

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH**

JUDGMENT

(Amarnath Goud, ACJ)

Heard Mr. N. Das, learned counsel appearing for the petitioner as well as Mr. D. Bhattacharjee, learned GA assisted by Mr. S. Saha, learned counsel appearing on behalf of the respondents.

2. Petitioners, have filed this writ petition for quashing the declarations dated 20.09.2021 issued by the respondent no. 3 alongwith the illegal papers and references of respondent no. 4 and for allowing the petitioners to work as Members of West Kuchainala Gram Panchayat.

3. The facts of the case are that, the petitioners are the elected members of West Kuchainala Gram Panchayat from a particular political party and they have unanimously elected Smt. Rubi Das as Pradhan and the petitioner no. 1 herein as Upa-Pradhan. Due to dissatisfaction of the works and activities of Pradhan in execution of the development works of gram panchayat, the petitioners being majority of six members out of nine proposed to remove the Pradhan and accordingly, respondent no. 2, District Panchayat Officer held a meeting on 23.04.2021 and thereby, on being found majority of the petitioners took decision for removal of the Pradhan. Thereafter, by a memorandum dated 14.09.2021, respondent no. 3 sought for some clarification from the petitioners herein, reply of which had been submitted by the petitioners on 20.09.2021 stating *inter alia* that there was no whip/direction in the hands of the petitioners, but suddenly on

24.09.2021, respondent no. 3 issued a Declaration declaring that the petitioners have earned disqualification and thereby ceased to be a member of the gram panchayat. It is the further case of the petitioner that prior to the meeting dated 23.04.2021, no Whip or direction was served upon the petitioner.

4. During arguments, Mr. N. Das, learned counsel appearing for the petitioners has argued that there was no communication on the part of respondent no. 3 for issuance of party whip. Mr. Das, learned counsel has further argued that mere reading of the party whip cannot substitute the communication of the party whip to the elected members of the gram panchayat. Mr. Das, learned counsel has also argued that since whip was not served upon the petitioners prior to commencement of the election process, the ceasing of the membership of the petitioners cannot sustain as per law. Learned counsel has also argued that before issuing disqualification certificate, a proceeding is required to be initiated against the disqualified members, but no proceeding has been initiated and respondent no. 3 whimsically has disqualified the petitioners from being members of the gram panchayat. Further, learned counsel for the petitioners has submitted that there is no proof that party whip was served upon the petitioners. According to Mr. Das, learned counsel, party whip must have been served on the petitioners before commencement of the election proceedings and their disqualification. Learned counsel has lastly argued that the impugned declaration order dated 24.09.2021 (Annexure 6 to the writ petition) ceasing

the membership of the petitioners of the gram panchayat be quashed/set aside.

5. Controverting the submissions of learned counsel, Mr. D. Bhattacharjee, learned GA has submitted that the petitioners have violated the party whip by casting their votes. Mr. Bhattacharjee, has also submitted that since the petitioners have violated the party whip they have earned disqualification under Section 16 of the Tripura Panchayat Act (for short, the Act). Mr. Bhattacharjee, learned GA has also submitted that the party whip was read over to the petitioners and they have put their signatures on the minutes. Lastly, learned GA has submitted that there is no illegality in the impugned declaration dated 24.09.2021 passed by the respondent no. 3.

6. The disqualification of the petitioners and ceasing them to be members of the Gram Panchayat relate to Section 16 of the Tripura Panchayat Act, 1993, which reads as under:-

"16. (1) A member of a Gram Panchayat belonging to any political party shall be disqualified for being a member of the Gram Panchayat-

(a) if he has voluntarily given up his membership of such political party ; or

(b) if he votes or abstains from voting in the Gram Panchayat contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining in either case, the prior written permission of such political party, persons or authority and such voting or abstention has not been condoned by such political party, person or authority within thirty days from the date of such voting or abstention.

Explanation: For the purpose of this sub-section , a member of a Gram Panchayat shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member.

(2) A member of a Gram Panchayat who has been elected as such, otherwise than as a candidate set up by any political party, shall be disqualified for being a member of the Gram Panchayat if he joins any political party after such election.

NOTE : For the purpose of this Section, "political party" means a political party which has been recognised by the Election Commission of India as a national party or as a state party of this State.

(3) If any question arises as to whether a member of a Gram Panchayat has become subject to disqualification under this Section, the question shall be referred for

decision of the Block Development Officer having jurisdiction over such Gram Panchayat and his decision shall be final.

(4) The proceeding under sub-section (3) shall be completed and decision thereon shall be communicated within fifteen days from the date when any such question has been referred.

(5) During pendency of a proceeding, no decision shall be taken by the Gram Panchayat in any meeting for the removal or election of the Pradhan or the Upa-Pradhan.

(6) The disqualification under this Section shall take effect from the date of the decision of the Block Development Officer.”

7. Further, the procedure to disqualify any Panchayat member on the ground of defection is laid down in Rule 27 of Tripura Panchayats (Election of Officer Bearers) Rules, 1994, (for short, the Rules, 1994) which reads as under:-

“27. (1) In any meeting of a Gram Panchayat, or a Panchayat Samiti or a Zilla Parishad, where vote is taken for election or for any other purpose, the Presiding Officer shall, if his attention is drawn that any member has voted or abstained from voting contrary to the direction of the political party to which he belongs and thereby has earned disqualification under Section 16, or Section 76, or Section 128, record the facts in the Remarks Column of the record of proceedings of the meeting, obtain clarification from such member and then refer the question to the Block Development Officer or, as the case may be, the District Magistrate having jurisdiction for decision in Form 6A, or 12A or 17A as the case may be.

(2) If the Gram Panchayat or a Panchayat Samiti or a Zilla Parishad received a written information from a political party or from a member that the member has voluntarily given up the membership of the party or the member having been elected otherwise than as a member of a political party has joined the political party, the Pradhan or Upa Pradhan in case of Gram Panchayat, the Chairman or Vice Chairman in case of Panchayat Samiti or Sabhadhipati or Sahakari Sabhadhipati in case of Zilla Parishad shall refer the question to the Block Development Officer or, as the case may be, the District Magistrate to decide whether such member has earned disqualification under Section 16, or Section 76, or Section 128 in form 6A, 12A or 17A as the case may be.

(3) Every such member who is alleged to have earned disqualification by reason of voting or abstained from voting contrary to the direction of his political party, may submit letter or prior permission or condonation to the Block Development Officer or, as the case may be, the District Magistrate having jurisdiction within thirty days from the date of voting and such authority shall take up the question of disqualification only after expiry of the said period of thirty days and decide the same within fifteen days from the expiry of the said period of thirty days.

(4) If the authority, as aforesaid, is satisfied on the basis of the report of the Presiding Officer and after making such enquiry as he may consider necessary that any such member has become disqualified under Section 16 or, as the case may be, Section 76 or Section 128, record his decision, communicate it to the Gram Panchayat concerned, or, as the case may be, the Panchayat Samiti or the Zilla Parishad and make declaration in Form 6B, or 12B, or 17B as the case may be, that the member has ceased to be the member of that Gram Panchayat or, as the case may be, the Panchayat Samiti or the Zilla Parishad.”

8. Section 16 of the Act, clearly says that any member of Gram Panchayat would stand disqualified if he voluntarily gives up his party membership or if he votes or abstains from voting in the panchayat disobeying party whip or direction issued by the party and when such voting has not been condoned by the party within 30 days from the date of such voting.

9. Rule 27 of the Rules, 1994 demonstrates that in any meeting of Gram Panchayat where vote is taken for election, the Presiding Officer of the meeting shall, if his attention is drawn to the fact that any elected member of the Panchayat in such meeting has voted or abstained from voting contrary to the direction of the political party to which he belongs and has thereby earned disqualification under the Act, record the facts in the proceedings of the meeting and after obtaining clarification from the members, shall refer the matter to the BDO. Under sub-section(3) of Section 27 of the Rules, the concerned member who is alleged to have earned such disqualification by reason of voting or abstention from voting contrary to the whip issued from his party can defend his case by submitting to the BDO a letter or prior written permission of his party or condonation by such party within 30 days and the BDO shall take up the question of disqualification only after expiry of the said period of 30 days and decide the matter within 15 days thereafter. Under sub-section(4) of Section 27 of the Rules, if the authority, aforesaid, is satisfied on the basis of the report of the Presiding Officer and his own inquiry that such member has become disqualified for the reason aforesaid,

he may record his decision and communicate it to the concerned panchayat and make a declaration in prescribed form that the member has ceased to be a member of the Gram Panchayat.

10. From the proceeding of the motion for removal of Pradhan of the Panchayat held on 23.04.2021 in the West Kachuianala Gram Panchayat, it would be conclusively seen that the Observer, Panchayat Extension Officer, Durga Chowmuhani RD Block has stated that *before starting of voting process Party WHIP received by undersigned are read out loudly and all members are briefed about the WHIP where it was mentioned to vote against the motion for removal of Pradhan and also discussed what action can be taken as per under Section 16(B) of the Tripura Panchayat Act, 1993 for violating of Party Whip.* Further, from the Memorandum dated 14.09.2021 issued by the BDO, Durga Chowmuhani RD Block, Dhalai, it is also observed that Whip was readout in front of the elected members in the meeting held on 23.04.2021. It is also clear from the Minutes of the meeting dated 23.04.2021 issued by the Presiding Officer that the Presiding Officer as per sub-section 4 of Section 23 of the Tripura Panchayat Act, 1993 had read over the Whip loudly to the members of the Kachuinala Gram Panchayat.

11. As per the statutes of the Act and Rules made thereunder, it is essential to communicate party whip prior to the commencement of the election process. Mere reading loudly of the whip does not come within the purview of the said Act and Rules. Further, there is no evidence on record that any written intimation of the party whip was ever served upon any of the petitioners.

There is no evidence also on record that such a whip, in any manner, being communicated to the petitioners by any of the authorized members of the party. From the annexures submitted by learned GA it is conclusively seen that the Presiding Officer had loudly read out the party whip to the petitioners in terms of Section 16 of the Act and Rule 27 of the said Rules. Section 20 of the Act says that it is not the duty of the Presiding Officer to read out the party whip to the elected members before commencement of the election. No duty is cast upon the Presiding Officer under the Rule to read out the party whip to the members before commencement of the proceeding. His only duty is to conduct the election.

12. From the Memo dated 21.04.2021 issued by the President, BJP, Tripura State it is seen that the President had authorized one Sri Jadab Lal Debnath, Secretary, BJP to issue Whip on behalf of the party to all the elected members of West Kuchainala Gram Panchayat, but there is no proof of service of the whip upon the petitioners. The petitioners have categorically denied to have received such whip. From the record it is evident that the petitioners have intimated the BDO, Durgachowmuhani RD Block by their letters dated 14.09.2021, stating that they have not received any Whip at the time of voting on 23.04.2021.

13. As per the provisions of Section 16 of the Panchayat Act and Rules 27 of the Panchayat Rules, even a meeting is said to be convened for removal of the office bearers of the Gram Panchayat, reasonable opportunity needs be given and in the place where whip has been issued under the Acts and Rules,

service of whip is an essential ingredient. In the present case, the counsel for the petitioner submits that no such whip has been served upon the petitioners herein. To this, learned counsel for the respondents in their counter affidavit has submitted that the said whip was read out in the meeting. The said contention, unless established, cannot be taken for granted. Moreso, when the law does not permit the said reading over of the whip, this court is of the *prima facie* view that doctrine of *audi alteram partem* has been grossly violated by the respondents.

14. From the above analysis, it is abundantly clear that disqualification of the petitioners from being members of the Gram Panchayat is wholly disproportionate to the default committed by the respondents under Section 16 of the Act and under Rule 27 of the Rules. Thus, we have no hesitation in holding that the impugned declaration dated 24.09.2021 betrays utter non-application of mind to the facts of the case and the relevant law. This court *prima facie* feels that the impugned action of the respondents against the petitioners needs be interfered with.

15. In the result, we are of the opinion that the declaration dated 24.09.2021 (Annexure 6 to the writ petition) issued by the respondent no. 3 disqualifying the petitioners from the membership of West Kachuinala Gram Panchayat for violation of party whip stands quashed and set aside. The petitioners are declared to continue as elected Office Bearers till their tenure, if not, facing any other dis-qualification. The writ petition, therefore, stands allowed and thus disposed of.

Pending application(s), if any, also stands disposed.

JUDGE

CHIEF JUSTICE (ACTING)

Saikat

HIGH COURT OF TRIPURA



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