

14.09.2021
Sl. No.5
srn

W.P.A. No. 14458 of 2021
Anjana Mondal (Sarkar)
Vs.
The State of West Bengal & Ors.

Mr. S. Roy,
Mr. Ashok Kumar Jha

...for the Petitioners.

Mr. Lalit Mohan Mahata,
Mr. P.B. Mahata

...for the State-Respondents.

Mr. Dipankar Pal,
Mr. Joy Chakraborty

...for the Respondent Nos.7 to 14.

None appears on behalf of the State-respondents despite service.

Mr. Mahata, learned Advocate, who normally appears in such matters is requested to accept the brief on behalf of the State-respondents with a junior of his choice. Their appointments may be regularised.

The matter was passed over for 15 minutes in order to enable Mr. Mahata to take instructions. The instructions have been taken.

The matter is now ready for hearing.

Mr. Roy, learned Advocate appearing on behalf of the Pradhan of Uttar Panchanandapur-II Gram Panchayat, District Malda is aggrieved by the notice issued under Form 1E sub-rule (2) of Rule 5B of the West Bengal Panchayat (Constitution)

Rules, 1975 dated September 6, 2021. By the said notice, the prescribed authority fixed September 15, 2021 as the date for holding the meeting for removal of the Pradhan.

All the members of the Gram Panchayat are before this Court except Sri Gajendranath Mandal and Sri Shyamal Mandal. Mr. Dipankar Pal, learned Advocate, represents them.

According to Mr. Roy, the notice was defective as the prescribed authority signed the notice under Form 1E with an incorrect date, that is, September 15, 2021. He submits that the requirement of the notice is a mandate of law and any defect in the notice will render the entire proceeding as null and void and the meeting cannot be held on September 15, 2021, on the basis of an incorrect notice.

Mr. Mahata, learned Senior Government Advocate appearing on behalf of the prescribed authority, submits, on instruction, that the prescribed authority informed him that it was a *bona fide* mistake. He had fixed the date of the meeting on September 15, 2021 and hurriedly signed the notice with the wrong date as "September 15, 2021". It was a careless but *bona fide* mistake due to oversight. The notice clearly indicates the date of the notice at the top and the bottom of the same as "September 6, 2021". The notice has been issued in the format as per Rules. The places where the dates of the notice are to be mentioned as per the form, the correct date as September 6,

2021 has been mentioned. The date has been incorrectly written by the prescribed authority when he signed the order. There was no necessity for the prescribed authority to put a date below his signature as the notice already carries the date. Moreover, all the members have accepted the notice and are willing to participate in the meeting to be held on September 15, 2021. By taking advantage of this mistake the Pradhan has come up before this Court only to avoid the proceedings which might lead to her removal from her office.

These institutions 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. In my opinion, the provisions for removing an elected representative such as the Pradhan or the Upa-Pradhan are 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.

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."

If the members have lost confidence to the Pradhan who had elected her, she does not have a right to stay in the office for a single day.

This Court directs the prescribed authority to issue another correct notice with the correct date and circulate the same by 6.00 p.m. today. This order of the Court is also a notice to all. As all the parties are represented except two members, namely, Sri Gajendranath Mandal and Sri Shyamal Mandal. This Court is of the opinion that further seven days'

notice will not be required in view of the fact that seven clear days' notice was already given and none of the members have come up challenging the notice. The office bearer is before the Court and is also aware of the date of the meeting. The purpose of giving seven days' notice is to enable the members to be informed about the motion, deliberate upon it and then participate in the meeting on the basis of such deliberation.

In this case, apart from the Pradhan who is aggrieved by the incorrect date under the signature of the prescribed authority in the Form 1E, none of the members are aggrieved. All the members have been given adequate notice. This provision of seven days' clear notice has been held to be directory in most cases, especially when no one has raised any objection with regard to the notice. The Pradhan is aware of the requisition, aware of the date fixed by the prescribed authority has got a copy of the requisition as also the notice and as such there is no reason to postpone the meeting of September 15, 2021 by giving a further seven days' time, over the same issue. It is also mentioned that the proceedings initiated by the prescribed authority was on the basis of the leave granted by this Court to the requisitionists to bring a requisition and the requisitionists have brought the requisition accordingly.

Mr. Mahata is directed to ensure that the prescribed authority serves the corrected notice upon all the members especially Gajendranath Mandal and Shyamal Mandal.

The authority will be held in accordance with law and reached to its logical conclusion.

The writ petition is, thus, disposed of.

There will be no order as to costs.

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

(Shampa Sarkar, J.)