

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 23176 of 2023

Srimanta Malik & Ors.

Vs.

The State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Kallol Basu, Adv. Mr. Suman Banerjee, Adv.
For the respondent nos.6 to 9	:-	Mr. Samrat Choudhury, Adv. Mr. Abhijeet Bhattacharyya, Adv.
For the State	:-	Mr. Lalit Mohan Mahata, Adv. Mr. Ziaul Haque, Adv.
Hearing concluded on	:-	27.09.2023
Judgment on	:-	10.09.2023

Amrita Sinha, J.:-

The matter relates to election of Pradhan in a reserved category seat.

Seventeen writ petitioners and the five private respondents are all elected members of a Gram Panchayat. There are total twenty-two seats in the Gram Panchayat and the petitioners are in majority. Meeting was fixed for election of Pradhan and Upa Pradhan. The post of Pradhan is reserved for a scheduled tribe candidate. None amongst the petitioners belong to the reserved category. Out of all the elected members, the respondent no. 6 who happens to be a member of the minority party, is from the reserved category. The said respondent no. 6 was absent on the day of the election. As none from the reserved category was available on the day of election of Pradhan, the Upa Pradhan of the Panchayat has been given charge of the Pradhan.

The petitioners are not inclined to accept the private respondent, a member of the minority party, as the Pradhan of the Gram Panchayat. According to the petitioners, they do not have confidence and cannot repose

faith upon the said private respondent to act as the Pradhan. The petitioners contend that till the Pradhan enjoys the confidence of the majority of the elected members, the functioning of the Gram Panchayat will suffer. There is no point in appointing a Pradhan who does not enjoy the confidence of the majority members. The petitioners intend to stall the election of the Pradhan till a candidate of their choice is available.

The petitioners rely upon the provision of Section 20 of the West Bengal Panchayat Elections Act, 2003 relating to co-option of persons in respective category.

In support of the aforesaid submission the petitioners rely upon the decision passed by the Hon'ble Supreme Court in the matter of ***Bhanumati & Ors. vs. State of Uttar Pradesh through its Principal Secretary & Ors.*** reported in ***(2010) 12 SCC 1*** paragraphs 49 and 66, ***Usha Bharti vs. State of UP & Ors.*** reported in ***2014 AIR SCW 1981*** paragraphs 33, 34, 36, 37, the judgment delivered by this Court in the matter of ***Prabhati Sarkar & Ors. vs. State of West Bengal & Ors.*** reported in ***(2010) 1 CHN 737 (DB)*** and ***Juljelal Miah & Ors. vs. State of West Bengal & Ors.*** reported in ***2019 SCC Online Cal 5289*** paragraphs 20 to 23.

Learned advocate representing the private respondents submits that the reserved category member is highly interested to take charge of the post of Pradhan but she was deliberately and forcefully restrained from attending the meeting for election of Pradhan. The said member was compelled to approach the police for help and an FIR has been lodged by her before the police station.

It has been submitted that the private respondent is the only candidate from the reserved category who can be appointed as the Pradhan. To frustrate the candidature of the private respondent, the petitioners are intentionally spreading false and incorrect rumours about her incompetence. The private respondent is yet to take charge of the Pradhan and prior to getting any

opportunity to prove her competence, the petitioners are standing in her way of being elected as the Pradhan.

Learned advocate representing the State respondents submits that the post of Pradhan in the present Gram Panchayat is reserved for a scheduled tribe member and any elected member, who belongs to the said reserved category, will be entitled to be appointed in the said post irrespective of the fact whether the member belongs to the party with majority members. The private respondent being the sole elected member from the reserved category is eligible and liable to be appointed as Pradhan.

The respondents pray for dismissal of the writ petition.

I have heard and considered the rival contentions of all the parties.

Admitted fact is that the seat of Pradhan in the subject Gram Panchayat is reserved for a scheduled tribe member. The private respondent no. 6 is the sole reserved category member from amongst the elected members of the Gram Panchayat. The petitioners, belonging to the majority group, are not inclined to accept a member from the minority group, to act as Pradhan. The petitioners fall back on Section 20 of the WB Panchayat Elections Act, 2003.

Section 20 of the Act, 2003 mentions that in case of non-availability of persons of reserved category for filling up the office of Pradhan so reserved, a person of that reserved category may be co-opted to fill up the office after swearing in an oath of affirmation before the authority as may be specified: provided that such person so co-opted shall have to be elected within six months from the date of his co-option in regard to that office against a suitable casual vacancy of that body.

In support of the contention to co-opt, the petitioners rely upon the decision delivered in the case of Prabhati Sarkar (supra) wherein the Court

applied the aforesaid principle of co-option in the case of unavailability of a reserved category candidate.

The petitioners harp on the point that as they do not have confidence on the sole reserved category member, accordingly, she ought not to be appointed as Pradhan. It has been contended that the members of the Gram Panchayat ought not to wait for a formal no confidence motion to be brought in for removal of Pradhan. For invoking the provision for removal of Pradhan, the petitioners will have to wait for a minimum period of one year from the date of election of Pradhan. The petitioners are not interested to accept the available reserved category candidate as their Pradhan even for a single day, far less one year. As the Pradhan neither enjoys the confidence nor the support of the majority members of the Panchayat, accordingly, she ought not to be appointed as such.

I am not inclined to accept the aforesaid contention of the petitioners. The election of the Pradhan is yet to be held and the candidate is yet to prove her credence. Prior to giving her an opportunity to serve the people, she ought not to be taken as an incompetent person to assume the office of Pradhan. It will be highly improper and at the same time stigmatic if a member, even after winning the election, is not permitted to hold the office of Pradhan by painting her to be undeserving for the post. An opportunity ought to be given to the candidate to prove her credibility.

The provision to co-opt clearly mentions that in case of non-availability of persons of reserved category, co-option is permissible. This is not a case of non-availability of reserved category person. In the subject Gram Panchayat, a reserved category member is already available. She ought to be permitted to hold the post of Pradhan. If after performance of a year it is found that she is not competent to hold the post or she fails to win the confidence of the members, then the provision for removal of Pradhan may be resorted to. Prior

to the same it will be highly improper and unjust not to permit her to be elected as Pradhan.

The fact that the reserved category candidate failed to turn up on the day of the election, does not appear to be completely true. On the contrary, it appears that she was deliberately prevented and restrained from attending the meeting scheduled for election of Pradhan. She was even compelled to approach the police for help.

If the contention of the petitioners is to be accepted, then it will become practically impossible to follow the reservation policy prescribed under the Constitution. If the elected reserved category candidate is not allowed the benefit of reservation, then the reservation policy will be frustrated. Reserved category member elected from the minority party will never get a chance to hold key posts and seats. Bye-elections have to be held in many such occasions. To prevent mid-term elections, the elected member ought to be permitted to hold office. Co-option ought not to be exercised if the reserved category candidate is available. If none is available from the reserved category, then co-option may be resorted to.

After the elections are over, all the members of the Gram Panchayat ought to act in tandem with each other and ought not to oppose the action of the member belonging to a rival political party. The sole intention of the members of the Gram Panchayat should be to act as a team and serve the electors of the Panchayat. There ought not to be any infighting in between the members and the Panchayat should behave as a single entity.

Time is not yet ripe to come to an opinion as to whether the sole reserved category member enjoys the confidence of the other members of the Panchayat. Till the member enjoys the confidence of the other members, she is entitled to hold the office of Pradhan. Only because the reserved category member is from the political party having minority members, the members enjoying majority

should not make things difficult for the said member which may ultimately lead to her removal.

The other decisions relied upon by the petitioners do not appear to be applicable in the facts and circumstances of the instant case.

In view of the above, the Court is not inclined to interfere in the instant writ petition.

The writ petition fails and is hereby dismissed.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)