

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M. A. T. 2261 of 2023
(CAN 1 of 2023)***

Sankar Prasad Bhowmick & Ors.

-Vs-

State of West Bengal & Ors.

For the Appellants : Mr. Surojit Nath Mitra, Sr. Adv.
Mr. Atarup Banerjee, Adv.
Mr. Rajdeep Pramanik, Adv.
Mr. Atreya Chakraborty, Adv.
Mr. Arka Roy, Adv.

For the Respondent : Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Nos.10 to 21 Mr. Firdous Samim, Adv.
Ms. Gopa Biswas, Adv.
Ms. Payel Shome, Adv.

For the Respondent : Mr. Mrityunjoy Chatterjee, Adv.
No.18 Mr. Manas Das, Adv.
Mr. Debapriya Majumder, Adv.

For the State : Mr. Pantu Deb Roy, Id. A.G.P.
Mr. Subrata Guha Biswas, Adv.

Heard on : 02.09.2024 & 04.09.2024

Judgment on : 04.09.2024

Joymalya Bagchi, J. :-

1. An unholy nexus between civic administration and a political group has degenerated the election to the post of Pradhan into a one-sided charade.

2. Factual matrix giving rise to the imbroglio is as follows :-

3. During the Panchayat election in 2023, twenty-three candidates were elected to *Sitalpur Gram Panchayat*. Eleven of them belonged to 'All India Trinamool Congress' (AITC) and twelve belonged to other political parties. The post of Pradhan in the said Panchayat is in the reserved category. Only one candidate i.e. appellant no.5 out of the elected members of AITC was from the reserved category and respondent no.21 (out of eleven candidates elected from other political parties) belonged to the said category. Consequentially, only these two candidates viz. appellant no.5 and respondent no.21 were eligible to contest for the post of Pradhan. On 11.08.2023 date was fixed for the election of Pradhan.

4. On the fateful day of election, all the elected members including appellant no.5 and respondent no.21 assembled at the Panchayat office. However, prior to the election respondent no.21 was arrested by police in connection with a criminal case being Nandakumar Police Station Case No.242 of 2023 dated 05.07.2023 under Sections 341/323/324/325/307/380/427/506/34 of the Indian Penal Code. It is alleged respondent no.21 and his associates resisted the arrest, assaulted police personnel and burnt police vehicles. Another criminal case being

Nandakumar Police Station Case No.304 of 2023 dated 11.08.2023 under Sections 147/148/149/186/188/189/353/332/307/427/506/34 of the Indian Penal Code, Sections 3/4 of the Prevention of Damage to Public Property Act, 1984 and Section 9 of the Maintenance of Public Order Act, 1972 was also registered. As respondent no.21 had been arrested, he was unable to offer himself as a candidate for the post of Pradhan and appellant no.5 was elected uncontested. The election conducted under such strange and oppressive circumstances has been challenged in the writ petition.

5. During hearing of the writ petition, affidavits were filed by the Officer-in-charge, Nandakumar Police Station justifying the arrest of respondent no.21 and respondent no.8 i.e. Block Development Officer, Nandakumar Block, Purba Medinipur with regard to the circumstances in which he proceeded to conduct the election to the post of Pradhan.

6. In the affidavit filed by the Officer-in-charge, Nandakumar Police Station it is stated on 11.08.2023 Sub-Divisional Magistrate, Tamluk had issued an order under Section 144 of the Code of Criminal Procedure to maintain peace and tranquillity at *Sitalpur Gram Panchayat*. One Biswajit Mondal, Sub-Inspector of Police and other officers had gone to the Panchayat office for promulgation of the said order. At that time another Sub-Inspector viz. Ravi Grahikar (Investigating Officer of Nandakumar Police Station Case No.242 of 2023 dated 05.07.2023) informed Biswajit Mondal that respondent no.21 was roaming near the Panchayat office.

Biswajit Mondal proceeded to confront respondent no.21 which gave rise to violent protest, assault on police personnel and damage to public property. Respondent no.21 was arrested from the spot and a separate criminal case being Nandakumar Police Station Case No.304 of 2023 dated 11.08.2023 under Sections 147/148/149/186/188/189/353/332/307/427/506/34 of the Indian Penal Code, Sections 3/4 of the Prevention of Damage to Public Property Act, 1984 and Section 9 of the Maintenance of Public Order Act, 1972 was registered.

7. Affidavit of Block Development Officer is completely silent with regard to the alleged mayhem unleashed by respondent no.21 and his associates at the time of arrest in front of and/or at the Panchayat office. His affidavit merely states that the meeting for electing Pradhan and Upa-Pradhan was held at the Panchayat office on 11.08.2023 at 11.00 A.M. as per law. Twenty-two elected members were present and Form-3 i.e. declaration of candidates were distributed to them. But eleven members did not submit their forms and left the venue. Since eleven members remained at the venue which constituted quorum, Block Development Officer, Nandakumar Block proceeded to conduct the election to the post of Pradhan/Upa-Pradhan and appellant no.5 came to be elected uncontested.

8. Hon'ble Single Judge after considering the reports came to a finding that the arrest of respondent no.21 was unjustified and mala fide. As he was illegally prevented from participating in the election process,

the Judge declared the election null and void and directed fresh election to be held.

9. During pendency of the appeal, re-election was held on 28.11.2023 and respondent no.21 was returned as the elected candidate.

10. Mr. Surojit Nath Mitra, learned senior Advocate with Mr. Atarup Banerjee argues there was no illegality and/or irregularity in the election process to the post of Pradhan. Respondent no.21 had not offered himself as a candidate. There is no averment in the writ petition that he intended to contest the election for the post of Pradhan. It cannot be said his arrest near the venue had in any way influenced the result of the election process. Accordingly, it is prayed that order under challenge be set aside.

11. In reply, Mr. Bikash Ranjan Bhattacharya, learned senior Advocate with Mr. Firdous Samim argues the arrest of respondent no.21 from the election venue was arbitrary, illegal and mala fide. It was engineered to deprive the said respondent of his valuable right to participate in the election process by offering himself as a candidate to the post of Pradhan. As respondent no.21 had been illegally arrested and removed from the venue, uncontested election of appellant no.5 to the post of Pradhan in the reserved category became a foregone conclusion. Under such circumstances, Hon'ble Single Judge was justified in nullifying the election and directing re-election. They submit this court may declare respondent no.21 as Pradhan in terms of re-election held during pendency of the appeal.

12. Mr. Pantu Deb Roy, learned Additional Government Pleader submits FIR was registered against respondent no.21 and others on 05.07.2023. In the FIR it was alleged respondent no.21 had assaulted the complainant with a knife on the forehead. He was absconding for more than a month and as per secret information he was apprehended from the Panchayat office. During apprehension he and his associates assaulted police personnel and damaged public property. A separate criminal case was registered. It cannot be said that arrest was unjustified or mala fide.

13. In light of the aforesaid submissions, the following issues fall for consideration :-

- (i) Whether the arrest of respondent no.21 on the day of election from the election venue was unjustified and mala fide?
- (ii) If so, whether it impacted the uncontested election of appellant no.5 to the post of Pradhan?

14. In order to adjudicate the first issue we called upon Mr. Deb Roy to produce the case diary in connection with Nandakumar Police Station Case No.242 of 2023 dated 05.07.2023.

15. We have perused the materials in the case diary including the statement of the complainant/victim and the injury report. The injury report discloses a simple injury.

16. We are mindful that nature of injury *per se* may not be a determining factor with regard to invoking graver offence under Section

307 IPC. However, we note a Hon'ble Coordinate Bench while dealing with the application for anticipatory bail of the co-accused had, inter alia, expressed prima facie doubt whether the offence under Section 307 IPC was disclosed or not. In light of such observation, one may safely conclude citing the offence under Section 307 IPC in the FIR was to add a sinister hue which was lacking in the factual matrix of the case.

17. That apart, other offences apart from offence under Sections 324/380 of the Indian Penal Code in the FIR are bailable. However, scanning the FIR and statements of witnesses we do not find any list of articles disclosed therein which were stolen attracting Section 380 IPC. With regard to Section 324 IPC, we are of the view nature of the offence may not require arrest and detention for progress of investigation.

18. No doubt arrest is a power concomitant to investigation. However, existence of such power does not justify its wanton exercise in every case. In this regard one may refer to the Shakespearian quote '*...it is excellent to have a giant's strength, but it is tyrannous to use it like a giant*'¹.

19. Investigating Officer appears to have exercised overzealousness in arresting respondent no.21 in connection with the aforesaid case wherein uncontroverted materials do not justify such aggressive course of action. More so, arrest was made at a very crucial moment when respondent no.21 had assembled with other elected members to participate in the democratic process to elect the Pradhan. He was the only other candidate

¹ Measure for Measure (Act 2, Scene 2)

apart from appellant no.5 who could have offered himself for the said election. Arresting respondent no.21 at that crucial moment clearly divulges a malicious and mala fide motive to abuse the power of arrest and thereby frustrate the level playing field in the election process.

20. It has also been argued respondent no.21 was evading arrest. It may not be out of place to record after the FIR was registered on 05.07.2023, election to the Gram Panchayat was held on 08.07.2023 and results were declared on 11.07.2023. Respondent no.21 participated in the election and was always available to the Investigating Agency. Thereafter, on 01.08.2023 respondent no.21 and other co-accused named in the aforesaid case had applied for anticipatory bail which was pending before this court when the police officers arrested him from the Panchayat office on the day of election. These circumstances improbabilise the police's case that respondent no.21 was absconding and could only be traced on 11.08.2023 at the Panchayat office where he was present to participate in the election to the post of Pradhan.

21. The other issue with regard to resistance to arrest by respondent no.21 also requires to be taken with a pinch of salt.

22. There is no whisper in the affidavit filed by the Block Development Officer that respondent no.21 or his associates had created a law and order situation, assaulted police or burnt police vehicles at the spot. These facts only appear in the affidavit of the Officer-in-charge, Nandakumar Police Station who registered another FIR being

Nandakumar Police Station Case No.304 of 2023 dated 11.08.2023. It is most significant to note while respondent no.21 was arrested in the earlier case, he was not shown arrested in the subsequent case involving resistance to arrest, assault on police personnel and damaging public property on the same day. After a lapse of eight days on 19.08.2023 he was shown arrested in the said case.

23. In light of the aforesaid discussion, we are of the opinion arrest of respondent no.21 in connection with Nandakumar Police Station Case No.242 of 2023 dated 05.07.2023 on the date of election to the post of Pradhan was wholly unjustified and was engineered not for the purpose of investigation but to deprive him of an opportunity to offer himself as the other alternative candidate to appellant no.5 to the post of Pradhan. Accordingly, issue (i) is answered in the affirmative.

24. Facts and circumstances show respondent no.21 had already been arrested before the declaration form i.e. Form-3 was distributed by the Block Development Officer amongst the elected candidates. As a result, he could not offer himself as a candidate to the post of Pradhan. In the writ petition, the petitioners including respondent no.21 have averred the illegal arrest had interfered with their democratic right to participate in the election to the post of Pradhan. A democratic right to participate in the election process includes the right to offer their nominee as a candidate for election. Accordingly, we are unable to subscribe to Mr. Mitra that belatedly respondent no.21 and other respondents/writ

petitioners had made out a new case that they proposed to recommend respondent no.21 as a candidate to the post of Pradhan.

25. In this backdrop, there is no escape from the conclusion that the unjustified and mala fide arrest of respondent no.21 from the election venue had prejudiced his democratic right to offer himself as a candidate to the post of Pradhan. Consequentially, appellant no.5 was elected to the post unopposed.

26. Where a level playing field has been skewed by arbitrary and unjustified arrest of a potential candidate who was thereby prevented from contesting the election, issue (ii) is answered in favour of the writ petitioners/respondents and nullifying the election result is wholly justified.

27. Accordingly, we uphold the order of the Hon'ble Single Judge.

28. We are informed during the pendency of the appeal, fresh election to the post of Pradhan had been held and respondent no.21 has been elected to the said post.

29. In light of the subsequent development, we direct the appropriate authorities shall act in terms of the result of the election held on 28.11.2023 and declare respondent no.21 as the Pradhan of the Gram Panchayat.

30. With this direction, appeal is dismissed.

31. In view of dismissal of the appeal, connected application being CAN 1 of 2023 is also disposed of.

32. There shall be no order as to costs.
33. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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