

S/L 17
11.08.2021
Court. No. 19
CP

W.P.A. 12454 of 2021

Alamgir Reja Choudhury
VS
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Srijib Chakrobarty
Mr. Aditya Mondal

... for the Petitioner.

Mr. Pratik Dhar, Sr. Adv.
Mr. Sabyasachi Chatterjee
Ms. Cardina Roy

... for the Respondent Nos.4 to 15.

Mr. Pantu Deb Roy,
Mr. Anand Farmania

... for the State.

The petitioner is the Pradhan of Ratua Gram Panchayat. The petitioner is aggrieved by the notice dated July 30, 2021 issued by the prescribed authority under Form 1-E, Sub-Rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975, fixing the meeting for removal of the Pradhan on August 13, 2021.

The first contention of the petitioner is that the requisitionists did not send the copy of the motion either personally or by registered post, either to the office of the Pradhan or to the residence of the Pradhan, at the same time when the same was served

upon the prescribed authority. It is further contended that under Section 12(2) of the West Bengal Panchayat Act, 1973, the law contemplates that the motion has to be sent by two modes to the Pradhan, i.e., either personal service/delivery in the office of the Pradhan or by registered post to the office of the Pradhan and sent by registered post to the residential address of the Pradhan.

Reliance has been placed on the decision of the Division Bench of this court in the matter of Gopal Kumar vs. State of West Bengal, reported in (2015) 1 CHN 445. Reliance is also placed on the decision of a coordinate bench of this court in the matter of Pabitra Kar vs. The State of West Bengal in WPA 10552 of 2021. The petitioner alleges that the notice was issued in hot haste by the prescribed authority without considering the provisions of law. The notice was issued under Form 1E on the same day the requisition was served upon him.

It is further submitted that the prescribed authority had not satisfied himself objectively with regard to the compliances under Section 12 (2) of the said Act, and thereby acted contrary to the provisions of Section 12(3) of the said Act.

Mr. Dhar, learned senior advocate for the requisitionists, submits that the requirement of law to

send a notice to the office of the Pradhan and as also to the residence of the Pradhan cannot be treated as mandatory, specially when the pradhan has subsequently been made aware of the requisition. Reliance has been placed on the decision of Josnara Khatun vs. State of West Bengal passed in WPA 12441 of 2021 and on the decision of Manwara Bibi vs. State of West Bengal passed in WPA 11414 of 2021. Further reliance has been placed on the decision of Bibi Najba vs. State of West Bengal, reported in (2008) 2 CHN 363.

Mr. Deb Roy, learned Additional Government Pleader, submits that there is nothing on record to show that the prescribed authority had satisfied himself with regard to the service of the requisition upon the Pradhan in the manner as provided under Section 12(2) of the said Act.

Mr. Dhar, submits that this court had held in the decision of Manwara Bibi (supra), that non-service of notice would be fatal only when the Pradhan would be prevented from participating in the proceeding, or was totally unaware of the requisition before the meeting of his removal was held. He also submits that in the matter of Josnara Khatun (supra), this court had observed that once the Pradhan was aware of the meeting, the question of annulling the entire process

for non-compliance of the provisions of Section 12(2) would not arise. Similar argument has been advanced by Mr. Dhar with reference to the decision of this court in the matter of Bibi Najba (supra).

Having considered the rival contentions of the parties, this court is of the view that in the decisions of Gopal Kumar (supra) and Pabitra Kar (supra), the Division Bench and the coordinate bench respectively, had held that, at least, one mode of service of the requisition upon the Pradhan was mandatory. A similar view has also been taken by another coordinate bench of this court in the matter of Rajendra Kujur vs. The State of West Bengal & Ors. passed in WP No.28717 (W) of 2014. If Mr. Dhar's contention is accepted by this court, then the entire legislative mandate requiring service upon the office bearer sought to be removed, will be given a go-by.

The law contemplates that the pradhan should be made aware of the requisition simultaneously with the prescribed authority. The prescribed authority must satisfy himself objectively that the requirement of service of requisition upon the Pradhan had been complied with by the requisitionists along with the other compliances.

In this case, the prescribed authority issued the notice on the date of the requisition, i.e., July 30, 2021

and the postal receipt shows that the requisition was sent to the Pradhan on August 2, 2021. There is nothing on record to show that at least a physical delivery was made either in the office of the Pradhan or to the Pradhan.

In my opinion, if neither of the modes of service of the requisition upon the Pradhan is complied with, the requisition cannot be accepted by the prescribed authority and a meeting on the basis of such a requisition cannot be held. In *Bibi Najba* (supra), what had fallen for decision was whether other members who did not have seven clear days notice of a meeting held for removal of the Pradhan could challenge the result of such meeting, in the absence of any challenge by the Pradhan himself. His Lordship held that as the Pradhan had not thrown any challenge and the meeting had already been held, thus non-service of seven clear days notice would not be fatal. In *Manwara Bibi* (supra), what had fallen for decision was whether the provision for granting seven days clear notice by the prescribed authority under Section 12(3) was mandatory or not and the order was passed in the facts of that case. In *Josnara Khatun* (supra), this court held that either mode of service of requisition upon the Pradhan was to be followed. Thus the contentions of the requisitionists cannot be accepted.

The requisition notice and the notice dated July 30, 2021 are set aside and quashed.

In my opinion, the provision for removing an elected representative such as Pradhan is of fundamental importance to ensure the democratic functioning of the institution as well as to ensure the transparency and accountability in the functions performed by the elected representatives. These institutions must run on democratic principles. In democracy, all persons heading public bodies can continue provided they enjoy the confidence of the persons who comprise such bodies. This is the essence of democratic republicanism. If the Pradhan has lost support of the majority of the members, he cannot remain in office for a single day.

The writ petition is disposed of granting liberty to the requisitionists to bring a fresh requisition in accordance with law in terms of Section 12(2) of the said Act. If such requisition is brought, the prescribed authority shall act and proceed under Sections 12(3) and 12(4) and so on in order to reach the requisition to its logical conclusion. The bar under Section 12(11) of the said Act shall not be applicable. The time limit prescribed by the statute must be strictly adhered to. The prescribed authority shall be at liberty to seek police assistance. If such request is made, the police

authorities shall render all support to the requisitionists as also the prescribed authority without any delay and laches.

It is also made clear that if the Pradhan tries to evade the service of requisition, then the requisitionists shall be entitled to serve the same in the office of the Pradhan through his secretary or assistant and if such service is not accepted they would be entitled to paste or hang the same at a conspicuous place in office of the Pradhan in addition to sending the same by registered post to the residential address of the Pradhan.

This writ petition is thus disposed of. There will be however no order as to costs.

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

(Shampa Sarkar, J.)