

27.07.2021
Sl. No.19
srn

W.P.A. No. 11574 of 2021
Md. Janarul Sk. @ Janarul Sekh
Vs.
The State of West Bengal & Ors.

Md. Mokaram Hossain,
Mr. Sandipan Maity

...for the Petitioner.

Mr. Anirban Roy, Id. G.P,
Mr. Raja Saha,
Ms. Rupsha Chakraborty

...for the State.

Mr. Billwadal Bhattacharyya,
Mr. Anish Kumar Mukherjee,
Mr. Amrit Sinha

...for the Respondent Nos.5 to 18.

Affidavit-of-service is taken on record.

This writ petition has been filed by the Pradhan of Raipur Gram Panchayat, District-Murshidabad. The allegation is that the requisition notice was not served upon the petitioner. The petitioner has pleaded that the petitioner collected the notice/requisition from one of the members of the Gram Panchayat, namely Urfan Ali Mondal. Such pleading is appearing in paragraph 8 of the writ petition. The other contention of the petitioner is that the meeting should not be held during the pandemic situation.

Mr. Raja Saha, learned Advocate appearing for the prescribed authority, submits that the notice dated July 9, 2021 calling for a meeting for removal of the Pradhan on the basis of

the requisition is in accordance with law and in compliance with the provisions of Sections 12(3) and 12(4) of the West Bengal Panchayat Act, 1973. The meeting is scheduled to be held today, that is, July 27, 2021 at 12.00 noon. The notice was issued on July 9, 2021.

Mr. Saha has handed up a bunch of documents before this Court along with a report prepared by the Block Development Officer, Hariharpara Development Block, who is the prescribed authority. The said report is kept with the record.

It is the specific case of the prescribed authority that out of 18 members, 13 members brought the requisition. The prescribed authority had a meeting with the requisitionists and satisfied himself on the compliance of Section 12(2) of the West Bengal Panchayat Act, including the identity and the party affiliation of the requisitionists. It has also been stated by the prescribed authority, that the other members of the gram panchayat were served with the notice and a copy of the requisition was sent by registered post and also by personal messenger to the Pradhan/petitioner. The petitioner refused to accept personal service and a report in writing has been submitted by the person, namely Durjodhan Das, an employee of the Panchayat office, who went to serve the requisition upon the Pradhan physically. He has stated that on July 10,

2021, the Pradhan/Md. Janarul Sk. refused service. Such report has been annexed to the report of the Block Development Officer. Postal receipts showing that the requisition was also sent to the petitioner by registered post, has been annexed to the report and as such there is no illegality in issuance of the notice dated July 9, 2021. The prescribed authority has complied with the provisions of law.

A Division Bench of this Court in the matter of Upananda Chatterjee vs. State of West Bengal & Ors. reported in 2007 SCC OnLine Cal 540, held that the provision of giving notice is a rather procedural one and unless prejudice is shown, the departure from the statutory provisions cannot lead to annulment of the action taken. The requisitionists have a right to remove the Pradhan in a democratic way. If the Pradhan has lost the confidence of the members he cannot stay on. The matter shall be decided on the floor in accordance with law.

In this case, the Pradhan was aware of the notice of requisition. It is his own case that a copy of the requisition was collected by him from one of the members. Moreover, the documents submitted by the prescribed authority before this court, also reveals that service was attempted on the Pradhan but he had refused. Unless arbitrariness or *mala fide* or infraction of law is apparent, there is a presumption that a

government official, acting in his official capacity (prescribed authority) has acted in accordance with law.

Under such circumstances, the writ petition is disposed of without any orders. As the meeting is scheduled to be held today, no useful purpose will be served in keeping the writ pending.

There will be no order as to costs.

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

(Shampa Sarkar, J.)