

03.12.2021

Sl. No. 11

Court No.25

B.M.

WPA 19209 of 2021

Md. Noor Ahsan Noor

Vs.

The State of West Bengal & Ors.

(Via Video Conference)

Mr. Dipankar Pal

Mr. Md. Nauroz Rahber

Mr. Anjana Meheubub ... for the petitioner

Mr. S. P. Lahiri

Mr. Md. Habibur Rahman

Mr. Marghoob Ahmed Salik

Mr. Saba Peswan

... for the respondent nos.6 to 12

Mr. Lalit Mohan Mahata, Sr. Govt. Adv.

Mr. Supratim Dhar

... for the State

The petitioner is an elected member of Jaingaon Gram Panchayet under Goalpokher-I Development Block.

The petitioner is the present Sanchalak of Shilpa-O-Parikathama Upa Samity of the said Gram Panchayet.

The respondent nos.6 to 12 brought a motion in accordance with the provision of Rule 22 of the West Bengal Panchayet (Constitution) Rules, 1975 for removal of the petitioner from his post of Sanchalak of the said Upa Samiti. The prescribed authority upon satisfying himself about the compliance of the law, issued a notice on November 24, 2021 fixing December 6, 2021, 12 noon as the date and time for holding the meeting on the motion brought by the respondent nos.6 to 12.

The petitioner has challenged the requisition as also the notice issued by the prescribed authority. The first challenge to the said requisition is that two of the members/requisitionists namely the respondent nos.11 and 12 have wrongly mentioned their party affiliation.

According to Mr. Pal, the said respondents Nos. 11 and 12 had changed their party affiliation to All India Trinamul Congress since 2018 but in the requisition, the party affiliation has been mentioned as CPIM and INC respectively. According to Mr. Pal, incorrect mentioning of the party affiliation amounts to not mentioning the party affiliation and as such requirement of law has not been complied with. The requisition should be cancelled. He has relied on a decision of this Court in the matter of Farida Bibi vs. State of West Bengal reported in 2016 (5) CHN 258.

The next submission of Mr. Pal is that the prescribed Form 1F has not been completely filled in and as such, the notice issued by the prescribed authority was defective. He submits that it is a settled principle of law as laid down by several judicial decisions that when a law prescribed a thing to be done in a particular way, it should be done in that way, or not at all.

Reliance is placed on the celebrated decision of Taylor v. Taylor reported in [1878] 1 CH D 426.

Per contra Mr. Mahata, learned senior government advocate submits that the party affiliation of the said respondents were rightly mentioned. According to Mr. Mahata, the respondent nos.11 and 12 contested under the nomination from the CPIM and INC respectively, in the election by which they were elected as members of the said Gram Panchayet. The gazette notification mentions their party affiliation, and the value of the gazette notification cannot be over ridden by a notarized affidavit indicating that the said persons had changed their affiliation to the All India Trinamul Congress.

On the point of defect in the notice, Mr. Mahata submits that the omission was a minor mistake and hypertechnicality cannot come in the way, thereby negating the motion or the meeting to be held for removal of the petitioner on the ground of lack of confidence. As the petitioner has lost the support of the majority of the members of the said Upa Samity, he must go if the motion is passed by majority. He submits that the Upa Samity also functions in the Gram Panchayet on the principles of democratic republicanism. When the petitioner who was elected as the leader of the said Upa Samity by its members, had lost their confidence, he cannot remain in office for a single day. Mr. Mahata submits that all decisions of the Upa Samity must be unanimous and if the petitioner is allowed to stay on in

his office under the cover of hypertechnical pleas, the entire governance will come to a standstill. He further submits that even if those two requisitionists are not recognised even then, the requisition will be valid. The minimum number of members who could bring the requisition would still be satisfied in this case.

Mr. Lahiri learned advocate appearing on behalf of the requisitionists submits that the gazette notification has been followed and the party affiliation as reflected therein had been mentioned in the requisition. Thus, there was no defect in the requisition. The requisition had been brought as per law.

On the ground of not mentioning the name of Upa Samity in the notice, Mr. Lahiri submits that Form 1F mentions the agenda and other details. It was a procedural formality and the omission would not be fatal. That the petitioner was well aware of the requisition on the basis of which, the said notice had been issued. He further submits that the substantive portion of the law had been complied with and the Form was merely a procedural part and the omission in the notice would not have the same effect as that of non-compliance of a substantive law.

Having heard the rival contention of the parties, this Court is of the opinion that the affidavit sworn by the members regarding joining Trinamul Congress and the

issuance of a letter welcoming them to the Trinamul Congress cannot supersede the gazette notification where the party affiliation of these persons have been mentioned. These persons have been elected as members of the gram panchayat on the basis of the nomination from the CPIM and INC, and the same had been gazetted. The documents relied upon by the petitioner cannot override the legal effect of a gazette notification. It is a public journal and an authorized legal document of the government. It is an important legal requirement to validate, authenticate and to make effective various kinds of laws, Act, rules Orders and government decisions.

The Gazette notification is admissible being the official record evidencing public affairs and the Court is required to presume its contents as genuine under [Sections 35](#) and [38](#) read with [Section 81](#) of the Indian Evidence Act, unless contrary is proved.

The law also prescribes other avenues which can be resorted to, if the members have acted contrary to the whip or interest of the party.

With regard to the motion, all that is to be seen, is whether the party affiliation had been mentioned as per the legal requirement. Neither the prescribed authority, nor the Court can venture into an enquiry as to the actual state of affairs. Whether there had been any horse trading

or defection as alleged by Mr. Pal, are matters to be decided in a separate proceeding.

With regard to not mentioning the name of the Upa Samity in the Form 1F, this Court is of the opinion that this omission is not fatal. The procedural part is directory. The petitioner is aware of the requisition and as also of the notice. The petitioner was sufficiently informed by the requisitionists. He had a copy of the requisition. He was aware that the said requisition was brought and the notice impugned was issued as a consequence of the requisition. However, the prescribed authority shall be more cautious to ensure that the forms and the notices are issued correctly and there should not be any omission. The job of the prescribed authority under the statute is serious and the District Magistrate shall ensure that the authorities are more careful in future and act and proceed on the basis of the rules. Time and again the court has found that the authorities act in a callous and casual manner, which should not be done in view of the enormous responsibility and power the statute has bestowed upon them.

Under such circumstances, with the observations made hereinabove, there is no scope of interference in the writ petition.

The meeting shall be held as per schedule.

Accordingly, the writ petition is disposed of.

Parties to act on the learned Advocate's communication as also a server copy of this order.

(Shampa Sarkar, J.)