reason only of his having a share or interest in any public company as defined in the Companies Act, 1956 (1 of 1956) which contracts with or is employed by the Gram Panchayat or Panchayat Samiti of the Block comprising the Gram or the Zilla Parishad or the Mahakuma Parishad or the Council...”.

It is the case of the petitioner that Pradhan and members of Salboni-I Gram Panchayat had rendered themselves liable to be disqualified from Salboni-I Gram Panchayat under Section 8 of the West Bengal Panchayat Act, 1973 since work orders were issued in favour of Smt. Rekha Mandal (Sarkar) wife of Barun Chandra Sarkar, leader of opposition, Salboni-I Gram Panchayat and Sri. Nagen Chandra Sarkar husband of Smt. Bani Sarkar, member of Salboni-I Gram Panchayat. It is submitted by Mr. Chatterjee that the respondent No.15 Nagen Chandra Sarkar husband of Smt. Bani Sarkar who is a member of Salboni-I Gram Panchayat. Respondent No.14 Rekha Mandal is the wife

of Barun Chandra Sarkar, the leader of opposition of Salboni-I Gram Panchayat. Respondent No.13 Nageswar Oraon is the husband of respondent No.10 Dipika Oraon, Pradhan of Salboni-I Gram Panchayat. They got contracts of different projects undertaken by the said Gram Panchayat under the influence of their wives or husband, as the case may be. When the husband or wife of a Gram Panchayat member is offered with the job undertaken by the Gram Panchayat in different Government Projects, the concerned member is deemed to have direct interest in the said contract. Therefore, granting job to the above named respondents automatically disqualifies the membership of respondent Nos.10, 11 and 12.

It is also submitted by Mr. Chatterjee that the Sub-Divisional Officer, Jalpaiguri has misconstrued the provision of Section 8(c) and the order passed by the Sub-Divisional Officer dated 7th February, 2022 is liable to be quashed and set aside.

Learned Advocate State respondent, on the other hand, submits that Section 8 of the Panchayat Act is under Part-II, chapter-2 of the West Bengal Panchayat Act. Part-II of the said act deals with constitution of Gram Panchayat. Section 8 deals with disqualifications of members of Gram Panchayat. Section 8 talks about initial disqualification from being the member of Gram Panchayat. Section 8(c) states that if a person has interest in any contract with by or on behalf of, the Gram Panchayat either Gram Panchayat or Panchayat Samiti or

Zilla Parishad or the Mahakuma Parishad directly or indirectly by himself or by his partner or employer or an employee, he shall not be qualified to be a member of the Gram Panchayat. Thus, Section 8 speaks about initial disqualification from being the member of Gram Panchayat. In other words, if a person has any share or interests in any contracts of the Gram Panchayat, he will not be entitled to contest Panchayat Election for the post of Gram Panchayat. It is further submitted by the learned Advocate for the respondents that respondent Nos.10, 11 and 12 have already been elected as Panchayat members of Salboni-I Gram Panchayat. After being elected, respondent No.10 has been selected as Pradhan of the said Gram Panchayat. Therefore, at this stage, question of disqualification does not arise. At this stage, the above named respondents can only be removed from their post as Pradhan and member. If in the opinion of the prescribed authority he/they willfully omits/omit or refuse/refused to carry out the provision of the Act or of any rules or order made thereunder or abuse the powers vested in him under this Act.

Allegation of the petitioner is that the respondent Nos.10, 11 and 12 exerted undue influence in the matter of allotment of Panchayat job in favour of their wives and husband. If that be so, it is an abuse of the power by the Gram Panchayat, Pradhan, leader of opposition and member under the West Bengal Panchayat Act. Therefore, Section 8 of the said Act is not applicable in the instant case and there is no reason

to interfere with the order dated 7th February, 2022 passed by the Sub-Divisional Officer, Jalpaiguri.

Having heard the learned Counsels for the parties and on careful perusal of the entire materials on record this Court is of the view that Section 8 deals with the disqualification of a person from being a member of a Gram Panchayat. Section 8 runs with the words “if a person...”. The legislature purposefully did not use the term “if a Pradhan or leader of the opposition or a member of a Gram Panchayat...”. If that be so, the petitioner could have prayed for disqualification of the respondent Nos.10, 11 and 12. However, at this stage they have already been elected as members of Gram Panchayat. They can only be removed following the provision under Section 213 of the West Bengal Panchayat Act. Since the petitioner has not taken any step for removal of respondent Nos.10, 11 and 12, I do not find illegality in the impugned order passed by the Sub-Divisional Officer, Jalpaiguri on 7th February, 2022.

The instant writ petition being devoid of any merit, accordingly dismissed on contest however, without any costs.

(Bibek Chaudhuri, J.)