

21.03.2025
Sl. No. 10.
D/L.
Mithun
Ct.No.39.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 1673 of 2025

Md Nasiul Sk.
Vs.
The State of West Bengal & Ors.

Md. Sarowar Jahan,
Mr. Anindya Ghosh,
Mr. Souvik Das,
Ms. Tapati Sarkar

..for the petitioner

Mr. Gangadhar Das,
Ms. Shreya Banerjee

...for respondent no.10.

Mr. Lalit Mohan Mahata,Ld. AGP
Mr. Prasanta Behari Mahata

...for the State.

Affidavit-of-service filed on behalf of the petitioner
is taken on record.

This writ petition has been filed seeking direction
upon the respondent-authorities to consider the
representation dated 30th December, 2024 within a
limited time frame along with other prayers.

The petitioner contends that the petitioner is an
elected member of Kaliachak-I Panchayat Samiti and is
the opposition leader of said Panchayat Samiti. One
Toslema Khatun was elected as *Sabhapati* of the
Kaliachak-I Panchayat Samiti on 14th August, 2023.
Said Toslema Khatun expired on 4th June, 2024 and
since then the post of *Sabhapati* of Kaliachak-I

Panchayat Samiti is lying vacant. The members of Kaliachak-I Panchayat Samiti on the ground of facing innumerable hurdles and hindrances in discharging their duties approached the Sub-Divisional Officer on 30th December, 2024 for taking steps for holding election of *Sabhapati* of Kaliachak-I Panchayat Samiti. However, no steps till date has been taken for election of *Sabhapati* of Kaliachak-I Panchayat Samiti. Hence, this writ petition.

Mr. Sarowar Jahan, learned Advocate for the petitioner submits that as per Section 98 of the West Bengal Panchayat Act, 1973 (*hereinafter referred to as 'Act of 1973'*), the office of *Sabhapati* if fallen vacant by reason of death, resignation, removal or otherwise, shall be temporarily continued by *Sahakari Sabhapati* until the *Sabhapati* is elected and assumes office. Referring to Section 102 of the Act of 1973, he indicates that upon resignation, death or otherwise, the Panchayat Samiti shall elect another *Sabhapati* in the prescribed manner as per Rule 6 of the Panchayat Constitution Rules, 1975. A representation on 30th December, 2024 was made by some of the members before the Sub-Divisional Officer, respondent no.6 for election of the *Sabhapati* but no steps has been taken till date. He seeks for appropriate orders for consideration of the representation of the members within a time frame by the respondent no.6, Sub-Divisional Officer adhering to

Section 102 of the Act of 1973 read with Rule 6 of the Panchayat Constitution Rule, 1975.

Mr. Lalit Mohan Mahata, learned Additional Government Pleader concedes that the election of *Sabhapati* should have been held within the time frame as provided in the Act as well as the Rules of 1975. He submits that the representation be relegated to the Sub-Divisional Officer, respondent no.6 to take steps in accordance with law within a time limit.

Mr. Gangadhar Das, learned Advocate for the private respondent no.10 submits that the allegations made in the writ petition needs to be dealt with by his client by way of an affidavit. To buttress his contention, he relies on the decision of this Court passed in ***Razia Sultana -versus- State of West Bengal and Others*** reported in ***AIR 2023 Cal 189***.

Upon hearing the learned Advocate for the respective parties, it would be apposite to reproduce the relevant provisions of Section 98 and Section 102 of the Act of 1973 as well as Rule 6 (1) of Panchayat Constitution Rules, 1975 as hereunder:-

“98. (4) When-

(a) the office of the Sahakari Sabhapati falls vacant by reason of death, resignation, removal, or otherwise, or

(b) the Sabhapati is by reason of leave, illness or other cause, temporarily unable to act, the Sahakari Sabhapati shall exercise the powers, perform the functions and discharge the duties of the Sabhapati until a new Sabhapati is elected and assumes office or until the Sabhapati resumes his duties, as the case may be.”

x x x

102. Filling of casual vacancy in the office of Sabhapati or Panchayat Samiti.- *In the event of removal of a Sabhapati or a Sahakari Sabhapati under section 101 or when a vacancy occurs in the office of a*

Sabhapati or a Sahakari Sabhapati by resignation, death or otherwise, the Panchayat Samiti shall elect another Sabhapati or Sahakari Sabhapati in the prescribed manner.”

“6.(1) As soon as may be but not later than thirty days from the date of any casual vacancy in the office of Pradhan or Upa-Pradhan, Sabhapati or Sahakari Sabhapati or Sabhadhipati or Sahakari Sabhadhipati by reason of death, resignation, removal or otherwise, or within such further time as may be allowed by the District Panchayat Election Officer for reasons to be recorded by him in this behalf, [the prescribed authority referred to in sub-rule(1) of Rule 3, sub-rule(1) of Rule 4, sub-rule (1) of Rule 5, or sub-rule (1) of Rule 5A] shall call a meeting of all the members [eligible to participate under Rule 3, Rule 4, Rule 5 or Rule 5A, as may be appropriate,] for the election of a Pradhan or an Upa-Pradhan, a Sabhapati or a Sahakari Sabhapati, a Sabhadhipati or a Sahakari Sabhadhipati, as the case may be, by fixing a date, place and time and causing a written notice to this effect in Form 1[to be served on each such member] at least [seven] days before the date fixed for such meeting.”

Upon cursory reading of the aforesaid provisions, it manifest that in the event of vacancy occurring in the office of *Sabhapati* by removal, resignation, death or otherwise the *Panchayat Samiti* shall elect another *Sabhapati* in the prescribed manner. Rule 6(1) provides that as soon as may be but not later than thirty days from date of any casual vacancy in the office of *Prodhan* or *Upa-Prodhan*, *Sabhapati* or *Sahakari Sabhapati* by reason of death, resignation, removal, or otherwise, or within such further time as may be allowed by the District Panchayat Election Officer for reasons to be recorded by him in this behalf, the prescribed authority shall call a meeting of all the members for the election of a *Pradhan* or an *Upa-Pradhan*, a *Sabhapati* or a *Sahakari Sabhapati* as the case may be.

In view of the above provisions, the respondent no.6, Sub-Divisional Officer is directed to take steps with regard to the representation submitted by the petitioner

and others being the members of *Panchayat Samiti* dated 30th December, 2024 within a period of two weeks from date of communication of this order adhering to Section 102 of the Act of 1973 read with Rule 6 of the Panchayat Constitution Rules, 1975.

The decision in *Razia Sultana (supra)* is factually distinguishable. Be that as it may, since no affidavits has been called for, the allegations made in the writ petition are deemed to be not admitted.

Learned Advocate for the petitioner is directed to communicate this order to respondent no.6, Sub-Divisional Officer, Malda Sadar, Malda.

With the aforesaid directions, the writ petition being **WPA 1673 of 2025** stands disposed of.

All connected applications, if any, stand disposed of.

There will be, however, no order as to costs.

Interim order, if any, stands vacated.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Bivas Pattanayak, J.)