

01.07.2021
SL No. 1
Court No. 24
d.p/P.M.

WPA 10842 of 2021

**Samjad Sekh
Vs
The State of West Bengal & Ors.
(Via Video Conference)**

Mr. U.A. Dewan,
Mr. A. Dewan,
Mr. Pritam Majumdar
... for the petitioner

Mr. Sk. MD Galib
... for the State.

The petitioner is the Upa Pradhan of Sekhalipur Gram Panchayat. The notice for her removal signed by 12 members was submitted by the requisitionists before the Prescribed Authority on 4th May, 2021. The Panchayet has 16 elected members out of which one expired.

It appears from records that 12 members of the Gram Panchayet has signed and expressed their no confidence and sought for removal of the petitioner from the post of Upa Pradhan of the Gram Panchayet. The party affiliation of the requisitionists and the reasons for removal of the Upa Pradhan were mentioned in the notice of motion.

On receipt of the aforesaid notice of motion the Prescribed Authority issued notice on 5th May, 2021 to all the aforesaid 12 members to remain personally present before the Prescribed Authority on 6th May, 2021 for examination of genuineness of their signatures in the notice.

On being satisfied that the signatures in the notice of motion were genuine, a notice of meeting on motion for removal of the Upa Pradhan in terms of Rule 5b (2) of the West Bengal Panchayet (Constitution) Rules 1975 as amended was issued. The date of the meeting was fixed on 18.05.2021 and the same was intimated to the petitioner by a notice of meeting issued by the Prescribed Authority and the Block Development Officer on 7th May, 2021.

By an order dated 15th May 2021 issued by the Prescribed Authority and the Block Development Officer, the no confidence motion which was scheduled on 18th May, 2021 stood adjourned, in view of the Government Order dated 15th May, 2021 by which all Government offices was directed to remain closed from 6 A.M. Sunday of 16th May, 2021 to 6P.M. Sunday 30th May, 2021 and all administrative, academic, entertainment, political, cultural, religious gatherings, grouping and congregations was prohibited to combat the spread of Covid 19 pandemic.

By a further notice dated 24th June, 2021, the Prescribed Authority intimated the petitioner that the re-scheduled date for holding the meeting for removal of the Upa-Pradhan is 2nd July, 2021.

The petitioner is aggrieved by the action taken by the Prescribed Authority in acting in response to the notice issued by the requisitionist members on the ground that the same is tainted with stigma. There are certain allegations mentioned in the notice seeking the removal of the

petitioner. According to the petitioner the same is impermissible.

The petitioner relies upon a judgement of the Hon'ble Division Bench of this Court in the matter of Ujjal Mondal Vs State of West Bengal reported in 2013(1) CHN (Cal) 458 paragraph 28 wherein the Court held that if the no confidence motion for removal is an allegation of any illegality or an allegation of misuse of power it is not a "no confidence motion for removal" simplicitor, but it is coloured with a foundation without any adjudication which would be bad in law.

The petitioner further relies upon an unreported order passed by a learned Single Judge of this Court on 28th November, 2014 in W.P. 27285 (W) of 2014 in the matter of Tojibur Rahaman Vs. State of West Bengal wherein the Court relying upon the judgment delivered in the case of Ujjal Mondal (supra) had been pleased to quash and set aside the notice of meeting for removal of the petitioner.

The second point raised by the petitioner is that according to the provision of Section 12(10) of the West Bengal Panchayet Act, 1973 the entire process of removal of the Upa Pradhan commencing from the submission of motion to the Prescribed Authority up to the action finally taken ought to have been completed within 30 days.

According to the petitioner, the process of her removal commenced on 4th May, 2021 and the same ought to have been completed within a period of 30 days

thereafter. As the matter has spilled over for nearly two months, accordingly the entire proceeding ought to be set aside.

The learned advocate representing the Prescribed Authority submits, upon instruction, that according to the provision of Section 12(3) of the West Bengal Panchayet Act, 1973 the Prescribed Authority on receipt of the motion satisfied himself that the same conforms to the requirements of law and upon such satisfaction convened and issued the notice within the time as mentioned for the purpose of holding the meeting for removal of the petitioner. It has been submitted that the action taken by the Prescribed Authority was strictly in terms of the Act.

The further submission of the respondent is that according to the provision of Section 12(4) of the 1973 Act, the meeting is to be held on a working day not later than 15 working days from the date of receipt of the motion. The meeting is not supposed to be adjourned or cancelled except in pursuance of an order or direction of the competent Court or for any other reason beyond control of the Prescribed Authority.

It has been submitted that the meeting which was initially supposed to be held on 18th May, 2021 was deferred in view of the pandemic situation and the same has been re-scheduled on 2nd July, 2021. The reason for deferring the meeting is absolutely beyond control of the Prescribed Authority and accordingly there is no illegality in the steps

taken by the Prescribed Authority in re-scheduling the date of the meeting.

Having heard the submission made on behalf of the parties, it appears that the notice for removal of the petitioner was submitted by 12 requisitionist members before the Prescribed Authority on 4th May, 2021. The Prescribed Authority intimated the petitioner about the same on 7th May, 2021. The petitioner waited till 28th June, 2021 to affirm the instant writ petition. No reason has been mentioned as to why the petitioner approached the Court at such a delayed date. In fact, had the meeting been convened on the scheduled date i.e. on 18th May, 2021 the writ petition may not have been filed at all. This implies that the petitioner was initially not aggrieved by the action of the Prescribed Authority and was willing to face the floor test, but later, as an afterthought, filed the instant writ petition.

The ground taken by the petitioner that the meeting has been fixed beyond the time prescribed in law is not acceptable to the Court. The reason for re-scheduling the meeting has categorically been mentioned in the order of the Prescribed Authority dated 15th May, 2021 which was duly communicated to the petitioner.

In view of the unprecedented situation caused by the pandemic, the Prescribed Authority in terms of the government order dated 15th May, 2021 rightly took the decision to re-schedule the meeting as a measure to combat the spread of Covid-19.

As regards the contention of the petitioner that incorporating allegations in the notice of no confidence motion is not permissible, is also not acceptable to the Court.

Section 12(1) of the West Bengal Panchayet Act, 1973 specifically mentions that the Prodhan or the Upa prodhan of a Gram Panchayet may, at any time, be removed from office by the majority of the existing members of the gram panchayet, expressing their lack of confidence or recording their decision to remove the Prodhan or the Upa Prodhan, at a meeting specially convened for the purpose.

According to Section 12(2) of the Act the motion is to be signed in writing by the requisitionist members expressing their lack of confidence or recording their intention to remove the Prodhan or the Upa Prodhan.

In the instant case, 12 out of 15 existing members have signed the motion and have expressed their no confidence and intention to remove the Upa Prodhan. The requisitionist members have additionally given the reasons for seeking removal of the Upa Prodhan.

“Recording the decision” in terms of Section 12(1) or “recording the intention” in terms of Section 12(2) to remove would mean a decision/intention coupled with reasons, otherwise the same would amount to a non-reasoned decision which may be misused by any of the requisitionist members. Recording of reasons for removal of the Pradhan or the Upa Pradhan in the notice of motion is a step forward

for maintaining transparency in the process. An elected member ought not to be removed from the post without a proper and valid reason. Recording of reason for removal, though not mandatory, acts in aid of taking a decision by the Prescribed Authority.

The judgment relied upon by the petitioner in the case of Ujjal Mondal (supra) deals with removal of Sabhapati or Sahakari Sabhapati in accordance with Section 101 of the 1973 Act. The Court in the said matter recorded that an office bearer cannot function if the confidence of majority members is lost and the consequence is to remove him and elect a new one. In the case at hand 12 out of 15 members have expressed their loss of confidence upon the petitioner and the natural consequence is that a new member is liable to be elected.

From the above it is evidently clear that the judgment delivered in the case of Ujjal Mondal does not come to the aid of the petitioner in the facts and circumstances of the instant case.

The judgment relied upon by the respondents in the matter of Farida Bibi Vs. State of West Bengal, reported in 2016 (5) CHN (Cal) 258 paragraphs 10, 11 and 12 may be relevant for the purpose of adjudicating the instant case. Paragraph 12 lays down that the sole object of introducing sub-sections (1), (2) and (3) under Section 12 of the Panchayat Act, 1973 is to ensure that a motion of no confidence for removal of Prodhan or Upa-Prodhan was

brought about and executed through a transparent and democratic process which ensures elimination of any clandestine design being evolved to oust either of them.

In the case at hand the Prescribed Authority applied its mind and on being satisfied that the notice of motion conforms to the provisions of law, issued the notice of meeting of motion for removal of the petitioner on a specified date and time.

I do not find any illegality in the action of the Prescribed Authority. The writ petition accordingly does not call for any interference and is hereby dismissed.

The instruction handed over by the learned advocate on behalf of the State respondents is retained with the records.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)