

(2005) 10 CAL CK 0011
In the Calcutta High Court
Case No : Writ Petition No. 17237 (W) of 2005

Israful Haque and Another	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Panchayat Act, 1973 — Section 213A, 213A(1)

Citation : (2006) 1 CALLT 188 : 110 CWN 158

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : Asoke Banerjee and Arindam Chatterjee, for the Appellant; Bharati Mutsuddi and Nilima Das, Bidyut Kumar Banerjee and Goutam Thakur for the Respondent No. 7, for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.—By this writ petition the petitioners have challenged both the orders dated 22nd June, 2005 and 22nd August, 2005 passed by the prescribed Authority and the Appellate Authority respectively under the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act) whereby and whereunder both the petitioners have been declared to be disqualified as being members of the Panchayat. The short fact is as follows :

The petitioners and each of them are elected members of Surun-I Gram Panchayat, Post Office - Bariol, District - Uttar Dinajpur (hereinafter referred as the said Panchayat). The said Panchayat was constituted by 13 elected members out of which 8 members were elected with the denomination of CPI(M), 3 members were elected with the denomination of Congress (I) Party, and one (1) member was elected with the denomination of Nationalist Congress Party while remaining one (1) member was elected with the denomination of Forward Block Party. In view of the aforesaid composition and strength of the respective parties the Panchayat was formed by the elected members with the denomination of the CPI(M) Party. The petitioner No. 1 was selected as Chief Whip and/or leader of the CPI(M) party by its members. The respondent No. 6 was chosen as Prodhan

of the Panchayat. The post of Upa-Prodhan was reserved for female Scheduled Caste candidate and Smt. Chhabi Das was chosen for that post. On or about 11th April, 2005, 5 members including the Upa-Prodhan of the said Panchayat asked the Prodhan (the respondent No. 6) to convene a meeting for his removal from the office of Prodhan. In spite of receipt of the said requisition, it is said that Prodhan failed to convene meeting. As such on 2nd May, 2005 Upa-Prodhan convened meeting for transacting the same business on 10th May, 2005. On 10th May, 2005 the meeting was held and 7 out of 13 members of the said Panchayat including the petitioners herein were present. However, the rest of the members numbering 6 abstained from meeting.

2. In the said meeting respondent No. 6 was removed from the office of Prodhan. The said resolution was challenged in this Court by the respondents No. 6 and 7 by filing a writ petition being W.P. No. 10513(W) of 2005 Faridul Haque and Anr. v. The State of West Bengal and Ors. With a detailed and reasoned Judgment and order the Hon'ble Justice Jyotirmay Bhattacharya on 28th July, 2005 dismissed the said writ petition and held that the said meeting was held duly and properly. I am told that there has been no appeal as yet preferred against the said Judgment and order.

3. After the aforesaid resolution as above on 12th May, 2005 the respondents No. 6 and 7 made an application u/s 213A verified by an affidavit for disqualification of the present writ petition. In the said application it was alleged as follows :

Despite best effort the writ petitioner No. 1 who was leader of the CPI(M) Party in the said Gram Panchayat could not be traced for a meeting. As such, he was removed from the leadership and in his place the respondent No. 7 is alleged to have been elected as a new leader. On 10th May 2005, the said new leader whipped all the members set-up by the CPI(M) Party and instructed to cast votes against the motion of removal of Prodhan in the meeting fixed on 10th May, 2005. Defying the said whip the petitioner and each of them are alleged to have cast their votes in favour of the motion. As such, they are disqualified for being members of the Gram Panchayat u/s 213A Clause (a) (ii).

4. The said application u/s 213A was heard by the prescribed Authority being the local B.D.O. The writ petitioners were also heard. It appears from the impugned order that the writ petitioners took up the point that the said notice of whip was not received by them and any notice of holding meeting on 9th May, 2005 on which new leader was elected in place of the writ petitioner No. 1. It is recorded by the prescribed Authority that the rest of the 6 members of the CPI(M) Party along with the other members remained absent from the requisitioned meeting on 10th May, 2005.

5. The prescribed Authority allowed the application and declared that both the petitioners are disqualified. The Appellate Authority also affirmed the said order. It appears from the grounds of appeal that both the petitioners took up the point of non-service of notice of the meeting held on 9th May, 2005 for electing new

leader in place of the writ petitioner No. 1.

6. It was agreed by all the parties that no affidavit-in-opposition could be filed in this matter and the matter would be heard on the basis of the records annexed to the petition. I also feel that no other document is required to be produced before this Court for deciding this matter.

7. Mr. Asoke Banerjee, learned senior advocate, assailing the two impugned orders submits that both the Authorities below failed to decide the vital question raised by the petitioner about service of notice dated 9th May, 2005 and also service of the alleged whip. He further contends that after decision of this Court in the previous writ petition it was not open for the Authorities below to decide otherwise and to dislodge the petitioners from the office of the Prodhan. He contends that without decision of the question of service of notice and whip the two impugned orders are bad in law. Those issues are vital and clinche the issues between the parties.

8. Next, he contends that going by the statements made in the application for disqualification no order could have been passed as there has been no cause of action nor any reason for entertaining such application.

9. Mr. Bidyut Kumar Banerjee, learned senior Advocate, appearing for respondents No. 6 and 7 contends that it is on record that both the writ petitioners being the members of the CPI(M) Party have defied the whip of the leader by casting their votes in favour of the motion for removal of the respondent No. 6. As such both the Authorities below have found on fact that they have incurred disqualification as mentioned in section 213A. He contends that it is true that there is no provision of whipping but the language impugned in section 213A Sub-section (1)(a)(ii) is very clear to suggest the whipping by the leader is prescribed under law.

10. In exercise of power under Article 226 this Court should not interfere with the fact finding. Moreover, it will appear from the observation and recording of The Hon"ble Justice Jyotirmay Bhattacharya in the previous writ petition that both the petitioners were aware of issuance of the instruction of the leader of CPI(M) Party to oppose the motion of removal. According to him, separate decisions or the fact finding of the issuance of service of notice do not and cannot arise. Mrs. Bharati Mutsuddi, learned Advocate has in substance adopted the arguments of Mr. Bidyut Kumar Banerjee. She contends that it is" clear from the records that on fact both the writ petitioners exercised their voting right contrary to the manner of voting of the majority members set-up by such recognized political party in such Panchayat. Therefore, going by this admitted position the decision of both the Authorities was correct.

11. Having heard the respective contentions of the learned counsels in this matter the Court is to find whether in exercise of the power under Article 226 of the Constitution of India the decisions of both the Authorities below are rendered observing the principle of natural justice and the procedure laid down in the Act

and Rules, and reasonably. This Court cannot take the role of Second Appellate Court and its power is confined to which is well-known by this time with the large number of pronouncements of the Apex Court and various High Courts that the Court cannot scrutinize in the writ jurisdiction fact finding, nor the decision on law unless the same is patently absurd and without following the procedure which is laid down. In this case, I find the application for disqualification should not have been entertained by the prescribed Authority. In my view this type of application can be entertained only when the two grounds are satisfied on fact viz. (i) an elected member set-up by a recognized political party has voluntarily given up his membership of such recognized political party or (ii) he has exercised the voting right contrary to the manner of voting of the majority members set-up by such recognized political party in such Panchayat.

12. The aforesaid two grounds are, in my view, relevant for the purpose of rendering a decision in this case. In the application it is alleged that the writ petitioners have defied the whip and in my view there is no such provision in the said Section 213A about service of notice of whip. Even if I assume that the substance of Clause (ii) of Sub-section 1(a) of Section 213A of the said Act inheres provision for issuing instruction by the leader of such political party upon the members then I think that an application for disqualification under the said section can be made when and only when all the members of the particular political party have attended the meeting and all they have factually exercised voting right according to instruction of the leader, and in such exercise any member has exercised voting right contrary to the manner of voting of the majority members. In this case from the statements made in the petition nowhere such fact has been mentioned. Rather it appears from the record that the majority members of CPI(M) Party abstained themselves from the meeting and thereby they facilitated the requisitionist to get the motion through. Therefore, if one goes by the language of the whip then it is clear that all the members were required to remain present in the meeting physically and to exercise their voting right and not to remain absent. When there has been no exercise of voting right, factually, question of attracting the aforesaid provision does not and cannot arise. Rather in my view the other members except the writ petitioners while remaining absent have defied the whip. Therefore, action should have been taken against them also. The aforesaid provision could have been attracted if all the members of the CPI(M) Party attended the meeting and exercised their voting right. Absence of member in the meeting is not at all a decisive factor. Rather it can be construed in both the ways. When they remained absent it will be assumed that they have taken an independent role for their absence will facilitate the other attending members to decide the issue conclusively. Even the so-called leader elected thereafter did not turn up to exercise his voting right. I think the policy and strategy what is termed to be a political one, of remaining absent cannot be wishes of the electors. Under the law the member has no defined right to remain absent in the meeting and is not intended by the electors. The electors have sent their representative to attend the meeting and

to express their voice. While remaining absent these people have fulfilled their political mission, but not that of people who have elected them. By this conduct these members in my mind have betrayed the wishes of the people. As I hold that no case has been made out nor could be made out on the facts and circumstances of the case to start proceeding u/s 213A of the said Act. Naturally no order should have been passed, as both the authorities had no jurisdiction.

13. I find as rightly submitted by Mr. Asoke Banerjee that both the Authorities of the said Act have failed to decide the question and issue of service of the said written whip and also the notice of the alleged meeting held on 9th May, 2005 for replacing the new leader of the party in place of the writ petitioner No. 1.

14. According to me, without decision on the aforesaid two issues the decision of disqualification allegedly incurred by the petitioners is perverse and without any basis whatsoever.

15. Accordingly, I hold that the decisions rendered by both the Authorities, holding the petitioners to be disqualified on the alleged ground of defying the whip, are not sustainable in law and the same are liable to be set aside and are hereby set aside. The interim order passed by the Court for holding fresh election stands vacated. The earlier decision, which was upheld by this Court taken on 10th May 2005, will stand revived and the person who was elected as Prodhan in the meeting shall take charge of the same. I accordingly direct the Prodhan elected pursuant to the order of this Court to hand over the charges and the interim order passed in terms of application stands vacated.