

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE ARINDAM MUKHEREJEE.

W.P.A 10552 of 2021

PABITRA KAR

VS.

THE STATE OF WEST BENGAL & ORS.

For the petitioner	:	Mr. Billwadal Bhattacharyya, Mr. Debanik Banerjee Advocates
For the State	:	Mr. Sirsanya Bandopadhyay, Ms. Sudeshna Mazumder Advocates
Heard on	:	08.06.2021 and 11.06.2021
Judgment on	:	7th July, 2021.

Arindam Mukherjee, J.:

- 1) In this instant writ petition, the petitioner has challenged a notice dated 28th May, 2021 issued by the Prescribed Authority and the Block Development Officer (respondent no.3) under the provisions of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975, (hereinafter referred to as the '1975 Rules').
- 2) The petitioner's case is as follows:-
 - a) The petitioner was elected as the Pradhan of Boyal-I, Gram Panchayat in the District of Purba Medinipur, being the

respondent no.4 (hereinafter referred to as the said 'Gram Panchayat').

- b) The respondent nos.5 to 13 are members of the said Gram Panchayat. The said respondent nos.5 to 13 have passed a motion of "No Confidence" for removal of the petitioner as the Pradhan of the said Gram Panchayat.
- c) The respondent no.3 on receiving such a requisition pursuant to the motion of "No Confidence" taken by the said respondents issued the notice dated 28th May, 2021 (hereinafter referred to as the 'notice') for holding a meeting on 7th June, 2021 at 11:30 A.M at the Boyal-I Gram Panchayat Office.
- d) The petitioner says that the respondent nos.5 to 13 were required to deliver a copy of the motion in person through any of the members or send it by Registered Post to the Prescribed Authority. One copy of the motion was required to be delivered to the petitioner either by hand or by Registered Post at the Gram Panchayat office and another copy was required to be sent by Registered Post at the petitioner's residential address. This requirement according to the petitioner in view of the provisions of Section 12 (2) of the West Bengal Panchayat Act, 1973 (hereinafter referred to the said 'Act') is a mandatory provision. No notice of such "No Confidence" motion was either delivered to the petitioner at the office of the said Gram Panchayat either by hand or by Registered

Post. No copy of such “No Confidence” motion was also sent by Registered Post at the petitioner’s residential address.

- e) The petitioner says that for non-compliance of such mandatory provision, no meeting could have been convened by the respondent no.3 as indicated in the said notice. Since, the mandatory requirement has not been complied with the said notice is in itself an invalid notice and no meeting can or could have been convened in terms thereof. Any decision taken at such meeting convened in terms of the said notice, according to the petitioner is void and invalid.
- f) The petitioner also says that ignoring the present situation, owing to the pandemic, the provisions of the Disaster Management Act, 2005 and the order issued by the Government of West Bengal on 15th May, 2021 bearing no.647-ISS/2M-22/2020 through the Chief Secretary, the respondent no.3 has issued the notice to convey the meeting. The action of the respondent no. 3 is as such arbitrary.
- g) The decision making process behind issuance of the said notice is as such faulted and should be interfered with. As a consequence thereof the said notice has to be quashed and /or set aside. The petitioner also relied upon a notice issued by the Prescribed Authority and Sub-Divisional Officer, Ghatal, Paschim Medinipur by which the meeting scheduled to be held on 21st May, 2021 at 11 AM in the Meeting Hall of Ghatal Panchayat Samiti for the removal of Sabhapati of Ghatal Panchayat Samiti was cancelled. The petitioner says

that the respondent no.3 ought to have followed the procedure adopted by the Prescribed Authority and Sub-Divisional Officer Ghatal, Paschim Medinipur and cancelled the meeting scheduled on 7th June, 2021. The petitioner also says that the Prescribed Authority Ghatal, Paschim Medinipur had cancelled the meeting in compliance of a direction issued by the District Magistrate, Paschim Medinipur under an Order bearing no. 491/PRD dated 19th May 2021 in adherence to the order dated 15th May, 2021 issued by the Government of West Bengal through the Chief Secretary. The petitioner says that the District Magistrate, Purba Medinipur ought to have passed a similar order like his counterpart in Paschim Medinipur for cancelling the meeting. The petitioner has also referred to a further order dated 29th May, 2021 issued by the Chief Secretary, Government of West Bengal extending the order dated 15th May, 2020 till 15th June, 2021 to urge that even on 7th June, 2021 the restrictions were in force.

- h) The petitioner relying upon the Government Orders and the cancellation memo issued by the Prescribed Authority Ghatal, Paschim Medinipur says that the respondent no.3 instead of acting impartially and independently which the said respondent is bound to do and has failed to act impartially. The respondent no.3 has acted in a biased manner to side the respondent nos.5 to 13 in order to give them undue advantage. The respondent no.3 according to the petitioner derives power under the said Act and is as such required to

act fairly and transparently. The entire act of the respondent no.3 is arbitrary and as such is required to be interfered with by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

- i) The petitioner also says that the petitioner is not avoiding to face the “No Confidence” motion but, the situation at the present is as such that the meeting scheduled on 7th June, 2021 ought to have been cancelled.

3. Respondents’ Case:-

- a) On behalf of the State respondents (respondent nos.1 to 3), it is submitted that the writ petition is not maintainable inasmuch as the petitioner cannot stall a “No Confidence” motion against him by challenging the notice for holding of a meeting pursuant to a requisition made after the respondent nos.5 to 13 has passed a motion of “No Confidence”. The petitioner had been appointed as Pradhan by the respondent nos.5 to 13 and as such they can pass a “No Confidence” motion to remove the petitioner if the majority of the members have lost confidence in the petitioner as the Pradhan.
- b) The petitioner can be removed by a majority of members following the procedure laid down in Section 12 of the said Act. Following such provisions, the respondent nos.5 to 13 have passed a “No Confidence” motion as against the petitioner. The petitioner is, therefor, liable to be removed. Upon realising that his removal is inevitable, the petitioner is attempting to raise frivolous technical grounds to invite

interference from this Court. On the issue that the petitioner can be removed and is not entitled to seek intervention of this Court against such “No Confidence” motion for petitioner’s removal the State respondents have cited the judgments reported in **2014(7) SCC 663 [Usha Bharti vs. State of Uttar Pradesh and Others]**, **2017(2) CHN 103 [Sujata Bhachhar (Kirtonia) vs. The State of West Bengal and Others]** and the judgement reported in **2017(2) CHN 258 [Ujjwal Kumar Singha vs. The State of West Bengal and Others]**. The said respondents have also relied upon a Division Bench judgement of this Court passed in FMA 1209 of 2015, MAT 242 of 2015 with CAN 1814 of 2015 (Panchu Mandal vs. State of West Bengal and Ors.) reported in **2016 SCC Online Cal 4950** for the said proposition.

- c) The State respondents also submit that the petitioner was neither available in the office of the said Panchayat to receive hand service of the motion nor had authorized anyone to receive the same. The respondent nos.5 to 13 on being unsuccessful have despatched the copy of the motion to the petitioner for being served by registered post at the office of the said Gram Panchayat. A copy of the motion has also been sent through registered post to the petitioner’s residence by the respondent nos.5 to 13. It, however, appears from the submission.

d) The State respondents further submit that the meeting as scheduled on 7th June, 2021 has been convened. In the said meeting the majority of members of the said Gram Panchayat have voted for removal of the petitioner. The decision in the meeting held on 7th June, 2021 has not been published or been given effected to in view of the interim order dated 4th June, 2021. The said respondents also stated that this Court was not inclined to stop the meeting scheduled on 7th June, 2021 as will appear from the Order dated 4th June, 2021 which prima facie establish that this Court was not in favour of the petitioner. The State respondents, therefore, pray for dismissal of the writ petition.

4. Petitioner's Reply:-

The petitioner in order to distinguish the judgements cited by the State respondents has submitted that the petitioner is not challenging the decision taken by the respondent nos.5 to 13 but the decision making process by which the respondent no.3 has called and conveyed a meeting pursuant to a requisition ignoring the provisions of Section 12(2) of the said Act and also that of Section 72 of the Disaster Management Act, 2005 which has an overriding effect over all acts. The petitioner also says that on 4th June, 2021, the Court finding substance in the petitioner's case was inclined to hear the matter at length and as such had granted an interim protection to the petitioner though the holding of the meeting was not stopped. The Court according to the petitioner did

not stop the holding of the meeting according to the petitioner as the same would amount to passing of the final relief at the interim stage without hearing the matter in details. Allowing the meeting to be held as scheduled, therefor according to the petitioner should not be construed as the Court leaning in favour of the respondents against the petitioner.

5. Decision with Reasons:-

- i.) The Election of the members of a Gram Panchayat is held under the provisions of Section 4 of the said Act read with the provisions of The West Bengal Panchayat Elections Act, 2003 and The West Bengal Panchayat Elections Rules, 2006. In terms of the provisions of Section 9 of the said Act, the Pradhan and Upa Pradhan of a Gram Panchayat are elected by the members of the said Panchayat. The petitioner was also elected as the Pradhan in the same manner.
- ii.) Section 12 of the said Act provides for removal of the Pradhan by way of a motion of “No Confidence” against the said Pradhan. There is as such no doubt on a conjoint reading of Sections 4(2A) and rule 12 (1) of the said Act, that the members of a Gram Panchayat are also empowered to remove an elected Pradhan by following the provisions of Section 12 of the said Act which includes passing of a motion of “No Confidence”. The argument of the State respondents that the petitioner cannot challenge the authority of the members who have decided to remove the petitioner does not fall for further scrutiny. This authority is available under the statute. That

apart and in any event the petitioner in the writ petition has also not challenged the authority of the members to remove the petitioner. The challenge is on the ground of non-adherence to the mandatory requirements to be followed for such removal.

iii.) The procedure to be followed pursuant to a motion of “No Confidence” having been passed is enumerated in Section 12 (2) of the said Act. The said section lays down formalities to be complied with which are mandatory. A copy of such motion of “No Confidence” is required to be delivered in person through any of the members or be sent by Registered Post to the Prescribed Authority indicating party affiliation or independent status of each of such members. A copy of the said motion is also required to be delivered to the concerned office bearer. In the instant case, the petitioner (Pradhan) had to be delivered a copy of the motion either by hand or by Registered Post at the office of the said Gram Panchayat and another copy was required to be sent by Registered Post at the petitioner’s residential address. In the instant case, it is apparent that the Prescribed Authority has received a copy of the motion in terms of the provisions of Section 12(2) of the said Act, but, there is no proof produced before this Court to show that one copy of the motion had been delivered to the petitioner either by hand or by Registered Post to the petitioner at the office of the said Gram Panchayat.

- iv.) The State respondents say that since the Pradhan was not available at the office of the Gram Panchayat, he could not be served by hand and as such one copy of the motion has been sent by Registered Post to the office of the Gram Panchayat. On a query from Court, the State respondents show through virtual mode, the postal receipt to demonstrate despatch of a copy of notice by registered post to the office of the said Gram Panchayat for being delivered to the Pradhan.
- v.) Although, it is strange that a document which is required to be produced by the respondent nos.5 to 13 had been produced by the State respondents but the fact remains that there is no proof of one copy of such motion having been delivered to the petitioner by registered post at the office of the said Gram Panchayat.
- vi.) The last portion of Section 12(2) of the said Act provides for another copy to be sent by Registered Post at the residential address of the petitioner. Although no such proof has been produced yet assuming without admitting that the other copy of the motion as per the second limb of Section 12(2) has been complied with by only despatch since the word used therein is “sent” and not “delivered” then also the other copy having not been delivered either by hand or through registered post the first limb of service of a copy of the motion on the petitioner is not complied with. Even if, it is presumed that there has been service of a copy of the motion in view of the provisions of Section 27 of the General Clauses Act, 1897 but such

presumption is not accepted where there is a statutory requirement of service of the motion of mandatory nature unless the service is proved beyond doubt or the facts are such that the presumption is inevitable. In the case in hand, the delivery has not been proved. The facts are not such that the presumption under Section 27 of the General Clauses Act, 1897 is a natural corollary. That apart despatch at the petitioner's residential address is also not proved. The mandatory requirement of Section 12(2) of the said Act is, therefore, not complied with. Unless both the limbs of delivery are complied with, the provisions of Section 12(2) which are indeed mandatory in nature so far as delivery of the office bearer intended to be limbed in the instant case have not been complied with.

- vii.) The Prescribed Authority on receipt of the motion has to satisfy himself that the motion conforms to the requirement of Section 12(2) and on his satisfaction shall specially convene a meeting of the Gram Panchayat by issuing notice as laid down in Section 12(3) of the said Act. The notice is required to be issued within five working days of the receipt of the motion and under Rule 5B of the 1975 Rules. The notice has to be sent at least before seven clear days to each of the existing members for consideration of the motion and for taking a decision on it.

viii.) The Prescribed Authority, therefor, under Section 12(3) of the said Act is required himself as to the number of members who signed the motion, their party affiliation or independent status in the signed motion received by the Prescribed Authority from those who have taken the “No Confidence” motion. The satisfaction as to number of members and the status of the member can be contended as an administrative or ministerial work as the Presiding Officer is to see only these two things in the motion. The Prescribed Authority has to also satisfy itself as to the service of the notice as envisaged under Section 12(2) of the Act on the person sought to be removed. Even if, this satisfaction of the Prescribed Authority is construed as an administrative or ministerial act then also the Prescribed Authority while convening a meeting by issuing notice on requisition is also determining questions affecting the rights of the person intended to be removed, in the instant case that of the petitioner. The Prescribed Authority is doing this as he has a legal authority to do so under the statute. The Prescribed Authority is therefor, not doing only a ministerial or an administrative act simplicitor but his act to convene a meeting upon being satisfied in terms of the provisions of Section 12(3) of the said Act has the trappings of quasi-judicial function and/or acts. The Prescribed Authority is, therefor, required to act judicially. Reliance in this context may be placed in the judgment reported in **AIR 2013 SC 168 (State of Maharashtra and Ors vs. Saeed Sohail Sheikh**

and Others) (paragraphs 28 to 38). An administrative or ministerial work cannot ordinarily be interfered with in exercise of powers under Article 226 of the Constitution of India unless there is arbitrariness, irrationality, unreasonableness, bias and mala fides [**See 2007(14) SCC 517 Jagdish Mandal vs State of Orissa and Others (paragraph 22)**], on the other hand the moment the act and/or function has quasi-judicial trappings, the decision making process can be interfered with in exercise of power under Article 226 of the Constitution of India even for some illegality, perversity or abuse of power apart from the grounds of interference as to a ministerial or administrative act.

- ix.) The Prescribed Authority, therefor, ought to have checked before issuing the notice to convene a meeting upon receiving a copy of the motion as to whether a copy of the motion has been delivered on the petitioner either by hand or through registered post at the office of the said Gram Panchayat and another copy of the motion having been sent to the petitioner by registered post at his residential address. The Prescribed Authority as apparent from the facts of the case did not apply his mind to this aspect of the matter when his satisfaction under the provisions of Section 12(3) of the said Act also include satisfaction as to compliance of the provisions of Section 12 (2) of the said Act. Moreover when a statute provides an act to be done by a particular authority and in a particular manner, it should only be done by that authority

and in that manner or not at all as held in **AIR 1936 PC 253 [Nazir Ahmed vs. King Emperor]** which has been followed consistently by the Hon'ble Supreme Court in several of its judgements. The Prescribed Authority in the instant case has failed to do an act as provided under Section 12(2) and 12(3) of the said Act. Looking at the matter from both the angles i.e., if it is an administrative action then it is arbitrary and irrational, if it is quasi-judicial then the action of respondent no.3 is tainted with illegality for not having done an act in the manner specified in the statute.

- x.) In *Usha Bharti* (supra) cited by the respondents, the Hon'ble Supreme Court had considered whether an “*Adhyaksh*” who can be related to a Pradhan under the 1973 Act, can or could be removed before the completion of his full tenure which as per the 1973 Act is for a period of 5 years. The Hon'ble Supreme Court while considering this question has also gone into the aspect of judicial interference in a case where an “*Adhyaksh*” is sought to be removed by the majority of the members of the Panchayat or bodies having similar nomenclature. In the instant case, it is not in dispute that a Pradhan cannot be removed before completion of his entire tenure. I have already held that the 1973 Act provides for removal of the Pradhan as and when the majority members decide by passing a motion of “No Confidence”. This judgment, therefore, has no application to the core issue involved in the instant case i.e., the validity of the notice

dated 28th May, 2021. The other judgements of this Court relied upon by the respondents follows the ratio laid down in *Usha Bharti*. There is no dispute as to the proposition laid down in *Usha Bharti* or the judgments of this Court cited by the respondents. The judgments of this Court, however, for the same reason are not applicable to the facts of the instant case.

xi.) The other point urged by the petitioner is the overriding effect of Section 72 of the Disaster Management Act, 2005 and its impact on the decision of the respondent no. 3 in issuing the notice dated 28th May, 2020, particularly in view of the orders issued by the Chief Secretary, Government of West Bengal on 15th May, 2021 and 29th May, 2021. It is correct that during the pandemic the functioning of various authorities are regulated by the orders dated 15th May, 2021 and 29th May, 2021 issued by the Chief Secretary, Government of West Bengal. However, keeping in mind the time period within which a Prescribed Authority is required to issue a notice upon receiving a copy of the motion, it cannot be said that there was a complete embargo on the Prescribed Authority (respondent no.3) in issuing the said notice for convening a meeting on 7th June, 2021. At the same time, the Prescribed Authority ought to have taken note of orders issued by his counterparts in other District or Zones like that issued by the Prescribed Authority and Sub-Divisional Officer, Ghatal, Paschim Medinipur cancelling the meeting scheduled to be held on 21st

May, 2021 for removal of Sabhapati of the Ghatal Panchayat Samiti and relied upon by the petitioner.

7. Conclusion:-

The act of issuing the said notice by the respondent no.3 is unsustainable. The said notice dated 28th May, 2021 issued by the Prescribed Authority under the provisions of Rule 5B of the 1975 Rules is set aside and/or quashed. Any decision taken at the meeting held on 7th June, 2021, in terms of the said notice dated 28th May, 2021 is also invalid, void and nullity.

Since, I have already held for the reasons stated hereinabove that the action on the part of respondent no.3 is not sustainable, the overriding effect of Section 72 of the Disaster Management Act, 2005 as contended by the petitioner does not fall for further consideration.

The writ petition is allowed. The notice dated 28th May, 2021 is set aside and/or quashed. No effect can or could be given to any decision said to have been at the meeting held on 7th June, 2021 in terms of the said notice.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)