

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

The Hon'ble **Justice Arijit Banerjee**
And
The Hon'ble **Justice Kausik Chanda**

M.A.T. 1292 of 2021
With
I.A. No. C.A.N. 1 of 2021

ABU SAHID GAZI AND OTHERS
-VERSUS-
STATE OF WEST BENGAL AND OTHERS

For the appellants : Mr. Kamalesh Bhattacharya, Sr. Adv.,
Mr. Mohinoor Rahaman, Adv.,
Mr. Shahan Sha, Adv.,
Ms. Maria Rahaman, Adv.

For the State : Mr. Raja Saha, Adv.,
Mr. Shamim-ul-Bari, Adv.

For the respondent no. 5 : Mr. Surajit Basu, Adv.,
Mr. Manoj Kurmi, Adv.,
Ms. Ranu Mondal, Adv.

Hearing concluded on : 08.12.2021

Judgment on : 17.12.2021

Kausik Chanda, J.:-

The writ petitioners/appellants on November 16, 2021, submitted a requisition to the prescribed authority under the West Bengal Panchayat Act, 1973 for removal of the Pradhan of Bhebia Gram Panchayat. The prescribed authority did not take any steps to convene a meeting on the basis of the said requisition which prompted the writ petitioners to approach the learned Single Judge seeking a direction upon the prescribed authority to complete the proceeding for removal of the Pradhan in terms of Section 12 of the Act.

2. In course of hearing of the case it was brought to the notice of the learned Single Judge by the Pradhan that, on an earlier occasion the writ petitioners had brought a motion of no-confidence on September 20, 2021, before the prescribed authority. Subsequently, some of the requisitionists withdrew from the requisition on the ground that the dispute between the said requisitionists and the Pradhan was resolved. In that view of the matter, the prescribed authority held that since the motion was not brought by at least 1/3rd of the existing members, the motion of no-confidence was not sustainable in the eye of law.

3. Learned Single Judge found that the facts with regard to the earlier requisition of September 20, 2021, and revocation of the same by the prescribed authority had been suppressed in the writ petition.

4. Learned Single Judge held that the conduct of the writ petitioners should not entitle them to obtain any order in their favour since there had been a

material suppression of fact. Placing reliance upon two judgments reported at **(2007) 8 SCC 449 (*Prestige Lights Ltd. v. State Bank of India*)** and **(2008) 12 SCC 481 (*K.D. Sharma v. Steel Authority of India Limited*)**, learned Single Judge dismissed the writ petition.

5. Mr. Kamalesh Bhattacharya, learned advocate appearing for the appellants, submits that the prescribed authority should have convened a meeting in terms of Section 12(3) of the West Bengal Panchayat Act, 1973, since the subsequent requisition was made by the required number of members of the relevant Panchayat.

6. According to Mr. Bhattacharya, withdrawal of the earlier requisition, by the majority members of the said Panchayat, was not a material fact and, therefore, the learned Single Judge should not have dismissed the writ petition. In support of his submission, Mr. Bhattacharya has relied upon a judgment reported at **AIR 1979 S.C. 134 (*Shri H.D. Vashishta v. M/s. Glaxo Laboratories (I.) (P.) Ltd.*)**.

7. Mr. Raja Saha, learned advocate appearing for the State, submits that the learned Single Judge rightly dismissed the writ petition since there is a bar of one year under Section 12 (11) of the West Bengal Panchayat Act, 1973 to convene a fresh meeting, if the earlier requisition is not acted upon.

8. Mr. Saha submits that since the requisition made on September 20, 2021, was withdrawn by the majority of the requisitionists, the present requisition dated November 16, 2021, was barred under Section 12(11) of West

Bengal Panchayat Act, 1973. Therefore, the writ petition has rightly been dismissed for suppression of facts.

9. There cannot be any quarrel with the proposition that if a litigant approaches the equitable jurisdiction of the writ court with unclean hands by suppressing a material fact, no relief can be given to him; but at the same time, the Court, before declining to grant any relief, should examine as to whether such fact is material or not.

10. A fact can be said to be material if the same has some bearing on the merit of the lis. In other words, the Court should be satisfied that if the suppressed fact had been disclosed, the outcome of the lis would have been otherwise.

11. In the present case, the requisition made on September 20, 2021, was withdrawn and, therefore, the prescribed authority did not convene any meeting in terms of Section 12 (3) of the West Bengal Panchayat Act, 1973.

12. In our view, the withdrawal of the requisition made on September 20, 2021, can have no bearing on the subsequent requisition made on November 16, 2021.

13. Sub-section (11) of Section 12 of the West Bengal Panchayat Act, 1973, does not bar such a requisition. Sub-section (11) of Section 12 of the West Bengal Panchayat Act, 1973, is quoted below:

“(11) If the motion is not carried by the majority of its existing members or the meeting cannot be held for want of quorum, no notice of any subsequent motion for the removal of the same office bearer shall be taken into cognizance within a period of one year from the date appointed for such meeting.”

14. A plain reading of the said Sub-section (11) of Section 12 of the Act makes it clear that a subsequent meeting for a period of one year will be barred only when (a) If the motion is not carried by the majority of its existing members or (b) the meeting cannot be held for want of quorum.

15. We do not accept the argument as advanced by Mr. Saha that the words “motion is not carried” would include a situation where the requisition made under Section 12 (1) of the West Bengal Panchayat Act, 1973, has been withdrawn without convening any meeting. In our view, the words “by the majority of its existing members” as deployed in Sub-section (11) of the West Bengal Panchayat Act indicate that to come within the mischief of Section 12 (11) of the Act, the motion of no-confidence must fail in the meeting.

16. Therefore, it cannot be said that simple withdrawal of the earlier requisition made on September 20, 2021, would operate as a bar to convene a fresh meeting within a period of one year in terms of Sub-section (11) of Section 12 of the West Bengal Panchayat Act, 1973.

17. The Supreme Court in the judgment reported at **(2007) 6 SCC 120** (***Arunima Baruah v. Union of India***) succinctly spelt out as to what would

amount to suppression of material fact. The relevant part of the said judgment is quoted below:

“12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.”

18. Therefore, it is clear that even if the writ petitioners had disclosed the factum of withdrawal of the requisition of September 20, 2021, it could not have been held that the subsequent requisition made on November 16, 2021 was barred by law. The said facts, therefore, were not material for the adjudication of the writ petition on merit.

19. The judgment reported at **AIR 1979 S.C. 134 (Shri H.D. Vashishta v. M/s. Glaxo Laboratories (I.) (P.) Ltd.)**, in our opinion, has no applicability in the present case. In the said case, a suit was dismissed since the relevant facts constituting the cause of action of the case were not pleaded. In that view of the matter, the suit was dismissed by the High Court and the Supreme Court

upheld the order of the High Court. We fail to understand how the said judgment helps the appellants.

20. Though it was desirable that writ petitioners, in the writ petition, would make disclosure as to the withdrawal of the earlier requisition, in our view, such non-disclosure did not debar the writ petitioners from seeking relief as prayed for in the writ petition.

21. In that view of the matter, the order of the learned Single Judge is set aside. The appeal is allowed. The prescribed authority shall take necessary steps in terms of Section 12 (3) of the West Bengal Panchayat Act, 1973, on the basis of the requisition made before him by the writ petitioners on November 16, 2021.

22. Accordingly, the appeal being M.A.T. 1292 of 2021 is allowed and the connected application being I.A. No. C.A.N. 1 of 2021 is disposed of.

23. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Arijit Banerjee, J.)

(Kausik Chanda, J.)