

11.08.2025
Sl. No.54(DL)
Ct. No.42
srm

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. No. 30363 of 2024

Muktar Hossain

Versus

State of West Bengal & Ors.

Mr. Neguive Ahmed,
Mr. Masooq Rahaman

...for the Petitioner.

Ms. Jhuma Chakraborty,
Mr. Suddhadeb Adak

...for the State.

Mr. Md. Sarwar Jahan,
Mr. Firoze Hassan,
Mr. Asif Mehedi

...for the Respondent No.5.

1. Affidavit-in-opposition filed on behalf of the respondent No.4 is taken on record. Copy served.
2. Learned Advocate for the petitioner submits that the petitioner will not file any reply to the said affidavit-in-opposition.
3. By the present writ petition, the petitioner seeks for setting aside of the order of respondent no.2, District Panchayat and Rural Development Officer and Appellate Authority dated 26th November, 2024 and cancel the membership of the respondent No.5.
4. The petitioner contends that the petitioner is an elected member of Kalinagar-I Gram Panchayat under Raninagar-II Block, Murshidabad and is the leader of

Indian National Congress. The petitioner made an application on 18th July, 2024 to the Prescribed Authority and Block Development Officer, Raninagar-II Block, District-Murshidabad for cancellation of membership of respondent No.5 upon disqualifying her. The Prescribed Authority rejected such prayer of the petitioner *vide* order dated 9th August, 2024. The petitioner preferred an appeal before the Appellate Authority being the District Panchayat and Rural Development Officer, respondent No.2 challenging the order dated 9th August, 2024 passed by the Prescribed Authority. Upon hearing, the Appellate Authority by its order dated 26th November, 2024 rejected the prayer of the petitioner for disqualifying the membership of the respondent No.5. Being aggrieved and dissatisfied with the said impugned order of the Appellate Authority, the petitioner has preferred the present writ petition.

5. Mr. Neguive Ahmed, learned Advocate for the petitioner submits that the petitioner produced paper cut-outs, electronic evidence including audio and video records showing defection by the respondent No.5 from her original party. However, neither the Prescribed Authority nor the Appellate Authority properly considered such evidence. There are evidences that respondent No.5 was seen under the banner of All India Trinamool Congress party which deems that she has voluntarily given up her membership of such recognised political party. Therefore, the Prescribed Authority as

well as Appellate Authority erred in rejecting the prayer of the petitioner for disqualification of membership of respondent no.5 under Section 213A of the West Bengal Panchayat Act, 1973 (*hereinafter referred to as the Act of 1973*). He seeks for setting aside of the impugned order and cancel the membership of respondent No.5.

6. On the contrary, Mrs. Jhuma Chakraborty, learned Advocate for the State submits that the petitioner has not adduced any documentary evidence from the concerned political party to substantiate that the private respondent no.5 has allegedly relinquished her membership from the Indian National Congress. The photographic evidence merely depicts that the private respondent is standing under the banner of another political party which is insufficient to establish the factum of membership relinquishment by respondent no.5. She seeks for dismissal of the writ petition.

7. Mr. Sarwar Jahan, learned Advocate for the respondent No.5 at the outset indicates that neither the application under Section 213A of the Act of 1973 nor the memo of appeal has been annexed to the writ petition. Respondent no.5 is the Pradhan of the concerned Gram Panchayat. The petitioner has taken recourse to Section 213A of the Act of 1973 for removal of the respondent No.5 in order to overreach the provisions of Section 12 of the Act of 1973 which provides a bar for removal of a Pradhan prior to expiry of two and half years from date of such election. No

evidence has been produced that respondent No.5 has voluntarily given up her membership from such recognised political party. Rather, during hearing before the Prescribed Authority, the respondent No.5 in her written statement has stated that she has been elected as a gram panchayat member of Kalinagar-I Gram Panchayat with party affiliation of Indian National Congress and till date she is in the same party and as such, there cannot be any assumption or presumption of voluntary giving up of membership. He also indicates that there is no deeming provision under the West Bengal Panchayat Act to hold that the respondent No.5 has voluntarily has given up her membership. He also seeks for dismissal of the writ petition.

8. Upon hearing the learned Advocates for the respective parties the only issue which has fallen for consideration is whether the impugned order of Appellate Authority, District Panchayat and Rural Development Officer, Murshidabad, respondent No.2 is proper.

9. In order to examine such issue it would be apposite to reproduce relevant provision as embodied under Section 213A(1) of the Act of 1973 as hereunder:

“213A. Disqualification on change of political party by Members of Panchayats.-(1) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, the prescribed authority for such Panchayat as may be specified by notification in this behalf, may subject to the other provisions of this section, declare, for reasons to be recorded in writing, a member of such Panchayat to be disqualified for being a member thereof, if-

(a) he is an elected member set up by a recognised political party and has-

- (i) voluntarily given up his membership of such recognised political party, or*
- (ii) exercised the voting right contrary to the manner of voting of the majority members set up by such recognised political party in such Panchayat, or*
- (b) he is an elected member not set up by any recognised political party and he has joined a recognised political party on the expiry of six months from the date of election :”*

10. Upon bare reading of the aforesaid provision it manifest that disqualification of a member of a panchayat on change of political party arises on two circumstances, if he is an elected member set up by a recognised political party, viz (i) voluntarily giving up membership of such recognised political party, (ii) exercised the voting right contrary to the manner of voting of the majority members set up by such recognised political party in such Panchayat. The case of the petitioner is precisely based on the first ground that the respondent No.5 voluntarily gave up her membership of such recognised political party. It is contended that the petitioner produced paper cut outs, audio and video electronic evidence in support of the fact that respondent no.5 voluntarily gave up her membership.

11. Be that as it may, the order of the Prescribed Authority clearly records that the respondent No.5 has in her written statement stated that she was elected as a gram panchayat member of Kalinagar-I Gram Panchayat with party affiliation of Indian National Congress and till date she is in the same party. There are no evidences produced from the original party that she has given up her membership of Indian National Congress

voluntarily. Admittedly, the authenticity of the documents such as paper cut outs, audio and video and other electronic evidences were not proved in accordance with law. Thus, preliminary condition as envisaged under Section 213A of the Act of 1973 of voluntary giving up of membership of a recognised political party not being fulfilled and proved, the rigours of the said provisions is not attracted in the facts and circumstances of this case. In view of the above, it is found that there is no infirmity in the order passed by the Appellate Authority. Thus, the writ petition falls short of merit.

12. With the aforesaid directions, the writ petition being **WPA 30363 of 2024** is dismissed.

13. Interim order, if any, stands vacated.

14. All connected applications, if any, stand disposed of.

15. There shall be no order as to costs.

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

17. Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)