

S/L 8
23.11.2021
Court. No. 19
GB

WPA 12811 of 2021

Subrata Singha
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

*Mr. Uday Narayan Betal,
Mr. Somnath Adhikary.*

... for the Petitioner.

*Mr. Raja Saha,
Mrs. Rupsha Chakraborty.*

... for the State.

Mr. Sarwar Jahan.

... for the Respondent Nos.5 to 13.

This writ petition was made returnable on September 16, 2021 upon exchange of affidavits, as the Court was conscious that the re-election of the Pradhan would have to be held within 30 days from the date of the motion being carried through, that is, August 23, 2021, in case the petitioner is removed. The matter was adjourned at the instance of the petitioner.

Occasion arose for issuing directions for filing of affidavits only because there were disputed questions of facts, which were required to be answered by the respondents on oath. The court permitted the meeting for removal of the Pradhan to be held, as the court was

not convinced prima facie with the contentions of the petitioner with regard to non-compliance of Section 12(2) of the West Bengal Panchayat Act, 1973. Today, the State respondents have filed their written version in the form of an affidavit and a copy of the affidavit used by the requisitionists is taken on record, as the original has been misplaced. The said photocopy is treated to be the original with the consent of the parties.

The allegation is of non-service of the motion upon the petitioner prior to issuance of the notice by the prescribed authority convening the meeting for removal of the petitioner (the erstwhile Pradhan). Non-compliance of Section 12(2) and 12(3) of the said Act is the sum and substance of challenge in the writ petition.

From the averments in the affidavit-in-opposition filed by the prescribed authority, it appears that the prescribed authority satisfied himself that the requisition was sent both to the office of the erstwhile Pradhan and to the residence of the said Pradhan by registered speed post at 1.16 p.m. on August 11, 2021. This fact is also admitted by the petitioner and it is a part of the pleadings and documents in the writ petition. The postal receipts annexed to the writ petition show that two envelopes containing the

motion were sent separately to the residence and the office of the Pradhan by registered post at 1.16 p.m. on August 11, 2021. The prescribed authority has categorically stated on oath that the satisfaction was recorded on the basis of the submissions made and documents shown by the requisitionists to the prescribed authority at 3.30 p.m. on August 11, 2021. All the requisitionists appeared before the prescribed authority on August 11, 2021 at 2.30 p.m. The prescribed authority has also stated that the requisition was sent to the office of the Pradhan and also to his residence by registered speed post on August 11, 2021 at 1:16 p.m. and as such, compliance under Section 12(2) of the West Bengal Panchayat Act, 1973 with regard to sending the motion to the office bearer had been satisfied. He further stated that non-acceptance of the notice at the office of the Pradhan on August 9, 2021 was intimated to the prescribed authority by a letter dated August 10, 2021, which is a part of the records.

Mr. Betal, learned advocate appearing on behalf of the petitioner submits that the postal receipts which are annexed to the affidavit filed by the prescribed authority are Whatsapp messages which show that the same was sent to one of the requisitionists at 10.26. According to him, the said receipt which has been

relied upon by the prescribed authority does not disclose the date and the time when the receipts were received by the prescribed authority or at least perused by the prescribed authority before the notice on August 11, 2021 was issued by the said authority. According to him, the time mentioned at the top of the Whatsapp message is contrary to what the prescribed authority has submitted before this Court on oath.

Mr. Saha, learned advocate appearing on behalf of the State submits that the only point to be considered in this case is whether the prescribed authority had satisfied himself with regard to the compliances of Section 12(2) of the West Bengal Panchayat Act, 1973 regarding delivering the motion at the office and sending the same to the residence of the office bearer sought to be removed. The admitted position, according to Mr. Saha, in this case is that the prescribed authority at the time of satisfying himself was made aware by the requisitionists that the postal articles containing the motion were served at the office as also the residence of the erstwhile Pradhan and the same were posted at 1.16 p.m on August 11, 2021. He submits that the prescribed authority was not required to obtain the receipts and verify the documents as long as the checklist provided under Section 12(2) of the West Bengal Panchayat Act, 1973

had been complied with. He further submits that the receipts which have been annexed to the affidavit and the time mentioned therein, do not indicate that the same were received by the prescribed authority at the particular time mentioned in the message. The Whatsapp number mentioned on the said receipt does not belong to the prescribed authority.

Mr. Jahan, learned advocate appearing on behalf of the requisitionists submits that one Sujoy Ghosh, one of the requisitionists along with Yousuf Mohammad Sk. went to the office of the Pradhan at 2.00 p.m. on August 9, 2021 to hand over the requisition notice to the Pradhan but as the Pradhan was not present in office, the Secretary as well as the Executive Assistant of the Gram Panchayat were requested to receive the copy of the requisition. The said persons refused to accept the same and asked the requisitionists to come again on the next day. On August 10, 2021, these requisitionists went to the office of the Pradhan, but the Pradhan was not present in the office and the Secretary and the Executive Assistant refused to accept the requisition. Again on August 11, 2021 the said Yousuf Mohammad Sk. and Sujoy Ghosh went to the office of the Pradhan at 11.00 a.m. to deliver the requisition but on none of the occasions was the petitioner present in the office and

the other staff refused to accept the motion. Finding no other alternative, the requisition was sent by registered speed post to the office of the Gram Panchayat. They posted the motion at 1.16 p.m. on August 11, 2021. These facts have been narrated elaborately in paragraph-3 to paragraph-7 of the affidavit-in-opposition filed by the requisitionists. There is just an omnibus denial in the affidavit-in-reply.

The prescribed authority also relies on a letter issued by the requisitionists to the prescribed authority dated August 10, 2021, from which it appears that the requisitionists informed the prescribed authority that on August 9, 2021 the prescribed authority went to serve a copy upon the Pradhan, but the same was not accepted and they had decided to send the same by registered speed post.

In reply to the contentions of the prescribed authority and also to the contention of the requisitionists, the petitioner submits that the requisitionists did not try to serve the copy of the requisition in the office and the prescribed authority acted without any proof of compliance of Section 12(2) of the West Bengal Panchayat Act, 1973 as regards service of the motion upon the office bearer.

Heard the parties. Records reveal that the petitioner had enquired from the Secretary and the Executive Assistant of the office of the gram panchayat by two separate letters dated August 13, 2021 as to whether any letters meant for the Pradhan had been served in the office of the gram panchayat between August 8, 2021 to August 11, 2021. Such letter has been annexed by the petitioner himself, being Annexure P-2. The letter is in Bengali and if the same is translated, it would mean that the petitioner, by the said letter wanted information as to whether any letter meant for the Pradhan had been received either by the Secretary or by the Executive Assistant of the said Gram Panchayat between August 8, 2021 to August 11, 2021 and further that, in case any such letter was received during that period, the same should be delivered to the residence of the Pradhan. From these two letters, the Court had drawn a presumption that the Pradhan was not in his office at least between August 8, 2021 to August 13, 2021. Had the Pradhan been in office at the time when the requisition was taken out, the occasion would not arise for the Pradhan to enquire from the Secretary and the office assistant on August 13, 2021 as to whether any letter had been received, on his behalf and he would not have directed them to reach the same to his residence.

The Pradhan could have himself gone to the office and made queries and collected all that mails and letters which had delivered at the office. The fact that the Pradhan wanted all those mails and letters to be delivered at his residence even on August 13, 2021, logically would mean that the Pradhan was not present in office to take delivery of any postal mails or letters which may have been sought to be delivered upon him personally by anyone. Thus, the contention of the requisitionists on oath giving details of what transpired between August 9, 2021 and August 11, 2021 is logical, reasonable and is accepted by the Court. Contrary documents showing any official activity by the Pradhan during such period in the office is not before the Court.

The court sitting in judicial review over an action of a statutory authority, cannot go into a minute by minute investigation as to what transpired in the office of the Gram Panchayat or in the office of the prescribed authority. All that the Court is required to see is whether the provisions of Section 12(2) of the West Bengal Panchayat Act, 1973 was followed and whether the prescribed authority satisfied himself about the compliance of Section 12(2) of the West Bengal Panchayat Act, 1973. Section 12(2) of the West Bengal Panchayat Act, 1973 provides that one copy of

the motion shall be delivered to the concerned office bearer by hand or by registered post at the Gram Panchayat and another copy shall be sent by registered post at his residential address.

In the peculiar facts of this case the, Pradhan who was apparently not in office since August 8, 2021 up to August 13, 2021 and may be thereafter could not have been served personally with the copy of the requisition. The other staff refused service. Thus, the motion was sent to the office of the Pradhan by registered speed post on August 11, 2021 after three attempts had failed and also to his residence by registered speed post. The delivery of the requisition upon the Pradhan is also not disputed. The same was delivered both at his office and residence on August 13, 2021 at around 6.00 p.m. This is an admitted position, which finds mention in paragraph-8 of the writ petition.

As the time prescribed by the statute is limited and the prescribed authority is required to act upon such notice of motion within 5 working days from receipt thereof and thereafter hold the meeting not later than 15 working days upon giving 7 clear days' notice, the prescribed authority was required to act with promptitude. Continuous absence from office in order to frustrate the meeting by causing delay which

would result in the expiry of the statutory period, is evident from the facts of this case.

This is a peculiar situation when the requisitionists could not find the Pradhan in his office between August 9, 2021 to August 11, 2021. The prescribed authority received the motion on August 9, 2021 having only 5 working days in hand to issue the notice, took steps to convene the meeting on the third day. Thus, when the requisitionists failed on three occasions to serve the motion personally upon the Pradhan at his office or through any member or official in the said office, they sent it by registered speed post and the prescribed authority upon being satisfied of the steps that were taken by the requisitionists, issued the notice of the meeting. The purpose of delivery of the motion/requisition upon the Pradhan is to ensure that the office bearer is aware of the requisition and of the fact that the members having lost confidence in him had requested that a meeting be convened for removal of the Pradhan on such ground.

In this case the petitioner was aware of the no confidence, which was brought against him definitely on and from August 13, 2021 at 6.00 p.m. as per his own version. I hold that the situation had become impossible for the requisitionists to deliver the motion in the office of the Pradhan. The performance of the

formalities prescribed by a statute has been rendered impossible by the continuous absence of the Pradhan. The requisitionists had no control over the action of the petitioner and his staff and as such non-delivery of the motion at the office will be taken as a valid excuse in the peculiar facts of this case. Man-made situation intended to defer the process prescribed under Section 12 of the said Act should be sternly dealt with.

Under the peculiar facts and circumstances, the non-compliance which is alleged is inconsequential as the same is not fatal to the result of the meeting and the explanation given by the prescribed authority is satisfactory. There has been substantial compliances of the provisions of law. Had the Pradhan not received the copy of the requisition before the meeting, the situation would have been otherwise and the Court would be constrained to cancel the entire process. The meeting was fixed on August 23, 2021 and on August 13, 2021, that is, 10 days' prior to the meeting, the petitioner was aware of the requisition if not earlier. The petitioner also had the occasion to challenge the meeting as also the notice as sufficient time had been allowed by the prescribed authority before the meeting was held. Thus, no legal right of the petitioner has been affected in any way as the removal on the ground of lack of confidence is a natural consequence of the

provisions of Section 12(2) of the West Bengal Panchayat Act, 1973 onwards. The Pradhan who has been chosen by the members to be their leader lost confidence of his members. He could not have changed the fate of either the meeting or the consequences thereof, even if, the motion was received on August 9, 2021. He also challenged the said notice and the requisition before this Court by moving the writ petition which was taken up on August 17, 2021 prior to the date of the meeting. The writ petition having been filed on August 16, 2021.

There is no manner of doubt whatsoever that the petitioner has been removed as the Pradhan of the concerned Gram Panchayat by a majority vote. The requisition notice issued by the members of the concerned Gram Panchayat was challenged by the Pradhan before this Court. Even though it is evident that the Prescribed Authority has acted in conformity with the provision of section 12 of the West Bengal Panchayat Act, the conduct of the petitioner leaves no manner of doubt whatsoever that instead of adhering to and abiding by the established democratic principles governing institutions such as a Gram Panchayat, petitioner has chosen to try and wriggle out from a situation where, admittedly, he lacks support of the majority of the elected members of the

Gram Panchayat, by nit-picking before this Court on such hypertechnicalities which are not at all germane for consideration or adjudication in the facts of the present case, in order to cling on to power, somehow.

The law additionally ensures elimination of frivolous motion by introducing the requirement of signatures of at least three existing members of a Gram Panchayat to make a motion valid. Such hypertechnical plea, as sought to be raised by the learned advocate for the petitioner, cannot render a transparent democratic process of bringing about a motion of no confidence for removal of a Pradhan or Upa Pradhan of a gram panchayat bad in law, unless it squarely falls foul of the object of the provisions of law, as discussed hereinabove.

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 explains why this provision of no-confidence motion has been provided under the law. The petitioner was elected by the members as their leader and they wished to remove him as they lost confidence in him. Even after being removed by majority votes he cannot insist on continuing as the Pradhan without any support of the members. This would result in complete

anarchy and a stalemate condition would prevail in the panchayat office.

In the decision of Ujjwal Kumar Singha v. State of W.B. reported in 2017 SCC Online Cal 4636, it was held that:

“The entire impugned judgment and order is supported with cogent reasons and there is no palpable infirmity noticed therein which would warrant any interference in an Intra-Court Mandamus Appeal. It appears that the appellant/writ petitioner resorted to taking shelter under the high prerogative jurisdiction of the High Court under Article 226 of the Constitution of India only for the purpose of thwarting the well-established democratic principles which govern the running of public institutions such as a Gram Panchayat, being at the lowest tier of self-governance at the village level in the three-tier Panchayati Raj System. In this context, one may take notice of the observations made by this Court in Farida Bibi v. The State of West Bengal reported in 2016 (5) CHN (Cal) 258, while following the observations made by the Supreme Court in Usha Bharti v. State of U.P. reported in (2014) 7 SCC 663 : AIR 2014 SC 1686, wherein it was observed to the effect that it is the fundamental right of democracy that those who have been elected can also be removed by expressing, ‘No Confidence Motion’ for the elected person. In an institution which runs on democratic principles, a person can continue to be its head so long he/she enjoys the confidence of the persons who comprised such a body. This is the essence of democratic republicanism which was taken note of by the Supreme Court in Usha Bharti (supra).

The appeal has no merit and is liable to be dismissed along with the application for stay with exemplary costs assessed at 500 G.Ms. which shall be deposited with the State Legal Services Authority for being earmarked for utilisation by the Mediation

and Conciliation Committee of the High Court.”

Thus, I do not find any reason to interfere with either the result of the meeting or the notice of the meeting. The meeting shall be given effect to. It is submitted that the meeting has been held and the Pradhan has been removed by majority vote. The charge was handed over to the Upa-Pradhan as per direction of the Court and re-election had not been held. With the disposal of the writ petition, the prescribed authority shall proceed with the re-election in terms of Rules 6 of the West Bengal Panchayat (Constitution) Rules, 1975 and the District Panchayat Election Officer is directed to extend the time for holding the re- election thereby granting reasonable time to the prescribed authority to complete the re-election as per law by issuing an official order pursuant to the direction of this Court. The reason for extension being that the re-election could not be held in view of the interim order of this Court. Such formal order shall be issued within 7 days from communication of the order and thereafter the prescribed authority shall continue with the re-election as per law.

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 learned advocate's communication.

(Shampa Sarkar, J.)