

S/L 28
09.07.2021
Court. No. 19
GB

W.P.A. 11036 of 2021

Sephali Barman
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Debabrata Acharya.

...for the Petitioner.

*Mr. S. Nayak,
Mrs. Rituparna Maitra.*

...for the Private Respondents.

*Mr. Jahar Lal Dey,
Mr. Shamimul Bari.*

...for the State.

The petitioner has challenged the Form-1E issued under the provisions of West Bengal Panchayat (Constitution) Rules 1975.

According to the petitioner the notice of meeting was not issued within five working days. It appears that the requisition notice was served upon the prescribed authority on June 22, 2021. The notice was issued under the Form-1E of the West Bengal Panchayat (Constitution) Rules, 1975 on June 28, 2021. On 26th and 27th June were holidays, June 26 being a Saturday. Thus, the first contention of the petitioner with regard to the notice under Form-1E dated June 28, 2021 being beyond the period of five working days is not accepted.

Mr. Acharya, learned advocate appearing on behalf of the petitioner submits that Saturdays are working days for

the office of the BDO as the writ petition was accepted on a Saturday. From the records, I find that the notice was accepted on July 3, 2021, which was the first Saturday of the week and not an official holiday.

The next contention of the petitioner is that the notice specifies that the meeting would be held on July 9, 2021 to consider the motion for removal of the Pradhan for lack of confidence against the Pradhan. According to Mr. Acharya, the motion for removal of the Pradhan and a meeting for expressing “no confidence” against the Pradhan had to be two different processes and could not be done in one single agenda. This argument of Mr. Acharya is not in consonance with the provisions of Section 12(2) of the West Bengal Panchayat Act. The section provides that the requisitionists can sign a motion in writing expressing their intention to remove the Pradhan or express their lack of confidence. This ‘or’ cannot be read as disjunctive. A purposive interpretation of this provision of the law would be that the requisitionists can bring a motion for removal of the Pradhan on account of their lack of confidence in their Pradhan. Such lack of confidence will be tested on the floor on the date of the meeting specially requisitioned for the said purpose and consequently by a resolution of majority of the members the Pradhan can be removed from his office.

The third contention of Mr. Acharya is that the notice does not record the subjective satisfaction of the prescribed authority. This contention is not accepted. The court refers to

a Division Bench Judgment in the matter of Gopal Kumar versus State of West Bengal, reported in 2015 (1) CHN Cal 445. The relevant portion of the judgment is quoted below:

“(22) In our view satisfying himself as regards the sufficiency of the motion really means that the Prescribed Authority has to ascertain with reference to sub-Section 2 whether the requirements mentioned therein are satisfied by the motion. No subjective exercise is involved therein. No executive or administrative order is to be issued by the Prescribed Authority by convening the meeting. It is more of a ministerial task. **In our view, the language of sub-Section 3 is quite clear and the legislature did not require the Prescribed Authority to record his satisfaction or reasons in support thereof as regards the sufficiency of the motion before convening the meeting. We are in agreement with the view of Samaddar, J. in the case of Firoza Begam (supra) that issuance of notice convening the meeting itself indicates the satisfaction of the Prescribed Authority as regards acceptability of the motion.**

(23) We feel that we would be adding words to the statute if we opine that the Prescribed Authority must record his satisfaction and reasons in support therein prior to issuance of notice convening meeting. This would be impermissible in view of the established principle of law regarding interpretation of statutes as amplified by the decisions of the Honble Apex Court discussed above.

(24) We have checked up the Panchayat Act and/or equivalent legislation of several other States including Assam, Bihar, Himachal Pradesh, Karnataka, Kerala, Panjab, Rajasthan and Uttar Pradesh. None of such legislations provide for the Prescribed Authority to record his satisfaction as regards the sufficiency of a motion convening a meeting.

(25) We further feel that recording of satisfaction by the Prescribed Authority prior to convening a meeting would serve no useful purpose and would be of no consequence. Even if the Prescribed Authority records his satisfaction as to the sufficiency of a motion when, in fact, such motion does not conform to the requirements of sub-Section 2, such motion would be liable to be quashed by the Court. The motion will speak for itself and all that the court will have to see is whether or not it satisfies the requirements of sub-Section 2. **Hence, it would be a futile and useless exercise to put an obligation on the Prescribed Authority to record his satisfaction in his official records as regards sufficiency of the**

motion. Such recording will not change the factual scenario or the actual contents of the motion.

(26) It is also significant that the format of the notice of meeting i.e. form 1E prescribed by Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975 does not provide for any scope for recording the satisfaction of the Prescribed Authority as regards the legal validity of the motion prior to issuance of notice of meeting.

(27) In view of the discussion above we are of the opinion that it was not the intention of the legislation to impose any obligation on the Prescribed Authority to record satisfaction regarding legal acceptability of a motion submitted under section 12(2) of the said Act before issuance of a notice of meeting under section 12(3) of the said Act. We are of the view that it is not necessary for the Prescribed Authority to record any such satisfaction and we agree with the view of the Ld. Judge in the case of Firoza Begam (Supra) that issuance of notice of meeting itself indicates such satisfaction. We answer the question of law referred to us accordingly.”

The Pradhan has been elected by a democratic process and the persons who elected the Pradhan have a right to remove him if they lack confidence in him. That is the principle of democratic republicanism in our country. In this case, the majority has lost their confidence on their leader and the Panchayat Samity cannot be allowed to function in a state of deadlock or non-cooperation especially during this pandemic situation where the Panchayat Samity has a vital role to play with regard to welfare, sustenance, medication, health facilities and vaccination of the local people.

In the decision of Firoz Alam & Ors. versus State of West Bengal & Ors. the Hon’ble Division Bench of this Court has also held that the notice under Form-1E was itself an indication of the subjective satisfaction of the prescribed authority.

Under such circumstances this writ petition is disposed of without any order in favour of the petitioner.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)