

Ct. 05
Item No.10
23.12.2021
(suvendu)

WPA 19273 of 2021

[Via Video Conference]

Rofik Malitya & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Debabrata Mondal

Ms. Sreetama Neogi

.....for the petitioners

Ms. Jhuma Chakraborty

Mr. A.Ghosh

.....for the State

Mr. Manas Kumar Das

.....for the respondent no.6

Affidavit of service filed on behalf of the petitioners is taken on record.

The writ petitioners are seventeen out of thirty-three of the existing members in the concerned Panchayat Samiti. The writ petitioners seek a direction on the Prescribed Authority to proceed with the Motion of No Confidence against the Sabhapati of the concerned Samiti.

It is the submission of learned counsel appearing for the petitioners that although the Prescribed Authority received and accepted the Motion of No Confidence on 22nd November, 2021, the Prescribed Authority has failed to take any steps

thereafter under Section 101(3) of the West Bengal Panchayat Act, 1973.

The prayer of the petitioners is opposed on behalf of the Prescribed Authority who raises a plea of delay by reason of the pandemic.

Learned counsel appearing for the Sabhapati (respondent no.6) submits that the procedure to be adopted under Section 101 is incomplete.

Upon hearing learned counsel, it appears from the documents that the Motion of No Confidence of the petitioners was received by the Prescribed Authority on 22nd November, 2021. Under 101(3), the Prescribed Authority on receipt of the Motion shall first satisfy himself that the Motion confirms to the requirements of 101(2) and the Prescribed Authority shall take steps for convening a meeting by issuing Notice within the stipulated time period only after being satisfied that the conditions under 101(2) have been fulfilled. 101(2) lists several conditions which are to be followed for the Prescribed Authority to proceed under 101(3) and require that one copy of the Motion shall be delivered to the concerned Office Bearer either by hand or by registered post at his residential address.

Admittedly, the second limb of the requirement has been satisfied. The document shown to the Court for the first limb shows that the

Motion was delivered to the Block Development Officer. According to learned counsel for the petitioners, this satisfies the condition since the Block Development Officer is the Office Bearer of the Samiti. This interpretation is not correct. The construction of 101(2) is that a copy of the Motion shall be delivered to the concerned "Office Bearer" which means the Office Bearer against whom the Motion of No Confidence or removal has been initiated by one-third of the existing members. This would be evident from a complete reading of 101(2). The Office Bearer hence is the respondent no.6, who is the existing Sabhapati, against whom the petitioners seek to move a No Confidence Motion.

By reason of the above, the submissions of the petitioners that Office Bearer would mean the Block Development Officer as the Executive Office Bearer of the Samiti is hence not correct. The "concerned office bearer" under Section 101(2) is different from the description of the BDO as the Executive Officer under Section 119(1)(a) of the Act.

This Court is, therefore, not inclined to allow the prayer of the writ petitioners.

It may be noted however that the stand of the Prescribed Authority of not calling a meeting by reason of the pandemic is arbitrary and completely without any basis since the Prescribed Authority

should be aware that every public or private functionary is running at full steam since June, 2021.

WPA 19273 of 2021 is accordingly dismissed without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)