

(2003) 11 CAL CK 0048

Calcutta High Court

Case No: Writ Petition No. 10933 (W) of 2003 and C.A.N. No. 6856 of 2003

Basanti Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision:** Nov. 19, 2003**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2004) 2 CALLT 53**Hon'ble Judges:** Amitava Lala, J**Bench:** Single Bench**Advocate:** L. Bhattacharya, for the Appellant; C.R. Chakraborty, Bhaskar Nandi, Kumud Ranjan Purkait and Bharati Kutsuddi, for the Respondent**Final Decision:** Dismissed

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### Judgement

A. Lala, J.

1. This writ petition has been made by one of the members of the Gram Panchayat. The purpose of making the writ petition is that meeting for holding election for the post of Pradhan and Upa-Pradhan was held without proper notice. The notices are annexed to the petition from which it appears that date, place and time are unfilled. Both of the notices are dated 18th/19th June, 2003, She made a representation to the proper authority. Subsequent to representation she came to know that on 30th June, 2003 at 12.00 noon meeting was held in the office of the Gram Panchayat, She also annexed a similar notice served upon one Smt. Lakshi Rani Khamaru i.e. another member of the Gram Panchayat, proforma respondent to the writ petition. But the same is duly filled up. Initially an interim order was obtained by her to the extent that if after the election no charge is handed over, it will not be handed over without the leave of the Court. If the charge is handed over in that ease neither the Pradhan nor the Upa-Pradhan will be entitled to take any policy decision or able to make any capital expenditure without the leave of the Court.

2. The successful members of the Gram Panchayat intervened and made an application for vacating the interim order. The learned counsel appearing for them contended that in paragraph 10 of the writ petition she stated that she rushed to the office of the Gram Panchayat and enquired of the fact from the Secretary who advised her to contact with the respondent No. 4. Having such advice she enquired for the respondent No. 4 and got assurance that no meeting will be held behind her back on the date so fixed. It was further assured that a notice will be served intimating about the date, place and time of the meeting.

3. Upon going through the submissions as made by the parties I am of the view that a definite conclusion can be arrived provided cause of the notice is considered with its true prospective. As per the rule i.e. the West Bengal Panchayat (Constitution) Rules, 1975 a notice is required to be served to the members of the Gram Panchayat fixing a date, place and time. Admittedly the same was not done in her case but to others. Here two notices were served by the Block Development Officer in the similar manner. Court is really surprised why the date, place and time are not given there like others. Either it is mere mistake or mis-utilisation of the Government Office by either of the parties for unlawful gain. There is a reason behind it. The purpose of the notice is to inform one so that he can be present in the proper date, place and time to take part in a democratic process. But the important part is to know the date, place and time she relied upon a notice to other member of the Gram Panchayat and annexed with the petition by affirming an affidavit as believed to be true. Moreover on the fateful day before the meeting she reached to the office but left the place to complain the authority. Therefore, what prevented her in attending the meeting and raise her voice about complain and right to exercise franchise is unknown to this Court. Therefore, the intention of the petitioner is to be understood. Whether she is really prejudiced or making prayers on the mere pretence. Surrounding circumstances are saying that service of defective notice to the petitioner is made on the mere pretence. In further I find that there are twelve members in the Gram Panchayat. Majority members are in favour of the selection of the Gram Panchayat Pradhan and Upa-Pradhan. Four are in the opposition leaving aside another one who is an independent candidate. Therefore, when the presence or absence cannot materially affect the election the conduct of the petitioner cannot be free from suspicion. The Court of equity cannot favour her. In [M.V. Venkataramana Bhat Vs. Returning Officer and Tahsildar and others](#), two members were allegedly restrained from participating to exercise their franchise in the election. It was held that when the result of election materially affect an importance should be given. However, it was also held by the Supreme Court itself that proper and higher duty of the High Court is to see that its judicial process is not abused and its order does not become an instrument or aid to overreach the adversary and when that interference or finding could be reached on proper consideration of the facts and circumstances, suitable remedy be given. That apart larger interest of the people will be affected if not the Panchayat is allowed to proceed freely. Moreover,

the petitioner has every right to fight for the cause in the floor if at all sufferer for the election. If she gets the majority support the elected people will no longer be there.

4. Therefore, taking into totality of the matter I am of the view that when the election has not been materially affected and when from the conduct of the petitioner is not very clear whether she is really aggrieved or want to abuse the process of Court no relief can be granted to her in this writ petition.

5. Therefore, the writ petition, stands dismissed. Interim orders stand vacated. However, no order is passed as to costs. As a consequential effect of vacating the interim order the application on behalf of the respondents being C.A.N. No. 6856 is treated to be succeeded and accordingly disposed of. However, even on such application no order is passed as to costs.

Let an urgent xerox certified copy of this judgment, if applied for, be given to the learned advocates for the parties within two weeks from the date of putting the requisites.