

(2007) 09 GAU CK 0032
In the Gauhati High Court

Taleb Ali and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

North Tripura Zilla Parishad under the Tripura Panchayat Act, 1993 — Section 16, 16(1), 16(1)(b)

Citation : (2008) 1 GLT 80

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

U.B. Saha, J.

The petitioners, 6 (six) in numbers, out of whom five of them, i.e. petitioners-1 to 5, are elected members of Erani Gram Panchayat under Gouranagar Rural Development Block, District North Tripura, Kailashahar and petitioner No. 6 was the General Secretary of Tripura Pradesh Congress Committee, who is also an elected member of the North Tripura Zilla Parishad under the Tripura Panchayat Act, 1993 (for short "the Act") in the year 2004. The respondent No. 6 is the authorised person to issue direction (whip) u/s 16 of the aforesaid Act on behalf of the Indian National Congress (for short "INC") on the elected members of Erani Gram Panchayat under the jurisdiction of the Gouranagar Rural Development Block, as the President of the Tripura Pradesh Congress Committee authorized him.

2. The present petition is filed by the petitioners for quashing the decision of the Block Development Officer (BDO), Gouranagar Rural Development Block in his letter dated 05.04.2007 (Annexure-10 to the writ petition), wherein and whereunder the said BDO refused to disqualify respondent No. 5 from membership of Erani Gram Panchayat under Sub-section (1)(b) of Section 16 of the Act and also for a mandamus directing respondent No. 2 to disqualify respondent No. 5 from membership of the said Gram Panchayat.

3. Heard Mr. S.M. Chakraborty, learned senior Counsel assisted by Mr. S. Ghosh, Advocate for the petitioners and also learned Addl. GA, Mr. T.D. Majumder appearing for respondent Nos. 1 to 4.

4. The facts which require consideration for deciding the instant case are as follows:

The petitioner Nos. 1 to 5 were elected as members of Erani Gram Panchayat, (for short Panchayat) in the month of July 2004 under the said Act for a term of 5 years. The said Panchayat consists of 9 members out of whom including the petitioners and respondent No. 5, the INC sponsored 6 members and other three members, sponsored by the Communist Party of India (Marxist). After publication of result of the said election, respondent No. 5 was elected as Gram Pradhan of the said panchayat in the first meeting of the said panchayat. Following a no-confidence motion, respondent No. 5 resigned on 13.11.2006 from the post of Gram Pradhan and consequent to resignation of respondent No. 5, the post of Pradhan became vacant. For filling the said post of Pradhan respondent No. 3, the District Panchayat Officer, North Tripura District issued a notification for election on 12.1.2007 at the office of the said panchayat. As respondent No. 3 is the statutory authority under the said Act to call the meeting of the panchayat for holding election of gram pradhan, he has the authority to appoint Presiding Officer for the said election and, accordingly he appointed respondent No. 4 as Presiding Officer of the said special meeting for election of pradhan which was held on 12.1.2007. In the said special meeting 9 members of Gram Panchayat were present and respondent No. 4, the Extension Officer, Kumarghat Rural Development Block, presided over the meeting. The petitioner No. 6 being General Secretary of TPCC (Tripura Pradesh Congress Committee), an elected member of North Tripura Zilla Parishad is the authorized person to issue whip (direction) u/s 16 of the Act upon the elected INC members of the Panchayat as they were sponsored by the INC. vide letter of authorization dated 02.01.2006 (Annexure-1 to the writ petition). While the aforesaid special meeting of panchayat held on 12.01.2007, the petitioner No. 6 appeared prior to commencement of voting and served whip upon petitioner Nos. 1 to 5 and respondent No. 5 and directed them to cast their votes for the post of Pradhan in favour of petitioner No. 2, Shri Abdul Hamid. The said whip was received by respondent No. 4 at 11.11 A.M. and he had read out the said whip in the meeting and thereafter the members cast their votes at 11.12 A.M. on 12.1.2007. The petitioner No. 6 also furnished a copy of the whip to respondent No. 3 on 12.01.2007 i.e. the District Panchayat Officer North Tripura District, Kailashahar, along with copy of the authorization letter issued by the President, TPCC (Annexure-3 to the writ petition) in favour of petitioner No. 6 and the said copy of whip (direction) and the authorization letter were accordingly received by him. Even after receipt of the direction (whip) issued by petitioner No. 6, petitioner No. 4 as well as respondent No. 5 voted in favour of the respondent No. 5 contrary to the aforesaid direction (whip) instead of voting in favour of petitioner No. 2, Abdul Hamid and as a result, respondent No. 5 was declared elected as

Pradhan.

5. Petitioner No. 4 vide letter dated 06.02.2007 prayed for condoning her disobedience to whip and, accordingly, petitioner No. 6 condoned the disobedience of petitioner No. 4 and petitioner No. 6 communicated the respondent No. 2, the Block Development officer regarding the fact of disobeying the whip (direction) issued by the political party which he belongs as he was not condoned for the said disobedience. The letter dated 28.2.2007 was received by respondent No. 2 on 28.2.2007 (Annexure-6 to the writ petition). A similar letter was issued by petitioner No. 6 requesting respondent No. 2 to disqualify respondent No. 5 from the post of membership of the Erani Gram Panchayat for the aforesaid disobedience of whip and the said letter was received by respondent No. 2 on 28.2.2007. Again petitioner No. 6 vide his letter dated 07.03.2007 requested respondent No. 3 to take a decision for disqualifying respondent No. 5 from membership of the said Gram Panchayat on the basis of the letter of the petitioner No. 6 dated 20.02.2007 and dated 28.02.2007 (Annexures 5 and 6 to the writ petition). But respondent No. 2 did not take any final decision regarding the disqualification of respondent No. 5, as asked for, under Sub-section (3) of Section 16 of the Act but, curiously enough, vide letter dated 12.03.2007 clarification was sought for by the Director of Panchayat, Government of Tripura soliciting necessary instruction as to whether the membership of respondent No. 5 should continue or not. Petitioner No. 6 vide letter dated 20.03.2007 requested the Director of Panchayat to take necessary steps as per law for disqualifying respondent No. 5 from membership of Erani Gram Panahayat. On 05.04.2007, vide Annexure-10 to the writ petition, the respondent No. 2 informed petitioner No. 6 on the basis of views expressed by the Law Department, as clarified by the Director of Panchayat that the whip issued by him directing the members of Erani Gram Panchayat belonging to INC to cast their votes in favour of petitioner No. 2 is not as per law on the purported ground that copy of authority was not enclosed with the direction and therefore, the membership of respondent No. 5 may not be cancelled under Sub-section (1) of Section 16 of the Act. Being aggrieved by the said action of respondent No. 2, communicated vide letter dated 05.04.2007 (Annexure-10 to the writ petition) petitioners prefer the instant writ petition.

6. Respondent Nos. 1 and 2 tried to resist the prayer of petitioners by way of filing a common counter affidavit and respondent Nos. 3 and 4 also filed separate counter affidavit. In all the counter affidavits the respondents have taken almost the same stand, inter alia, that the petitioner No. 6 by letter dated 07.03.2007 requested the respondent No. 2 to take a decision for disqualifying respondent No. 5 on the basis of his letters dated 20.02.2007 and 28.02.2007. Respondent No. 4 also received unsigned copy of the whip from one Wahidujjaman, Ex Pradhan of Tilagaon Gram Panchayat and no authorization letter of the competent authority of the aforesaid party was produced at the time of submission of direction (whip) issued by Md. Badrajumman.

7. The special meeting was convened on 12.01.07 by the District Panchayat Officer, respondent No. 3, as per Section 24 of the Act and Rule 10 of the Tripura Panchayat (Election of the Office bearers) Rules, 1994 and the respondent No. 4, Panchayat Extension officer, was appointed to act as Presiding Officer as per Sub-rule 3 of Rule 5 of the Tripura Panchayats (Administration) Rules, 1994 to conduct the election of Pradhan, Erani Gram Panchayat under Gouranagar block. The person, who issued whip to the members of the INC (I) was seized of the authority by an order of the President, Tripura Pradesh Congress Committee vide No. 434/TPCC.2006 dated 10.10.2006 superseding the previous order No. nil dated 2.1.2006 and one Diba Chandra Hrangkhwal was given authorization to issue whip to members belonging to the members of the party within the areas mentioned including Gouranagar block. Election was held on 12.1.2007 and authorized person neither gave whip nor was there any signature of the authorized person on the documents containing whips. The respondent No. 4, District Panchayat Officer, received the unsigned copy of the whip issued by the petitioner No. 6, Shri Md. Badrajumman, to the members of the Panchayat belonging to INC from one Wajuddin, ex. Pradhan of Tilagaon Gram Panchayat belonging to Congress, under Gouranagar Block (Annexure-R/2 to the writ petition). Even if it is considered that the President of TPCC authorized the petitioner No. 6, then also it would be for the period prior to the date of the special meeting. Out of nine members present in the meeting presided over by the Pradhan on 12.1.07 on which one Diba Chandra Hrangkhwai was authorized to issue whip to the elected member of the said Panchayat belonging to the INC (I). It is also contended that there was no wrong in the letter which was communicated by the B.D.O., respondent No. 2, that out of nine members present in the meeting of the election of the Panchayat on 12.1.07 majority has elected the respondent No. 5 as Pradhan, who belongs to the members of INCP and hence the respondent No. 4 declared him as Pradhan of Erani Gram Panchayat as clarified by the Director of Panchayat on the basis of the views of the law Department allowing the respondent No. 5, Sundar Ali to continue as Pradhan of the said Panchayat (Annexure-10).

8. Mr. S.M. Chakraborty, learned Counsel for the petitioners submits that Respondent No. 2 failed to apply his independent mind while taking decision for continuation of respondent No. 5 as Pradhan of Panchayat since he violated whip of his political party as per Sect. 16 of the Act and as such he is not eligible to be continued as Pradhan of the said Panchayat in accordance with law. Rather the entire action of respondent No. 2 was based on the opinion of the Law Department, which is unwarranted and contrary to the prescription of provisions of the statute. Decision of respondent No. 2 regarding non cancellation of membership of respondent No. 5 even after receipt of the letter from petitioner No. 6 is liable to be quashed under Sub-section (1) of Section 16 of the Act as well as the letter/communication dated 5.4.07 (Annexure 10 to the writ petition) and consequent thereto respondent No. 2 was bound to disqualify the respondent No. 5 from membership of Erani Gram Panchayat. He further sub-mits that by

this time, it is settled that when the legislature, within its competence has made the specific law prescribing specific procedures to be followed by the statutory authority, the statutory authority is bound to follow the said procedure, or not at all. In support of his aforesaid contention, he relied the case of AIR 1936 253 (Privy Council) , Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, . He further submits that the written argument submitted by the learned A.G., Tripura, as requested by this Court, also supports case of the petitioners as the learned A.G., specifically contended in his written argument that the Block Development Officer (BDO) just reiterated the opinion of the Law Department, Government of Tripura without applying his mind acted on the said opinion and he also contended that the matter may be referred back to the BDO to exercise his jurisdiction independently as per law.

9. Mr. T.D. Majumder, learned Addl. GA. submits that respondent No. 2 did not commit any wrong for allowing respondent No. 5 to be continued as a member of the said panchayat being pradhan, as the petitioner No. 6 issued whip to the members of the said Panchayat belonging to INC without any proper authorization letter from the competent authority and also the said whip was also not produced before respondent No. 4, rather respondent No. 4 received unsigned copy of the same from one Wahidujjaman, Ex. Pradhan of Teliagaon Gram Panchayat. He also submits not admitting but for the arguments sake, if it is accepted that petitioner No. 6 was authorized for issuing whip, then also it would be sent with the said authorization letter as for a period prior to the date of special meeting held for election of Pradhan presided over by respondent No. 2 on 12.01.2007.

Mr. T.D. Majumder, learned Addl. G.A. further submits that respondent No. 2 did not commit any wrong while he exercised his independent mind for taking decision regarding special meeting for non cancellation of membership of respondent No. 5 from the said Panchayat. He further submits that the respondent No. 3, the District Panchayat Officer did not receive any copy of the whip in his office on 12.01.2007.

He also refers to the contention of respondent No. 3 that "in view of the fact the petitioner No. 6 was without any authority to issue whip and as such there is absolutely no legal necessity to direct the respondent to issue order for disqualification of respondent No. 5". He further contends that respondent No. 2 could have issued the order without referring the matter to the Law Department and without seeking clarification from the Director of Panchayat, the impugned order would be suitably worded and as such action of respondent No. 2 as per opinion of Law Department cannot be said that he committed any wrong as there is no prohibition in law that expert opinion on a particular issue cannot be sought for to exercise jurisdiction on a matter before the concerned statutory authority. However, he finally submits that as the learned Advocate General, Tripura has already submitted a written argument through the learned Addl. G.A., Mr. N.C. Paul, as he was indisposed on that day and left the entire matter to this Court.

10. The learned A.G., as requested by this Court vide order dated 21.5.07 to assist this Court in the instant matter in his usual fairness agreed to assist the Court and, submitted his written argument. It appears from his written argument wherein he contended inter alia that the Block Development Officer by his letter dated 12.3.2007 actually solicited the necessary instruction from the Director of Panchayat whether the membership of the Sundar Ali, pradhan can continue or liable to be disqualified as per Section 16 of the Tripura Panchayat Act, 1993 or any other Act or rules. For better appreciation, the relevant portion of written argument of learned A.G, Tripura is reproduced hereunder:

In the same way by order dated 15th April, 2007 the Block Development Officer just reiterated the opinion of the Law Department without apply his independent mind acted only on the opinion.

Under Section 16(3) of the said Section, there is a mandatory provision that the matter of disqualification shall be referred for the decision of the Block Development Officer and his decisions shall be final, so before taking any decisions the Block Development Officer must apply his independent mind before passing such an order.

Unfortunately, the Block Development Officer, R.D. Block by his letter dated 5th of April 2007 mechanically acted like a post office by saying only that "Mr. Sundar Ali may not be cancelled u/s 1 of Section 16 of the Tripura Panchayat Act, 1993."

I submit that way the order has been passed is not proper one inasmuch as no reasoning has been given, he only followed the order of the Director of Panchayats and the Law Department. In such way the order is bad.

But at the same time the decision that has been taken may not be in correct, in view of the fact that the whip which was originally given on 04.01.2007 (Annexure-2, page 19 of the writ petition) and the letter written to the Block Development officer by Md. Badrujjaman (Annex-ure-4, page 25 of the writ petition) was written only as a Member of Uttar Tripura Zilla Parishad and not as the Secretary of the Party. As such the decisions taken by the Block Development Officer may be badly drafted but cannot be said as wrong.

11. This Court has given anxious thought over the submissions of learned Counsel for the parties and also considered the written argument of the learned AG, Tripura which is furnished before this Court as well as the records available. To appreciate the submission of learned Counsel for the parties including the submission of learned AQ it would be proper for this Court to extract the provisions of Section 16 of the Tripura Panchayat Act, 1993.

Section 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 authorized 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 recognized by the Election Commission of India as a national party or a state 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.

12. According to this Court, the contention of respondent Nos. 3 and 4, in their counter affidavits, inter alia, copy of the whip issued by Md. Badruzzamman, Member, Uttar Tripura Zilla Parishad (UTZP), which was received by the District Panchayat Officer, respondent No. 3 through one Md. Wahidujjaman, Ex. Pradhan of Tilagaon Gram Panchayat under Gournagar RD Block without signature of the petitioner No. 6, is not correct in view of the endorsements bearing on it. The Annexures-2 and 3 to the writ petition bearing official receipt seal of the District Panchayat Officer, signature of respondent No. 3, date and time and signature of respondent No. 4 respectively establish that the same was received by them and also in the impugned letter dated 5.4.07 (Annexure-10) there is no mention that the respective authorities did not receive the whip issued by petitioner No. 6. Therefore, it can be easily presumed that the said plea taken in the counter affidavit is only to protect the action of respondent No. 2, the BDO. For proper understanding of the matter, it would be better to extract the impugned letter

dated 05.4.07 by which the BDO communicated its decision to the petitioner No. 6 hereunder:

To

Dated, the 5th April, 2007

Md. Badruzzaman, General Secretary, T.P./C.C. Member, Uttar Tripura Zilla Parishad, Kailashahar.

Subject: Reply against your letter duly received by this office on 28.2.07

Sir, It is clarified by the Director of Panchayat, Govt., of Tripura, Agartala vide letter No. F. 3(1-26)/GEN/PR/2004 (1) dated 02.04.07. The Law department has been opined their views that "the direction (whip) issued by Mr. Badruzzaman, member UTZP, directing the member of Irani Gram Panchayat belonging to Indian National Congress to cast their votes in favour of Md. Abdul Hamid, is not as per law since no copy of authority authorized by it in this behalf has been enclosed with the direction. Rather he signed as a member of the Uttar Tripura Zilla Parishad.

So membership of Md. Sundar Ali of Irani Gram Panchayat may not be cancelled under Sub-section (1) of Section 16 of the Tripura Panchayat Acts, 1993.

Sd/- Block Development Officer Gournagar R.D. Block Kailashahar, North Tripura.

It appears that respondent No. 2, the BDO acted on the basis of the clarification and the views given by the Director Panchayat as well as the Law Department, Government of Tripura, by not applying his independent mind as required by law.

It appears that Sub-section (2) of Section 16 of the Act I casts a duty on the BDO, respondent No. 2, to act independently without influence from any authority including the Director Panchayat and the Law Department.

13. Recently, this Court in WP (C) No. 468 of 2007 Chongtham Yaimbi Devi v. State of Manipur observed:

According to this Court there is no obligation on the part of the Executive Officer, respondent No. 3 of that case, the statutory authority, to obtain permission/approval from the State Government before convening the said meeting for consideration of no confidence motion on the basis of the requisition submitted by not less than one-third of the total number of the councillors constituting the Nagar Panchayat or the council for the time being. More so, Government has no authority under law to issue any administrative order either in the form of notification or letter to encroach the power of statutory authority the like Executive Officer, as vested by the statute and also to frustrate the prescription of the statute like the provision of Section 31 of the Act. When the legislature within its competence made a specific law/procedure for convening a meeting for consideration of no confidence motion without approval from any other authority including the Government, the statutory authority is bound to act in conformity

with the said provisions of law, particularly Section 31 of the Act. If any other authority, except the authority prescribed by the Statute, instructs or issues any notification and/or letter in the form of order contrary to the provisions of statute to frustrate the mandate of the legislature or tries to encroach the power of the statutory authority then it would be the duty of the said statutory authority to ignore the same for attaining the object of the statute and particularly the interest of democracy in the grass-root level as the object of the legislature was not to obtain any approval from such a non-statutory authority including the Government.

14. Mr. S.M. Chakraborty, learned senior Counsel very rightly submitted that when the Legislature, within its power has made specific law, prescribed specific procedure to be followed by the statutory authority, the statutory authority is bound to follow the said procedure or not at all. The said principle as laid down in Nazir Ahmed (supra), Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, , Deep Chand Vs. The State of Rajasthan, , Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others, and K. Prasad and Others Vs. Union of India (UOI) and Others, . In view of the submission made by the learned senior Counsel for the petitioners and from the various decisions of the Apex Court as cited above, this Court is in full agreement that respondent No. 2 failed to apply his independent mind while he was taking decision under Sub-section (3) of Section 16 of the Act.

In the case in hand the BDO, i.e. respondent No. 2, has failed to exercise the statutory power as he acted on the opinion of other authority like the Director, Panchayat and the Law Department, Government of Tripura, which is not permissible and unwarranted under the law.

15. In the instant case, respondent No. 2, the BDO ought to have taken his independent opinion and communicate the same to the Director, Panchayats, but without doing that he sought for opinion of the Director, Panchayats, asking him *inter alia*, what should be the proper decision, when petitioner No. 6 issued the whip to members of the panchayat belonging to the INC to cast their votes in the election of Pradhan, in favour of petitioner No. 2 and, instead respondent No. 5 acted contrary to the said whip and being elected by the members of the panchayat belonging to the rival party of the INC unlike the CPI (M) with the help of another dissident panchayat member, petitioner No. 4, who subsequently applied for condonation of his disobedience of the said whip.

16. It is settled by this time that when the Legislature has entrusted a particular authority to do a particular act in a particular manner, he is to do that thing in that manner or not at all, as the Statute is his master, not any other authority. The BDO may have various powers like, administrative power, statutory power and financial power. If he discharges the powers as mentioned above, then he could easily seek for views/guidance of his superior authority like the Director, Panchayats, but while he was acting as statutory authority he ought to remember that his master is only the statutory provision, as the Legislature

wants that the statutory authority should exercise its power independently to fulfill the object of the statute.

17. There is no doubt that the statutory authority can take help from the expert authority for interpretation of the statute or the legislative intent, but such authority may not seek views from any authority for rendering his decision as the same has to be done by himself under the statute. In the instant case, what the B.D.O. did, according to this Court, he took help from the authority, i.e. Director Panchayat as well as from the Law Department as to his decision in this respect. He did not give his independent decision as required under law. When the statute prescribes the B.D.O., he should have given his decision after examining the direction (whip) issued by the political party to authorize person along with the letter of authorization and in such eventuality any other authority is not permissible go give any decision other than the person prescribed by the statute. When a statute vests a power to do acts to a particular person or authority, those acts cannot be done by any other authority or people meaning thereby that the statutory powers are not assignable.

18. In the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, the Apex Court held thus:

We have held that the Commissioner did not in fact exercise his discretion in this case and did not cancel the license he granted. He merely forwarded to the respondent an order of cancellation, which another authority had purported to pass. It is evident from this fact that the commissioner had before him objections, which called for the exercise of the discretion regarding cancellation specifically vested in him by Rule 250. He was, therefore, bound to exercise it and bring to bear on the matter his own independent and unfettered judgment and decide for himself whether to cancel the license or reject the objections. That duty he can now be ordered to perform u/s 45.

19. In the case of The State of Assam Vs. Keeshab Prasad Singh and Another, the Apex Court also held that only the specified authority could settle a fishery and not the sanctioning authority, though the settlement might not be valid without the sanction of the sanctioning authority. The ratio of this case was that the sanctioning authority could not sanction its own acts. In the instant case also, the Director of Panchayat may be the higher authority than the respondent No. 2, B.D.O. and the respondent No. 4, the District Panchayat Officer, then also he has no power to give any suggestion to them as to what decision they could give on the whip/direction of the petitioner No. 6 and prayer for discontinuation of the respondent No. 5. However, it is admitted that the BDO failed to discharge his duty according to the statute.

20. Considering all these aspects, this Court thinks it fit to quash the letter dated 05.04.2007 (Annexure-10 to the writ petition) as well as the decision of the respondent No. 2 refusing the cancellation of membership of respondent No. 5 of the said Panchayat, accordingly, impugned letter dated 05.04.2007 (Annexure-10

to the writ petition) wherein the decision regarding continuation of the membership of the respondent No. 5, Member Erani Gram Panchayat, cannot be sustained in the eye of law. Accordingly, the same is set aside.

21. This Court is not issuing any mandamus as prayed for by the petitioners for directing the respondent No. 2 to disqualifying respondent No. 5 from membership of the Erani Gram Panchayat as the same will create problem in smooth running of the democratic institution, i.e. Panchayat. However, this Court directs respondent No. 2, the BDO to take a fresh decision on the basis of the whip issued by petitioner No. 6 before holding the special meeting to its members in terms of Section 16 of the Act as early as possible, in any case within a period of one month, till then respondent No. 5 maybe allowed to act as a Pradhan. Writ petition is allowed. No order as to costs.