

(2010) 02 CAL CK 0040

In the Calcutta High Court

Case No : A.S.T. 1 of 2010 and A.S.T.A. 5 of 2010 in Writ Petition No. 14320 (W) of 2009

Prabhati Sarkar and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 12-02-2010

Acts Referred:

Constitution of India, 1950 — Article 243D, 334
West Bengal Panchayat (Amendment) Act, 2008 — Section 12(2)
West Bengal Panchayat (Constitution) Rules, 1975 — Rule 3(7)
West Bengal Panchayat Act, 1973 — Section 12, 16, 16(1), 16(2), 213
West Bengal Panchayat Election Act, 2003 — Section 13, 16, 18, 20

Citation : (2010) 1 CALLT 545

Hon'ble Judges : S. Shah, C.J.; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : P.S. Deb Barman, Amlan Mukherjee and Anindya Bose, for the Appellant; S. Dasgupta, Samiran Giri, Jiban Ratan Chatterjee, Nurul Haque and Manabendra Thakur, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—This Mandamus-Appeal is at the instance of the writ-petitioners and is directed against an order dated December 23, 2009 passed by a learned Single Judge of this Court in C.A.N. 8456 of 2009 in connection with W.P. No. 14320 (W) of 2009 thereby vacating the interim order earlier granted in the said writ-application on August 28, 2009.

2. Being dissatisfied, the writ-petitioners have come up with the present Mandamus-Appeal.

3. The appellants filed a writ-application being W.P. No. 14320 (W) of 2009 before a learned Single Judge thereby praying for setting aside a notice issued by the Respondent Nos. 8 to 15 being Annexure P-2 to the writ-application by which they requisitioned a meeting of the concerned Gram Panchayat of which the writ-petitioner No. 1 was the Pradhan for her removal.

4. The facts giving rise to filing of the said writ-application may be epitomised thus:

(a) The writ-petitioner No. 1 is the Pradhan of the Gachha Akharpur Gram Panchayat and the other three writ-petitioners are the elected members of the said Panchayat. The respondent No. 8 is the Upa-Pradhan and the respondent Nos. 9 to 15 are the other members of the said Gram Panchayat. Thus, there are total 12 members of the said Gram Panchayat.

(b) The writ-petitioner No. 1, being a Scheduled Caste candidate in the female category, and being the only available female Scheduled Caste elected member, was elected as a Pradhan of the Panchayat in view of the policy of reservation adopted pursuant to the provisions contained in Article 243D of the Constitution of India.

(c) In the last general election of the three-tier Panchayat bodies, the petitioner No. 1 was elected as a member of the Panchayat concerned in a seat reserved for Scheduled Caste (Woman) candidates. It is pertinent to point out that she was the sole elected candidate belonging to the "Scheduled Caste category (woman)" of the said Gram Panchayat. Out of 12 seats of the Panchayat, 4 members have been elected as the candidates set up by the Communist Party of India (Marxist) and the remaining 8 members were elected from Congress (I).

(d) The District Panchayat Election Officer, North 24-Parganas, issued an order u/s 18 of the West Bengal Panchayat Election Act, 2003 thereby providing different offices of the Pradhan of the Gram Panchayats in the said District reserved for the members belonging to the Scheduled Caste category and by virtue of the said order, the office of the Pradhan of the concerned Gram Panchayat was kept reserved for a candidate belonging to the Scheduled Caste (Woman).

(e) The District Panchayat Election Officer, North 24-Parganas, also passed an order u/s 13 of the West Bengal Panchayat Act, 2003 keeping the seats of different Gram Panchayats reserved for Scheduled Castes/Scheduled Tribes category.

(f) By virtue of the order u/s 16 of the said Act of 2003, the constituency seat No. II of Gachha Akharpur Gram Panchayat was reserved for the candidates belonging to Scheduled Caste (women) and out of 12 constituencies, only the constituency being seat No. II of the said Gram Panchayat was reserved for Scheduled Caste (woman). The petitioner No. 1 being the Scheduled Caste (woman) candidate, contested the Panchayat election from the constituency bearing the seat No. II, mentioned above, as a candidate set up by a recognised political party and secured highest vote from the said constituency.

(g) As there was only one constituency in the said Gram Panchayat reserved for Scheduled Caste (woman) and the writ-petitioner No. 1 being the sole elected member belonging to the category of Scheduled Caste (woman) and at the same time, the office of the Pradhan of the said Panchayat was reserved for the

candidate belonging to Scheduled Caste (woman), under the Proviso to Sub-rule 7 of Rule 3 of the West Bengal Panchayat (Constitution) Rules, 1975, the petitioner No. 1 was the sole elected member who belonged to that category for which the office of the Pradhan was reserved and consequently, the Presiding Officer declared the petitioner No. 1 as elected to the office of the Pradhan by issuing order in Form 4.

(h) On July 24, 2009, the writ-petitioner No. 1 was served with a letter written by the respondent Nos. 8 to 15 thereby expressing "no confidence" in her as a Pradhan and asking her to call a meeting for the purpose of her removal from the said office. The petitioner No. 1 having refused to convene such meeting, the respondent Nos. 8 to 15 issued a notice of requisitioned meeting dated 11th August, 2009 thereby informing that they would convene a meeting on August 20, 2009 for the purpose of removal of the writ-petitioner No. 1 from the office of the Pradhan of the said Gram Panchayat. The said notice dated 11th August, 2009 is the subject-matter of the writ-application, the Annexure P-2, challenged by the writ-petitioners.

5. In the past, the learned Single Judge on prayer made by the writ-petitioners passed an interim order of stay of operation of the said notice of holding the requisitioned meeting.

6. Subsequently, the respondent Nos. 8 to 15 entered appearance and filed an application for vacating the said interim order.

7. As indicated earlier, the learned Single Judge, by the order impugned in this appeal, has vacated the earlier interim order on the ground that the mere fact that the writ-petitioner No. 1 is the only Schedule Caste (woman) member, by itself does not give her immunity from removal from the office by the majority members by passing necessary resolution in terms of Section 12 read with Section 16 of the West Bengal Panchayat Act.

8. Being dissatisfied, the writ-petitioners have come up with the present Mandamus-Appeal.

9. Mr. Deb Barman, the learned Advocate appearing on behalf of the appellants, attacked the order impugned on the ground that the provision contained in Article 243D of the Constitution of India has an overriding effect upon Sections 12 and 16 of the West Bengal Panchayat Act, 1973 and if the writ-petitioner No. 1 is removed from her office, the purpose of reservation of the Scheduled Caste female candidates as provided in Article 243D of the Constitution of India would be frustrated. In other words, according to Mr. Deb Barman, in a situation like the present one, there is no scope of removal of the Pradhan of a reserved female Scheduled Caste category by mere strength of the majority of the members so as to upset the purpose of reservation enjoined by our Constitution.

10. In order to appreciate the question involved in this appeal, it will be appropriate to refer to the provisions contained in Sections 12 and 16 of the

West Bengal Panchayat Act, Section 20 of the West Bengal Panchayat Elections Act, 2003 and Article 243D of the Constitution which are quoted below:

12. Removal of Pradhan and Upa-Pradhan.--(1) Subject to the other provisions of this section, a Pradhan or an Upa-Pradhan of a Gram Panchayat may, at any time, be removed from office by a resolution carried by the majority of the existing members referred to in Clause (i) of Sub-section (2A) of Section 4 at a meeting specially convened for the purpose. Notice of such meeting shall be given to the prescribed authority:

Provided that at any such meeting while any resolution for the removal of the Pradhan from his office is under consideration, the Pradhan, or while any resolution for the removal of the Upa-Pradhan from his office is under consideration, the Upa-Pradhan, shall not, though he is present, preside, and the provisions of Sub-section (2) of Section 16 shall apply in relation to every such meeting as they apply in relation to a meeting from which the Pradhan or, as the case may be, the Upa-Pradhan is absent:

Provided further that no meeting for the removal of the Pradhan or the Upa-Pradhan under this section shall be convened within a period of one year from the date of election of the Pradhan or the Upa-Pradhan:

Provided also that if, at a meeting convened under this section either no meeting is held or no resolution removing an office bearer is adopted, no other meeting shall be convened for the removal of the same office bearer within six months from the date appointed for such meeting.

(2) The Pradhan or the Upa-Pradhan, who is removed from his office in terms of a resolution carried under Sub-section (1), shall not be eligible for election to that office before completion of a period of one year from the date of such resolution.

16. Meetings of Gram Panchayat.--(1) Every Gram Panchayat shall hold a meeting at least once in a month in the office of the Gram Panchayat. Such meeting shall be held on such date and at such hour as the Gram Panchayat may fix at the immediately preceding meeting:

Provided that the first meeting of a newly-constituted Gram Panchayat shall be held on such date and at such our and at such place within the local limits of the Gram concerned as the prescribed authority may fix:

Provided further that the Pradhan when required in writing by one-third of the members of the Gram Panchayat subject to a minimum of three members to call a meeting shall do so fixing the date and hour of the meeting to be held within fifteen days after giving intimation to the prescribed authority and seven days? notice to the members of the Gram Panchayat, failing which the members aforesaid may call a meeting to be held within thirty-five days after giving intimation to the prescribed authority and seven clear days? notice to the Pradhan and other members of the Gram Panchayat. Such meeting shall be held

in the office of the Gram Panchayat on such date and at such hour as the members calling the meeting may decide. The prescribed authority may appoint an observer for such meeting who shall submit to the prescribed authority a report in writing duly signed by him within a week of the meeting on the proceedings of the meeting. The prescribed authority shall, on receipt of the report, take action thereon as it may deem fit.

Provided also that for the purpose of convening a meeting u/s 12, at least one-third of the members referred to in Clause (i) of subsection (2A) of Section 4, subject to a minimum of three members, shall require the Pradhan to convene the meeting:

Provided also that if the Gram Panchayat does not fix at any meeting the date and the hour of the next meeting or if any meeting of the Gram Panchayat is not held on the date and the hour fixed at the immediately preceding meeting, the Pradhan shall call a meeting of the Gram Panchayat on such date and at such hour as he thinks fit.

(2) The Pradhan or in his absence, the Upa-Pradhan shall preside at the meeting of the Gram Panchayat; and in the absence of both or on the refusal of any or both to preside at a meeting, the members present shall elect one of them to be the President of the meeting.

(3) One-third of the total number of members subject to a minimum of three members shall form a quorum for a meeting of a Gram Panchayat:

Provided that no quorum shall be necessary for an adjourned meeting.

(4) All questions coming before a Gram Panchayat shall be decided by a majority of votes:

Provided that in case of equality of votes the person presiding shall have a second or casting vote:

Provided further that in case of a requisitioned meeting for the removal of Pradhan or Upa-Pradhan u/s 12, the person presiding shall have no second or casting vote.

11. Section 20 of West Bengal Panchayat Election Act, 2003:

Co-option of persons in respective category.--In case of non-availability of persons of reserved category for filling up the office of Pradhan or Upa-Pradhan, Sabhapati or Sahakari Sabhapati and Sabhadhipati or Sahakari Sabhadhipati so reserved, a person of that reserved category may be co-opted to fill up of that 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:

Provided further that the person so co-opted shall have the powers and obligations of an ordinary member.

12. Article 243D:

Reservation of seats.--(1) Seats shall be reserved for--

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under Clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under Clauses (1) and (2) and the reservation of office of Chairpersons (other than the reservation for women) under Clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in

the Panchayats at any level in favour of backward class of citizens.

13. Apart from the aforesaid provisions of law, Section 9 of the West Bengal Panchayat Act is also relevant. Sub-section (1) of Section 9 provides for election of the Pradhan and Upa-Pradhan and the provisos to the said sub-section prescribe reservation for the Scheduled Castes, Scheduled Tribes and Women for the purpose of election to the offices of the Pradhan and Upa-Pradhan. Subsection (3) of Section 9 then reads as under:

9(3). The Pradhan and the Upa-Pradhan shall, subject to the provisions of Section 12 and to their continuing as members, hold office for a period of five years.

14. After hearing the learned Counsel for the parties and after going through the provisions of law quoted above, we find that by the Constitution (seventy-third) Amendment Act, 1992, Article 243D was incorporated with effect from April 24, 1993 for the purpose of providing reservation of the seats for Schedule Castes and Schedule Tribes in the Panchayat level in accordance with the population of those categories as indicated therein. Subsequently, the West Bengal State Legislature enacted the West Bengal Panchayat Election Act, 2003 to consolidate and amend the existing laws relating to holding of election to the Panchayats in the state of West Bengal.

15. Chapter IV in Part III of the said Act starting from Section 12 and ending with Section 20 thereof specifically give effect to the principles of reservation as stated in Article 243D of the Constitution of India and in the process, has also made specific provision for co-option of person of different categories in case of non-availability of persons of reserved category in a given situation that may occur while giving effect to the existing provisions of the West Bengal Panchayat Act and the Rules framed thereunder.

16. Section 20 of the Act of 2003 so enacted contemplated the situation we are faced with in this case and gives complete answer to the question raised by Mr. Deb Barman before us. If the only available female member of the reserved Scheduled Caste category loses confidence of the majority while acting as a Pradhan thereof, any other female Scheduled Caste person having the qualification of becoming a member of the Gram Panchayat may be co-opted by any of the political parties by compelling one of its elected members to resign for the purpose of creating a casual vacancy of that body. Such casual vacancy need not necessarily be created in respect of a reserved seat and may be created even in respect of an unreserved seat but the person so co-opted from the reserved category by any political party and ultimately elected to that reserved office of the Pradhan should not only be made a candidate for filling up the "casual vacancy" but should also be elected through a by-election for filling up the "casual vacancy" arising due to such co-option within six months from the date of co-option.

17. We are unable to accept the extreme contention of Mr. Deb Barman that the

provision contained in Article 243D guarantees the continuation in the office of the sole female Schedule Caste Pradhan even if she loses confidence of the majority or is liable to be removed or suspended in terms of the provisions contained in Sections 213, 213A or 213B of the West Bengal Panchayat Act, 1973. The said Article merely confers right of reservation to the extent mentioned therein or declared by subsequently law enacted by the Legislature pursuant to that provision but does not protect his or her reserved office from the provision of removal by the majority, if so decided by the majority, subject, however, to the condition that another person of the same category should be elected in that reserved office and to give effect to that goal, the provisions contained in Section 20 of the Act of 2003 have been enacted. Moreover, in Sections 12 and 16 of the West Bengal Panchayat Act, there is no indication that the provision of removal is not applicable to a circumstance like the present one and the various provisos to those two Sections creating some sorts of restrictions to the provision of removal do not cover the type of dispute involved in this case. On the contrary, Section 9 of the Panchayat Act which provides under the proviso to Sub-section (1) for reservation of Scheduled Castes and Scheduled Tribes and for Women, also expressly mandates under Sub-section (3) for five years' term for offices of the Pradhan and Upa-Pradhan, subject to the provisions of Section 12 of the Act providing removal of the Pradhan and Upa-Pradhan for "no confidence" by the majority of members of the Panchayat.

18. In the unreported decision of a Division Bench of this Court in the case of *Musuk Rajak v. State of West Bengal* in A.P.O.T. No. 262 of 2008 disposed of on July 10, 2008, relied upon by Mr. Deb Barman, a notification dated June 10, 2008 issued by the Principal Secretary, Govt. of West Bengal, seeking clarification of Section 20 of the Act of 2003 was challenged. By the said notification, a political party having majority of the members was sought to be invested with the authority to co-opt a person of the reserved category for the selection of Pradhan if that political party failed to return any successful candidate of the reserved category and the person elected in the reserved office was a member of the political party having failed to obtain majority in the body. Such notification was held to be prima facie illegal for twofold reasons: First, the law did not authorise the Principal Secretary of the concerned department to amend the statutory provision enacted by the Legislature and secondly, when there was already an elected candidate of the reserved category who was available for the office of the Pradhan, Section 20 of the Act of 2003 did not permit co-option by any political party simply because the elected member of the reserved category belonged to the opposition group. We respectfully agree with the view taken by the said Division Bench. We, however, fail to appreciate how the said decision can be of any help to the appellant. We are concerned here with a situation where after the removal of the Pradhan, there will be no available candidate for the office of the Pradhan of the reserved category because, subsection (2) of Section 12 as inserted by the West Bengal Panchayat (Amendment) Act, 2008 bars candidature of such members for election to the office of the Pradhan and Upa-Pradhan for a

period of one year, as indicated earlier, whereas in that case, immediately after the election, there was an available elected member of the reserved category and in such a case, she should be elected automatically as Pradhan once her name is proposed. The said decision rather is in tune with the view that we have taken in this case and is of no avail to the appellants.

19. We, therefore, find that the learned Single Judge rightly vacated the ex parte interim order earlier granted. The appeal is, consequently, bereft of any merit and is dismissed, subject to our observation on applicability of Section 20 of the Act of 2003 for the purpose of filling in the office of the Pradhan which may fall vacant on removal of the appellant for no confidence u/s 12 of the Panchayat Act.

20. In the facts and circumstances, there will be, however, no order as to costs.

21. In view of our findings above, no purpose would be served by keeping the writ-application out of which the present appeal arises pending. The said writ-application is also dismissed with the above observations.

Bhaskar Bhattacharya, J.

22. I agree.