

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 3461 of 2025

Sk. Manuar Ali

Vs.

Susanta Paul & Ors.

For the Petitioner

: Mr. Partha Pratim Roy
Mr. Gourav Das
Mr. Samrat Chakraborty
Ms. Madhumanti Das

For the opposite party No.1

: Mr. Bikash Ranjan Bhattacharyya
Sr. Adv.,
Mr. Sudipta Dasgupta
Mr. S. Sutradhar
Ms. Sinjini Chakraborti

For the State

: Mr. Ayan Banerjee
Ms. Sharmila Deb

For the State Election Commission

: Ms. Sonal Sinha
Mr. Sandipan Das
Mr. Shabnam Farooqui

Heard on

: 25/09/2025

Judgment on

: 25/09/2025

Hiranmay Bhattacharyya , J. :

1. This application under Article 227 of the Constitution of India is at the instance of the elected candidate of a Panchayat Samity and is directed against an order being No.20 dated June 24, 2025 passed by the learned Civil Judge (Jr. Div.), 2nd Court, Medinipur, District-Paschim Medinipur in J. Miscellaneous Case No.155 of 2023.

2. By the judgment and order impugned, the J. Miscellaneous Case No.155 of 2023 was allowed *ex parte* thereby declaring that the petitioner herein was not qualified to file nomination being disqualified within the meaning of Section 7 (C) (ii) of the Panchayat Elections Act, 2003 and for making untrue representation in his nomination form.

3. The opposite party No.1 herein filed the J. Miscellaneous Case No.155 of 2023 on July 31, 2023, praying for cancellation of the nomination and election of the petitioner herein in the Election of the Panchayat Samity from Kaliara-I/PS-4, Panchayat Samity under Kharagpur-II and for declaring the election to be void. The petitioner herein contested the election from Kaliara-I/PS-4, Panchayat Samity, pursuant to the notification dated June 8, 2023 issued by the State Government under Section 42 of the Panchayat Elections Act, 2003 thereby fixing July 8, 2023 as the date for polls for election to the Gram Panchayat, Panchayat Samity and Zilla Parishads under the West Bengal Panchayat Act, 1973.

4. The opposite party No.1 claims to have come to know subsequently that the petitioner is a local contractor, who on regular basis executes work for Kaliara-I Gram Panchayat, had also filed the

nomination for the said election. The opposite party No.1 claims that since the petitioner was executing a job for Kaliara-I Gram Panchayat and he was having a share and interest in the contract with, by or on behalf of the Panchayat Samity, he was disqualified to participate as the contesting candidate of the concerned Panchayat Samity. The petitioner claims to have raised an objection in that regard to the District Panchayat Election Officers and filed several representations but no steps were taken by the competent authorities for disqualifying the petitioner from participating in the said election. The opposite party No.1 thereafter approached this Court by filing a writ petition being W.P.A. No.14974 of 2023 which was disposed of by a co-ordinate Bench by an order dated June 27, 2023 by giving liberty to the opposite party No.1 to challenge the candidature of the petitioner in accordance with law for redressal of his grievances.

5. Pursuant to the liberty granted to the opposite party No.1, J. Miscellaneous Case No.155 of 2023 was filed before the Court of the learned Civil Judge (Jr. Div.), 2nd Court, Medinipur, District-Paschim Medinipur which was registered as an election petition case.

6. The learned Civil judge, by the judgement and order impugned, declared that the petitioner was not qualified to file the nomination being disqualified within the meaning of Section 7 (c)(ii) of the Act of 2003 and for making untrue representation in his nomination form and .it was declared that the election in respect of the Panchayat Samity namely, Kaliara-1 /PS-4 under Kharagpur – II is void.

7. Challenging the said judgement and order, the elected candidate, whose election was cancelled by the impugned order, has approached this Court.

8. Mr. Roy, learned advocate appearing for the petitioner submits that a contract was awarded in favour of the petitioner sometimes in the year 2021 and the period of such contract ended long prior to the date of filing the nomination. He submits that the learned Judge without considering the fact that there was no subsisting contract between the petitioner and the Panchayat Samity as on the date of filing the nomination, declared the election in respect of the Panchayat Samity of the concerned constituency as void and further declaring that the petitioner was disqualified from filing the nomination. Mr. Roy places reliance upon the decision of the Hon'ble Supreme Court in the case of **S. Munishamappa Vs. B. Venkatarayappa & Ors.** reported at **(1981) 3 SCC 260** in support of his contention that even if the bills of the petitioner was not settled as on the date of filing of the nomination the same cannot be a ground for disqualification of the petitioner for participating in the Panchayat election. Mr. Roy refers to a Division Bench judgement of this Court in case of **Mohindra Tubes Pvt. Ltd and Another Vs. State of West Bengal and Others** reported at **2018 SCC Online Cal 9056** in support of his contention that an agreement which did not even stipulate the period of time for which the same will be valid or would remain in force does not necessarily mean that the parties intended that the agreement would be valid for an indefinite period of time. By referring to

the Exhibit 15, Mr. Roy contended that the agreement was executed sometimes in the year 2021 and the time limit for completion of the said work was thirty days from the execution of the said contract. He, therefore, contended that the contract could not have been said to be subsisting as on the date of filing of the nomination.

9. Mr. Bhattacharyya, learned senior advocate appearing for the opposite party no.1 contended that there was existence of fiscal relationship between the petitioner and the Samity as on the date of filing of the nominations for the Panchayat elections as it would be evident from the impugned judgement wherein it was recorded that the payments were made to the petitioner in installments. By referring to Section 7 (c)(ii) of the Panchayat Elections Act, 2003 Mr. Bhattacharyya would contend that mere expiry of the time limit for completion of a work would not necessarily mean that there is severance of all interest in respect of the contract by and between the contractor and the Panchayat Samity. He submits that since the entire payment in respect of the contract was yet to be received by the petitioner, the petitioner was disqualified under Section 7 (c) (ii) of the 2003 Act.

10. Mr. Banerjee, learned advocate representing the opposite party nos. 3 and 4 contended that the time stipulated in the work order expired long prior to the date of filing of the nomination.

11. Ms. Sinha, learned advocate appearing for the State Election Commission submits that the Election Commission has not taken any further steps pursuant to the impugned order.

12. Heard the learned advocates for the respective parties and perused the materials placed.

13. After going through the impugned order this Court finds that the learned judge after considering the materials on record more particularly the Exhibit 15 returned a finding that the petitioner who is the proprietor of “Nosib Construction” got the work order dated January 20, 2021 and the said work order has not yet been completed and also has not yet been terminated. The learned judge after considering the Exhibit 15, Exhibit 1 and other evidences available in the record arrived at a conclusion that the opposite party was entitled to get relief as per the prayer made before the Court vide election petition filed on July 31, 2023 as the contract is subsisting till now.

14. Exhibit 1 is the reply given by the concerned authority under the Right to Information Act. From the said reply under the provisions of the Right to Information Act dated July 28, 2023 being Exhibit 1 this Court finds that under Clause VII it was stated that the work order dated January 20, 2021 as against NIT No. 6 dated December 24, 2020 issued in favour of “Nosib Construction” is subsisting till now and the same was not terminated or cancelled. It was further stated in the said reply that the earnest money deposited by “Nosib Construction” in respect of the said work order has not been refunded by the Gram Panchayat till the date of issuance of the said reply.

15. As to what would be the effect of payments made even after the date of filing of the nominations was considered by the Hon’ble Supreme

Court in the case of **S. Munishamappa (supra)**. The Hon'ble Court held that even if the bills were settled at a later date and that the security deposit was refunded later on, the same will not disqualify the candidate.

The Hon'ble Supreme Court held thus:

16. In any event, if the contract had not been terminated by the parties themselves, it appears that the appellant must be held to be in clear breach of the agreement long before the date he had filed his nomination paper. Execution of the work in terms of the contract was undoubtedly one of the fundamental terms of the contract and the appellant had failed or refused to do so. Even if it be held that the appellant had committed a breach of the contract, the contract cannot be said to be subsisting thereafter. If the contract is discharged by breach on the part of the appellant, the entire contract necessarily goes and along with this the agreement, if there be any, with regard to the maintenance, must necessarily go, leaving the party aggrieved to take steps to recover damages for such breach. The contract, however cannot be said to be subsisting. In the view that we have taken it does not, indeed, become necessary for us to consider the question whether the maintenance clause in the instant case formed a part of the contract or not. We must, therefore, hold that in the instant case, there was no subsisting contract between the appellant and the State Government at the date of his filing the nomination for election. The fact that the bills of the appellant were settled at a later date and that the security/deposit was refunded later on, will not disqualify the appellant in view of the explanation to Section 9-A of the Act. We are, therefore, of the opinion that the finding of the High Court that the appellant was disqualified in view of the provisions contained in Section 9-A of the Act, is not correct. The decision of the Supreme Court in the case of Konappa Rudrappa Nadgouda is of no assistance in the facts and circumstances of this case, as in the said decision the question of discharge of a contract never came up for consideration and the decision was concerned with a case where, admittedly, a contract was subsisting. The further argument of Mr. Lekhi that if any contractor is permitted to put an end to a contract by committing breaches thereof to enable him to contest the election, will frustrate the very purpose of Section 9-A of the Act, does not appeal to us. Whether a contract subsists or not, has to be determined in the light of the provisions of law relating to contract and the interpretation cannot, be any different while considering the provisions contained in Section 9-A of the Representation of the People Act, 1950."

(emphasis supplied).

17. It is not in dispute that the work order was executed on January 20, 2021. The period as mentioned in the said work order was thirty days from the date of signing of the contract.

18. The Hon'ble Division Bench in **Mohindra Tubes Pvt. Ltd (supra)** held that even if the agreement did not stipulate the period of time for which the same will be valid or be enforced, the same cannot mean that the parties intended that the agreement would be valid for an indefinite period of time. The Hon'ble Division Bench after noting that in the said case there was an indication of the validity period of the agreement in a subsequent letter written by the authorities wherein it was stated that the contract would remain valid till a particular date held that it would be reasonable to conclude that the agreement between the parties died a natural death upon expiry of the date mentioned in the said letter.

19. It is not in dispute that the case on hand the contract was executed on January 20, 2021 and the period for such contract was thirty days from execution of the contract.

20. The learned Civil Judge held that the contract was subsisting on the following grounds :-

- (i) the work under the contract has not yet been completed;
- (ii) contract has not yet been cancelled or terminated;
- (iii) payments on various dates in respect of several financial years were made.

Admittedly the contract in question was for a fixed period. The period of such contract expired long prior to the date fixed for filing of nominations. A contract for a fixed period expires by efflux of time or by act of the parties prior to its expiry. The fact that the work under the contract was not completed may amount to a breach of contract but the same would not result in automatic extension of the validity period of contract. No document has been produced to show that the period of contract was extended.

21. This Court, by applying the proposition of law laid down by the Hon'ble Division Bench in Mohindra Tubes Pvt. Ltd (supra), holds that the contract in question between the petitioner and the Panchayat Samity died a natural death upon expiry of thirty days from the date of execution of the said contract.

22. The question of termination or cancellation of a contract does not arise after the same stood expired by efflux of time.

23. This Court accordingly holds that the finding of the learned Judge that the contract is subsisting till now suffers from infirmity.

24. The expression "any share or interest in any contract" would necessarily mean share or interest in a contract that was subsisting as on the date of filing of any nomination. Merely because of a fact that a person entered into a contract with the Panchayat Samity or any other body at a particular point of time it would not necessarily mean that such person is disqualified from participating in an election for all times to come. The said bar would operate only during the subsistence of the

contract and not after the same has been terminated either by way of natural death or by the act of the parties thereby terminating the said contract prior to its expiry.

25. For all the aforesaid reasons, this Court is inclined to interfere with the order impugned. The judgement and order impugned dated June 24, 2025 passed by the learned Civil Judge (Junior Division), 2nd Court, Medinipur Sadar, Paschim Bardhaman is set aside.

26. Accordingly, C.O. 3461 of 2025 stands allowed.

27. There will be no order as to costs.

28. Urgent photostat certified copy of this judgement and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)

*Item No.10
Aritra Ghosh/B.P.
A.R. (Court)*