

08.12.2021
Sl. No.9
srm

W.P.A. No. 16788 of 2021

Mosa Sakila Bibi

Vs.

The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharya,
Mr. Md. Yusuf Ali,
Mr. Shahan Shah

...for the Petitioner.

Mr. Gangadhar Das,
Mr. Tanmoy Chattopadhyay

...for the Respondent Nos.8 to 24.

Mr. Lalit Mohan Mahata,
Mr. Supratim Dhar

...for the State-respondents.

Affidavits-in-opposition filed by the respondent Nos.7 & 17 and 4 and the reply thereto filed by the petitioner are taken on record.

The subject matter of challenge in the writ petition was the notice dated September 27, 2021 issued by the prescribed authority under Form 1E sub-rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975. By the said notice, the date of the meeting for removal of the Upa-Pradhan of Sovanagar Gram Panchayat, District Malda, was fixed on October 7, 2021. The petitioner as the then Upa-Pradhan challenged the notice of the meeting on the ground that the prescribed authority did not satisfy himself about the compliances of the provisions of Section 12(2) of the West

Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act) before convening the meeting.

According to Mr. Bhattacharya, learned Advocate appearing on behalf of the Upa-Pradhan/petitioner, the copy of the motion was not served upon the office bearer sought to be removed in the way and manner prescribed under the law. According to Mr. Bhattacharya, the Pradhan, one of the requisitionists, received the motion in her office but the said motion was not delivered to the Upa-Pradhan/petitioner in her office either physically or through special messenger or by registered post. He further submits that other requirement of law of sending the copy of the motion to the residence of the office bearer, was also not satisfied.

Such contentions were disputed both by Mr. Mahata, learned Senior Government Advocate, appearing on behalf of the prescribed authority and Mr. Das, learned Advocate who appeared on behalf of the respondent Nos.8 to 24. On the earlier occasion the Court called for affidavits-in-opposition from the respective respondents. The Court further observed that as the matter was moved on October 5, 2021 and the preparations for the meeting had been made an interim order staying the meeting should not be passed. Accordingly, the meeting was to be held. The respondents required some time to furnish the documents of service before this Court. The

matter was fixed for early hearing and on November 9, 2021, the Court directed that the respondents must annex the receipts showing delivery of the requisition/motion in the office of the Upa-Pradhan/petitioner and sending the same by registered post to the residence of the Upa-Pradhan/petitioner.

In the affidavit-in-opposition filed by the prescribed authority, it has been stated that the prescribed authority was informed at the meeting that was held for recording his satisfaction about the compliance of the provisions of Section 12(2) of the said Act, that the Pradhan had given instructions to the Secretary of the gram panchayat to serve the motion/requisition upon the Upa-Pradhan/petitioner but the Secretary failed to serve the same at the residence as the Upa-Pradhan/petitioner was absent and the family members of the Upa-Pradhan had refused to accept the service of the requisition.

With regard to the other modes of service of sending the motion by registered post to the residential address of the Upa-Pradhan/petitioner and also sending the same by registered post at the office, in case physical delivery was not possible, nothing has been disclosed by the prescribed authority. This aspect has not been considered by the prescribed authority at all. There is nothing on record to show that the prescribed authority satisfied himself whether both

the modes of service as contemplated under the law had been complied with. The averments in the affidavit-in-opposition indicate that the prescribed authority proceeded on the basis that as 11 out of 18 members were against the Upa-Pradhan/petitioner and had lost confidence on the Upa-Pradhan, the meeting should be held. The prescribed authority accepted the version of the Pradhan that the family members of the petitioner refused to accept the motion and the petitioner was absent. Inability to serve the requisition either in the office or at the residential address was accepted as sufficient compliance of the provisions of law.

The Pradhan has also filed an affidavit, inter alia, stating that on September 23, 2021, a copy of the motion was sent to the residential address of the Upa-Pradhan/petitioner through a special messenger, an employee of the gram panchayat. The Upa-Pradhan/petitioner received the copy of the motion from the said Sanjib Pramanik, but did not sign on the duplicate copy and as such, although the Upa-Pradhan/petitioner was served, the receipt copy was not obtained. He has stated that the Upa-Pradhan was served with a copy of the motion.

On September 27, 2021, the prescribed authority called the signatories/requisitionists for a meeting in order to satisfy himself about the compliances of Section 12(2) of the said Act. The requisitionists were present before the prescribed

authority and expressed their desire to remove the Upa-Pradhan. Although the Pradhan has stated that by a letter dated September 24, 2021, the said Sanjib Pramanik informed the Pradhan that although the requisition was served upon the Upa-Pradhan/petitioner, receipt was not given, such fact was not mentioned by the Pradhan to the prescribed authority on September 27, 2021.

According to Mr. Bhattacharya, the law prescribes certain modes of service of the requisition upon the office bearer sought to be removed and those mandatory provisions would have to be followed. The prescribed authority was mandated by law to verify from the records as to whether those conditions prescribed by the law with regard to the service of the motion upon the office bearer sought to be removed, had been complied with, before issuing the notice of the meeting.

Mr. Mahata also submits that the prescribed authority had considered the genuineness of the signatories and as majority of the members had desired to remove the Upa-Pradhan/petitioner, the meeting was convened. He fairly submits that sending the motion by registered post was not done, as the records would reveal.

Mr. Das, the learned Advocate appearing on behalf of the Pradhan and other requisitionists, submits that the

panchayat karmee, one Sanjib Pramanik who allegedly delivered the motion to the petitioner at the residential address of the petitioner, failed to obtain a receipt and had accordingly informed the Pradhan of the same. According to Mr. Das, such service should be taken as good service and any one of the mode of service of the motion, should be accepted. Thus the prescribed authority acted in accordance with law by convening the meeting. According to Mr. Das, this Court has held on several occasions that delivery of the motion at least by one mode should be accepted as good service.

I have heard the learned Advocates for the respective parties.

Sections 12 (2) of the said Act is quoted below:

“12. Motion of no confidence or removal of Pradhan or Upa-Pradhan. –

(1) xxx xxxx

(2) For the purpose of removal of the *Pradhan* or the *Upa-Pradhan*, one-third of the existing members referred to in sub-section (1) subject to a minimum of three members shall sign a motion in writing expressing their lack of confidence against the *Pradhan* or the *Upa-Pradhan* or recording their intention to remove the *Pradhan* or the *Upa-Pradhan*, indicating party affiliation or independent status of each of such members and either deliver the motion in person through any of the members or send it by registered post to the prescribed authority; one copy of the motion shall be delivered to the concerned office bearer either by hand or by registered post at the Gram Panchayat office and another copy shall be sent by registered post at his residential address.”

Section 12(2) of the said Act requires that one copy of the motion shall be delivered to the concerned office bearer either by hand or by registered post at the gram panchayat office and another copy shall be sent by registered post at his residential address. Thus, the law prescribes that the motion should have been delivered personally upon the Upa-Pradhan/petitioner at her office or by registered post at the office and another copy of the motion must be sent by registered post at the residential address. Clearly, the intention of the legislature was to ensure that all the modes of service are exhausted before the motion could be put to vote. It is true that this Court has held that delivery of the motion by any one mode would satisfy the requirements of Section 12(2) of the said Act but the requisitionists must ensure that the motion was sought to be served by all the modes prescribed by law. If the Upa-Pradhan was not present in the office, the same should have been sent to the office by registered post and a copy of the motion should have been sent to the residential address of the Upa-Pradhan/petitioner by registered post mandatorily. None of the parties have stated before this Court in their respective affidavits that either of the modes has been satisfied with regard to the delivery of the motion upon the Upa-Pradhan/petitioner. No postal receipt showing that the motion was sent by registered post both to the office and

residence have been brought on records. The affidavits are silent in this regard.

As per the decision of the Hon'ble Division Bench in the matter of *Gopal Kumar versus State of West Bengal, reported in 2015 (1) CHN Cal 445*, the prescribed authority has to perform a ministerial act to ensure that the check list as provided under Section 12(2) of the said Act had been complied with or not. The relevant portion of the said judgment is quoted below:

“(20) Section 12(2) of the said Act provides manner in which such a meeting can be requisitioned. It stipulates that one-third of the existing members subject to a minimum of three members shall sign a motion in writing expressing their lack of confidence against the Pradhan or the Upa-Pradhan or recording their intention to remove such office holder. The motion must indicate the party affiliation or independent status of each of the members signing the motion. It must be delivered in person through any of the members or sent by registered post to the Prescribed Authority. One copy of the motion must be delivered to the concerned office bearer either by hand or by registered post at the Gram Panchayat office. Another copy of the motion must be sent by registered post at the residential address of the concerned office bearer. Thus, the requirements of sub-Section 2 are as follows:

- (i) One-third of the existing members of the Gram Panchayat subject to a minimum of three members shall sign a motion in writing.
- (ii) The motion in writing will record their lack of confidence against the Pradhan or the Upa-Pradhan or their intention to remove the Pradhan or the Upa-Pradhan.

(iii) The party affiliation or independent status of each of such members shall be indicated in the motion.

(iv) The motion must be delivered in person through any of the members or sent by registered post to the Prescribed Authority.

(v) One copy of the motion shall be delivered to the concerned office bearer either by hand or by registered post at the Gram Panchayat office.

(vi) Another copy of the motion shall be sent by registered post at the residential address of the concerned office bearer.

(21) Section 12(3) provides that the Prescribed Authority upon receiving the motion shall satisfy himself that it conforms to the requirements of sub-Section 2 and upon such satisfaction shall specially convene, by issue of notice, a meeting of the Gram Panchayat for consideration of the motion and for taking a decision on it. An obligation is, thus, cast on the Prescribed Authority to convene a meeting as per the requisition of the members if he is satisfied that the motion complies with the requirements of sub-Section 2. This is not subjective satisfaction and the Prescribed Authority has no amount of discretion in the matter. It is purely an objective satisfaction and the only obligation of the Prescribed Authority is to check if the motion complies with the six requirements of sub-Section 2 enumerated above. Sub-Section (2) is nothing but a check list and the duty of the Prescribed Authority is to see that the requirements indicated in the check list have been complied with by the requisitionists. If satisfied that the six requirements of sub-Section 2 have been complied with, the Prescribed Authority is duty bound to convene the meeting. Equally, if he finds that anyone or more of the requirements are not complied with then the motion is not legally acceptable and he is duty bound not to convene a meeting on the basis of such deficient motion.

(22) In our view satisfying himself as regards the sufficiency of the motion really means that the Prescribed Authority has to ascertain with reference to

sub-section (2) whether the requirements mentioned therein are satisfied by the motion. No subjective exercise is involved therein. No executive or administrative order is to be issued by the Prescribed Authority by convening the meeting. It is more of a ministerial task.”

The statements of the Pradhan before this Court on oath and those of the prescribed authority are contradictory. The prescribed authority has stated that during the satisfaction meeting, the prescribed authority was informed by the Pradhan that the Secretary was directed by the Pradhan to deliver the motion at the residence of the Upa-Pradhan/petitioner but the Secretary although made several attempts to serve the same to the Upa-Pradhan could not do so, in view of her absence at home. The other family members also refused to receive the same. Thus, according to the averments of the prescribed authority, the motion was never served.

On the contrary, the Pradhan has affirmed an affidavit, *inter alia*, stating that one Sanjay Pramanik, a panchayt karmee had served the motion upon the Upa-Pradhan/petitioner at her residence but the Upa-Pradhan refused to grant a receipt on the duplicate copy. Apparently, the incident was informed to the Pradhan by the said Sanjib Pramanik, by a letter dated September 24, 2021, which has been annexed to the affidavit. Strangely, this fact was not stated by the Pradhan to the

prescribed authority at the satisfaction meeting held on September 27, 2021. The Pradhan ought to have disclosed this incident to the prescribed authority. The letter dated September 24, 2021 written by the panchayat karmee should have been produced before the prescribed authority. The prescribed authority could have called for the verification of such information, given by Sanjib Pramanik and the Pradhan, from the Upa-Pradhan/petitioner herself.

Thus, the contrary stands of the two respondents does not inspire the confidence of the Court to uphold the procedure adopted with regard to the service of the motion upon the Upa-Pradhan, and also with regard to the satisfaction of the prescribed authority about the compliances of Sections 12(2) of the said Act. Moreover, it is clear from the records that the mandate of the statute of sending the motion to the residential address and at the office of the office bearer by registered post (in case physical delivery was not possible), had not been done.

Although this is a procedural irregularity but the mandate of the law requires that the same must be complied with. There should be documentary evidence before this Court to show that the Upa-Pradhan/petitioner sought to be removed had been delivered the motion at least by one mode. The Pradhan has stated that the requisition was delivered by Sanjib

Pramanik but the receipt was not given. The prescribed authority stated that the Pradhan informed the prescribed authority that the Secretary was asked to deliver the motion to the Upa-Pradhan/petitioner at her residence but the delivery was not done as the petitioner was absent and the family members refused to accept it. Such contrary submissions and also the non-compliance of the provisions of Section 12(2) of the said Act, leads the Court to hold that the meeting was held contrary to law and even if the majority members were against the Upa-Pradhan/petitioner, the process of removal which is a right conferred upon the members should have been carried out in accordance with the provisions of law.

The meeting, the result of the meeting and election of the new Upa-Pradha, i.e., the respondent No.24 are hereby set aside and cancelled.

However, as this is not a case that the motion was not carried through either for lack of majority or lack of quorum, the right of the requisitionists to bring a fresh motion cannot be denied and liberty must be granted by Court. There is no bar under Section 12(11) of the said Act in this case. This is a procedural irregularity which the prescribed authority ought to have detected in the first instance and ought to have rectified the mistake made by the requisitionists by directing service upon the petitioner.

Under such circumstances, 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 the statute up to Section 12(10) of the said Act. The bar under Section 12(11) shall not apply, as this is not a case where the requisition failed for want of quorum or could not be carried through.

It is further made clear that the prescribed authority shall be entitled to seek police protection and if such request is made, the police authority shall render all support to the requisitionists as also to the prescribed authority without any delay and laches. It is also made clear that if the Upa-Pradhan tries to evade service of the requisition, then the requisitionists shall be entitled to serve the same in the office through the secretary or assistant and if, such service is not accepted, then the requisitionists will be entitled to affix the same at the office of the Upa-Pradhan in addition to sending the same by registered post to the residence as also the office of the Upa-Pradhan.

The petitioner will continue as the Upa-Pradhan till steps are taken by the requisitionists pursuant to this order

and the prescribed authority shall monitor his functioning and keep strict vigil.

This 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.)