

01.
17.03.2021.
Ct. No. 11.
F.B.

**MAT 347 of 2021
with
IA No. CAN 1 of 2021**

**Ismail Sk. & Ors.
-Vs.-
The State of West Bengal & Ors.**

**Mr. Dipankar Pal,
Ms. Kakali Naskar
..... For the Appellants.**

**Mr. Pantu Deb Roy,
Mr. Subrata Guha Biswas
..... For the State.**

**Mr. Chitta Ranjan Chakraborty,
Mr. Partha Sarathi Ghosh,
Mr. Dipjyoti Chakraborty
..... For the Respondent
Nos. 7 to 14.**

Mr. Pal, Learned Counsel, appears in support of the appeal. The appeal is directed against the order of the Hon'ble Single Bench in the writ petition dated the 3rd of March, 2021. The writ petition was numbered as WPA 3964 of 2021.

By the said impugned order the challenge of the present appellants/the writ petitioners to the action for removal of the writ petitioners/the appellants from the various *Samities* under the *Kaliachak-III Panchayat Samity* (for short, the said *Samity*) was set aside. The Hon'ble Single Bench was pleased to, *inter alia*, hold that there was no apparent illegality in the steps taken

by the Prescribed Authority (*PA*)/who is the concerned Block Development Officer (*BDO*) which falls foul of Rule 22(4) of the West Bengal Panchayats (Constitution) Rules, 1975 (for short the said Rules).

Mr. Pal, Learned Counsel, submits that the Hon'ble Single Bench erred by failing to notice that the Motions for removal signed by the private respondents to the writ petitions/who are also the private respondents in this appeal, have not been signed strictly in compliance with Rule 22(4) of the said Rules. It is submitted that the Motions for removal were found to carry an additional page indicating the names of the proposers of the Motions and their respective party affiliations. It is alleged that the said second/additional page was not made available to the writ petitioners/the present appellants while intimating them on behalf of the *PA*/the *BDO* of the respective Motions for removal. The omission of the second page to the Motions for removal signed by each of the respective proposers/the private respondents is submitted by the appellants to be a grave breach of Rule 22(4)(b) of the said Rules.

The second submission as raised by Learned Counsel for the appellants is that the *PA*/the *BDO* failed to record his satisfaction prior to convening the meeting to consider the removal in terms of Rule 22(4)(c) of the said Rules. In the absence of such satisfaction

expressed by the *PA*/the *BDO*, the meeting convened on the issue shall be deemed to be *void ab initio*.

It is finally submitted that complete adherence to the provisions of Rule 22(4) is strictly necessary because any action under Rule 22(4)(supra) carries adverse civil consequences against the appellants.

By the previous order of this Court dated the 12th of March, 2021, Mr. Deb Roy, Learned Additional Government Pleader (*AGP*), was granted the opportunity to produce the original records. The original records are produced along with the Register of the meeting in issue. From the original record, Mr. Deb Roy illustratively points out to one notice of Motion and submits that the Notice of Motion for removal of the writ petitioners is plural in its connotation and begins with the word 'We'.

It is further submitted that the requirement of Rule 22(4) is to propose a Notice of removal by at least one third of the members of the Gram Panchayat (*GP*) in issue and such notice of removal must be signed by at least three members as proposers. It is pointed out that in the facts of this case each proposer/the signatory to the Notice of Motion for removal/the private respondents have indicated not only their party affiliations but, also the other members who are co-

signatories to such notice. Both the communication of their party affiliations as well as the number of total signatories fulfils the eligibility threshold provided for such a Notice to be admitted under Rule 22(4) of the said Rules.

From the Register of the Meeting, Learned *AGP* refers to the Minutes dated the 25th of January, 2021 by which the Notice of Motion for removal was placed before the full elected house of the *GP* in issue in presence of the *PA/the BDO*. The full house of the elected members of the *GP* in issue resolved to proceed with the next meeting to consider the removal motion.

Learned *AGP* submits that although the law is trite on the point that the very issuance of a notice fixing a date for the meeting to consider the removal by the *PA/the BDO* is indicative enough of the satisfaction of the *PA/the BDO*, in the facts of this case the Minutes of the meeting dated 25th of January, 2021 (*supra*) further underscore such satisfaction.

Mr. Chakraborty, Learned Counsel, appears for the private respondents to this appeal and submits that the writ petition is not maintainable since no jurisdictional infraction in the performance of legal obligations under the statute by the *PA/the BDO* have been pointed out by the present appellants.

Having heard the parties and considering the materials placed, this Court finds that the technicalities sought to be relied upon by the present appellants, even if considered for the sake of argument, do not match up to the ultimate substantive result of the Notice of Motion for Removal since the Notice of Motion for Removal of the present appellants was carried by majority members of the elected *GP* in issue strictly in compliance with the requirement of Rule 22(4). It is not the case of the appellants that the result of the notice for removal of the appellants went in any other way as proposed or, could have gone in any other way if such Notices(s) were nipped in the bud.

With reference to the non-supply of the so-called second page to the respective Notices of Motion, this Court was in a position to place a query to Learned Counsel for the appellants with regard to the receipt by each of the appellants of the original notices. This Court is not persuaded to agree with the stand of the appellants that the notice containing the first pages only as shown in the records of the stay application is the complete notice since, from the original records as produced on behalf of the *PA*/the *BDO* by Learned *AGP*, the second page indicating the names of the proposers along with their party affiliations in terms of Rule 22(4)(supra) has been clearly spelt out.

In the backdrop of the above discussion, this Court finds that the judgment and order impugned of the Hon'ble Single Bench requires no interference.

Accordingly, the judgment and order as impugned in this appeal dated the 3rd of March, 2021 stands affirmed.

MAT 347 of 2021 with **CAN 1 of 2021** are thus **dismissed**.

Since arguments have proceeded on the basis of the records as produced, affidavits are not invited. Other allegations made are deemed to be denied and disposed.

Let the copy of the original records duly attested by the *PA*/the *BDO* as produced by Learned *AGP* be retained with the record.

Let the original record including, the Register of Meeting be returned to the Learned *AGP*.

As prayed for, the appellants are granted time to remove the defects in course of this day.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.) (Subrata Talukdar, J.)