

13.01.2025
Sl. No. 02
g.b.
Court No.10
265717

WPA 17847 of 2024

Md. Kuddus Ali
-Vs-
The State of West Bengal & Ors.

Mr. Robiul Islam
Mr. Raju Mondal
Mr. Masooq Rahman
.....For the Petitioner
Mr. Lalit Mohan Mahata, AGP
Mr. Prasanta Behari Mahata
.....For the State

The grievance of the petitioner is directed against an allotment of room to a self-declared leader of the Opposition of the Raninagar – II Panchayat Samiti, Murshidabad.

It is alleged that the entire selection process is in violation of section 124 of the West Bengal Panchayat Act, 1973 and the same ought to be cancelled.

It is contended that the Opposition leader must be nominated from the political group having the second highest number of members in the Panchayat Samiti and this has not been adhered to in choosing the leader of Opposition.

By an ad interim order dated 23rd December, 2024 a stay of the appointment of the leader of the

Opposition of the Raninagar – II Panchayat Samiti had been granted and the parties were directed to exchange affidavits.

It is contended on behalf the State respondents that the writ petition is misconceived and is liable to be dismissed. The writ petition has been filed without impleading the leader of the Opposition as a party respondent. Neither has the Sabhapatty been impleaded as a party to the writ petition. On merits, it is contended that the entire writ petition proceeds on the basis as if the leader of the Opposition would be selected from the second largest political party on the basis of the number of members which is misconceived and erroneous.

On behalf of the respondent authorities it is submitted that the leader of Opposition had been elected on 7 September, 2023 and the petitioner has deliberately delayed in approaching Court. It is also contended that section 124 of the Act contemplates that “it is the leader of the recognized political party in Opposition having the largest number of members in the Panchayat Samiti who shall be a member of Artha, Sanstha, Unnayan-O-Parikalpana Sthayee Samiti”.

Section 124 of the West Bengal Panchayat Act, 1973 is as follows:

124. Sthayee Samitis.

(1) A Panchayat Samiti shall have the following Sthayee Samitis, namely:-

(i) [Artha, Sanstha, Unnayan O Parikalpana] [Words substituted for the words 'Artha O Sanstha' by W.B. Act 37 of 1984.] Sthayee Samiti,

(ii) Janasasthaya [O Parihesh] [Words in clauses (ii) inserted by W.B. Act 17 of 1992.] Sthayee Samiti,

(iii) Purta Karya [O Parihalian] [Words in clause (iii) inserted by W.B. Act 17 of 1992.] Sthayee Samiti,

(iv) Krishi Sech O Samahaya Sthayee Samiti,

(v) [Shiksha, Sanskriti, Tathya O Krira] [Words substituted for the word 'Shiksha' by W.B. Act 17 of 1992.] Sthayee Samiti,

(vi) [Sishu O Nari Unnayan, Janakalyan O Tran] [Words substituted for the words 'Khudra Silpa, Tran O Janakalyan' by W.B. Act 15 of 1997.] Sthayee Samiti,

(via) [Bon O Bhumi Sanskar Sthayee Samiti.] [Clauses (via) to (vid) inserted by W.B. Act 17 of 1992.]

(vib) [Matsya O Prani Sampad Bikash Sthayee Samiti.] [Clauses (via) to (vid) inserted by W.B. Act 17 of 1992.]

(vic) [Khadya O Sarbaraha Sthayee Samiti.] [Clauses (via) to (vid) inserted by W.B. Act 17 of 1992.]

(vid) [Khudra Silpa, Bidyut O Achiracharit Shakti] [Clauses (via) to (vid) inserted by W.B. Act 17 of 1992.] Sthayee Samiti,

(vii) such other Sthayee Samiti or Samitis as the Panchayat Samiti may, subject to the approval of the State Government, constitute.

(2) A Sthayee Samiti shall consist of the following members, namely:-

(a) the Sabhapati [and Sahakari Sabhapati] [Words inserted by W.B. Act 17 of 1992.] of the Panchayat Samiti, ex officio;

(b) [without prejudice to the provisions in clause (ba).] [Word, letters and brackets inserted by W.B. Act 8 of 2003.] not less than three and not more than five persons to be elected in the prescribed manner by the members of the Panchayat Samiti from among themselves;

(ba) [the Karmadhyakshas elected in other Sthayee Samitis as referred to in section 125 shall be ex officio members of the Artha Sanstha Unnayan O Parikalpana Sthayee Samiti referred to in sub-section (1) and no member shall be elected in the manner referred to in clause (b).] [Clauses (ba) to (bc) with provisos inserted by W.B. Act 8 of 2003.]

(bb) [leader of the recognized political party in opposition having largest number of members in the Panchayat Samiti in comparison with other recognized political parties in opposition shall be a member of the Artha Sanstha Unnayan O Parikalpana Sthayee Samiti.] [Clauses (ba) to (bc) with provisos inserted by W.B. Act 8 of 2003.]

(bc) [one member from each recognized political party in opposition shall be selected to be a member of each of the Sthayee Samitis other than [the Artha Sanstha Unnayan O Parikalpana Sthayee Samiti, if no member in opposition is elected in a Sthayee Samiti referred to in clause (b).] [Clauses (ba) to (bc) with provisos inserted by W.B. Act 8 of 2003.]]

Provided that the members selected from the recognized political party having larger number of members in the Panchayat Samiti shall be the member of Sthayee Samiti placed higher in the consecutive order in sub-section (1):

Provided further that if the number of recognised [political] [Word inserted by W.B. Act 31 of 2003.] parties in opposition is less than the number of Sthayee Samitis, the independent candidates in opposition in Panchayat Samiti shall be members of the Sthayee Samitis for which no member of the recognized political parties are available and the member senior in age shall be placed as member in the Sthayee Samiti placed higher in the order of sub-section (1):

Provided also that if the number of recognized political parties added with number of independent members falls short of the number of

Sthayee Samitis, one additional member from each such political party in opposition in Panchayat Samiti, shall be chosen for membership in the Sthayee Samitis where no member in terms of this clause has been provided and the same sequential order shall be followed for placement of a member in a Sthayee Samiti and such process shall be repeated until all Sthayee Samitis have one member under this clause :

Provided also that a member in-opposition may be a member of more than three Sthayee Samitis if in a term of general election, not more than three members in opposition are elected in the Panchayat Samiti:

Provided also that the members of the recognized political party shall jointly decide and intimate the Executive Officer of the Panchayat Samiti by a letter under signature of all such members, the name of the member or members, as the case may be, who shall represent the party as member or members of the Sthayee Samiti and in case of an independent member the Executive Officer shall determine the membership in each Sthayee Samiti:

Provided also that the Executive Officer shall place the entire matter of membership under this clause in a meeting of the Panchayat Samiti as early as possible in the next meeting.

[Explanation. - For the purpose of this clause, a member of the Panchayat Samiti shall be considered a member in opposition if in the election of the Sabhapati under section 98, he did not cast his vote in favour of the winning candidate or has abstained himself from casting his vote in the said election;] [‘Explanation’ inserted by W.B. Act 31 of 2003.]

(c)[such number of persons being officers of the State Government or of any statutory body or corporation or being eminent persons having specialised knowledge as the State Government may think fit, appointed by the State Government.] [[Clause (c) substituted by W.B. Act 17 of 1992, which was earlier as under:-

‘(c) not more than five persons being officers of the State Government, appointed by the State Government :

Provided that such officers shall not be eligible for election as Karmadhyaksha of the Sthayee Samiti and shall not have any right to vote.’.]]

(3)[No person, other than the Sabhapati or the Sahakari Sabhapati, shall be a member of more than three Sthayee Samitis other than the Artha Sanstha Unnayan O Parikalpana Sthayee Samiti.] [[Sub-section (3) substituted by W.B. Act 31 of 2003. which was earlier as under:-

‘(3) No person, other than the Sabhapati or the Sahakari Sabhapati, shall be a member of more than three Sthayee Samitis.’.]]

(4) An elected member of a Sthayee Samiti shall hold office for a period of [five years] [Words substituted for the words ‘four years’ by W.B. Act 12 of 1982, w.e.f. 4.8.1982.] or for so long as he continues to be a member of the Panchayat Samiti, whichever is earlier.

(5) The meeting of the Sthayee Samiti shall be held [in the office of the Panchayat Samiti] [Words inserted by W.B. Act 37 of 1984.] at such time and in such manner as may be prescribed.

(6) A Sthayee Samiti shall exercise such powers, perform such functions and discharge such duties as may be prescribed or as may be assigned to it by the Panchayat Samiti.

(7) The State Government may make rules providing for the removal of members of a Sthayee Samiti including the Karmadhyaksha and for filling up of a casual vacancy.

On a plain reading of the above section, it is apparent that the contention of the petitioner that the leader of the Opposition ought to be chosen from the opposition party having the second largest number of members is untenable.

By a Memo No. 1409/PN/O/1/1A-1/2006 dated 11 March 2010 it is clarified that members who had abstained from casting their vote in favour of the Sabhapati of the Panchayat Samiti, shall be the Member-in-Opposition and their leader shall be a member of the Artha Sanstha O Parikalpana Sthayee Samiti of Panchayat Samiti. Accordingly, in the selection of the leader of Opposition, the non-voting members need to be taken into consideration. There is no challenge to the above Memo in the petition.

From the Report filed by the State, it is also evident that the elections for Sabhapati and Sahakari Sabhapati had been held on 12 August 2023 and that all members of the Panchayat Samiti had attended the same and voted for the said Sabhapati except for 13 members of the AITC who remained absent during the said election meeting. Significantly, there are no materials in the writ petition pertaining to the actual voting which had taken place. Accordingly, such 13 members of the

AITC were declared to be members of the Opposition. In such circumstances, the contention that the leader of Opposition be only chosen on the basis of the second largest political party is unacceptable.

In view of the above, there is no illegality which the petitioner has been able to demonstrate in the nomination of the leader of the Opposition of the Raninagar-II Panchayat Samiti. WPA 17847 of 2024 stands dismissed. The interim order dated 23 December, 2024 also stands vacated.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Ravi Krishan Kapur, J.)