

S/L 8  
31.08.2021  
Court. No. 19  
sn

WPA 13336 of 2021

Nur Asmin Khanam  
Vs.  
The State of West Bengal & Ors.

(Through Video Conference)

*Mr. Ashraful Huq*  
*Mr. Sarwar Jahan*  
*Mr. Firoze Hassan*

*...for the Petitioner.*

*Mr. Joy Chakraborty*

*..for the respondent no.7*

Despite service, none appears on behalf of the State respondents. Let affidavit of service be taken on record.

Mr. L.M. Mahata, learned Senior Government Advocate, who usually appears in such type of matters is requested to appear in this matter.

This writ petition has been filed by the Pradhan of Uttar Lakshmipur Gram Panchayat within Kaliachak-II Panchayat Samity.

The only grievance of the writ petitioner is that the prescribed authority ought not to have issued the notice under Form IE sub-rule(2) of Rule 5 of the West Bengal Panchayat (Constitutional) Rules, 1975 (hereinafter referred to as the said Rules), without satisfying himself whether a

copy of the notice was sent to the residence of the Pradhan by registered post.

The contention of the petitioner is that a copy of the requisition, which was served on the prescribed authority should be delivered to the office bearer in his office and also sent to his/her residence by registered post.

Mr. Jahan, learned advocate appearing on behalf of the petitioner submits that the copy of the requisition which was sent to the Pradhan by registered post was not a copy of the original requisition. It is also submitted that the signature in the copy of the requisition, which was sent to the residence did not tally with the signatures of some of the requisitionists in the requisition. The first signatory's signature was missing.

Mr. Chkraborty, learned advocate appearing on behalf of the requisitionists submits that this Court has consistently held that one mode of service upon the Pradhan shall be adequate compliance under Section 12(2) of the said Act. Once the Pradhan is aware of the requisition, the meeting should be held as per schedule.

Admittedly, in this case, a copy of the requisition was not sent to the residence of the Pradhan. A separate requisition was prepared. The original where of is produced

before this court and admittedly the same does not tally with the copy served upon the prescribed authority. The signature of the first requisitionists was missing in the same. Signatures of some other members did not tally with the original requisition. The Court is not satisfied with the compliance of Section 12(2) of the said Act with regard to sending of a copy of the requisition to the residence of the Pradhan. Mr. Chakraborty has not been able to produce any document in support of his contention that a copy of the requisition was served upon the Pradhan.

It is definitely a democratic and statutory right of the requisitionists to remove the Pradhan for lack of confidence, but the right has to be exercised within four corners of the statute. This is not a case whether the Pradhan had knowledge of the requisitionists. This is a case of non-compliance of Section 12(2) of the said Act. When the law requires a copy of the requisition should be sent to the residence of the Pradhan in addition to delivery of the same in the office, the said provision of law has to be complied with by the requisitionists and the prescribed authority should also satisfy himself that a copy of the requisition was sent to the residence of the Pradhan. The requisition sent to the residence of the Pradhan is not a copy of the original

which was served upon the prescribed authority. A separate requisition was prepared where signature of one of requisitionists is missing and it also appears that some signatures do not tally. If the Court allows the said requisition, which was prepared subsequently, in that case, the court would be failing in its duty to uphold the provisions of the statute.

Mr. Mahata, learned Senior Government Advocate submits that this is non-compliance of Section 12(2) of the said Act and a copy of the original should be served in the office and sent to the residence. Thus, the requisition as also the notice under Form 1E, Sub-Rule (2) or Rule 5 of the West Bengal Panchayat (Constitution) Rules, 1975 are set aside and quashed.

This Court relying on the decisions of the Hon'ble Apex Court in the matter of M/s Hindustan Construction Co. Ltd. v. The Union of India reported in 1967 0 AIR (SC) 526, is of the view that interpretation of the term 'copy' under Section 12(2) of the said Act would be same as its interpretation under the provisions of Evidence Act with regard to secondary evidence. The relevant portion is quoted below:-

“5. Now the word ‘copy’ as such is not defined in the Indian Evidence Act, 1 of 1872. But we get an idea of what a copy is from the provisions of S. 63 of the Evidence Act. That Section inter alia defines what secondary evidence means and includes, namely-(i) certified copies as provided in S. 76 of Evidence, (ii) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies, and (iii) copies made from or compared with the original. Obviously, therefore, a copy means a document prepared from the original which is an accurate or true copy of the original. In Webster a New World Dictionary, the word ‘copy’ means ‘a thing made just like another, full reproduction or transcription’. What the word ‘copy’ in S. 14(2), therefore, requires is that it must be a full reproduction of the original and that it should be accurate or true. When a document is an accurate or true and full reproduction of the original it would be a copy. In the present case it is not in dispute that what was produced by Sri Dildar Hussain was a true or accurate and full reproduction of the original. It was, therefore, a copy of the original, and the only question that remains is whether it was signed for if it was signed, it would be a signed copy.”

It is the democratic right of the requisitionists, to seek the removal of their leader who has lost their confidence, in accordance with law. They are entitled to enforce such right and any delay by the authorities will actually frustrate such right and destroy the democratic set up of the institution. These institutions must run on democratic principles. In democracy all persons heading public bodies could 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 requisition as also the notice and all subsequent actions are set aside and cancelled.

The requisitionists are granted liberty to bring a fresh requisition in accordance with law. If the said requisition is brought, the prescribed authority shall reach the requisition to its logical conclusion upon complying with the provisions of Sections 12(3) and 12(4) onwards of the West Bengal Panchayat Act, 1973 by strictly adhering to the time limit fixed by this court. The bar under Section 12(11) shall not apply.

It is made clear that the law imposes a duty upon the prescribed authority to act in terms of the provisions of Section 12 of the said Act. No further delay will be permitted. The prescribed authority shall be at liberty to requisition for police support in case he apprehends breach of law and order. The police authorities shall mandatorily render support to the prescribed authority during such meeting on the scheduled date. Failure of the police authorities in this case, will be viewed with seriousness. If the Pradhan avoids service, apart from the modes prescribed under the statute, substituted service by hanging the requisition at a conspicuous place at the Pradhan's office and residence shall be accepted.

The writ petition is, thus, disposed of.

There will be, however, no order as to costs.

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

**(Shampa Sarkar, J.)**