

S/L 3
05.01.2022
Court. No. 19
GB

W.P.A. 29 of 2022

Hasina Mondal (Pinki)
VS
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Alokesh Dalai

...for the Petitioner.

*Mr. Raja Saha,
Mr. Biswabrita Basu Mallick.*

...for the State.

*Mr. Shahan Shah,
Mr. Abdul Aziz Mondal..*

...for the Respondent Nos.7 to 19.

The petitioner has challenged the notice issued under Form 1-E under Sub-Rule 2 of Rule 5B of the West Bengal Panchayat (Constitution) Rules 1975.

The petitioner is the Sahakari Sabhapati of the Nowda Panchayat Samity. The petitioner has alleged that the notice convening the meeting on January 6, 2022 at 12.00 for removal of the Sahakari Sabhapati on the ground of lack of confidence was illegal and not in consonance with law. That two separate meetings were required to be held and two separate notices would have to be issued, one for removal and the other for lack of confidence.

Mr. Shahan Shah, learned advocate appearing on behalf of the requisitionists submits that the writ petition has been filed frivolously only to stall the meeting and to delay

the process of removal, although the petitioner has lost the confidence of his people.

Mr. Saha, learned advocate appearing on behalf of the State submits that removal on the ground of lack of confidence are coterminous and a single notice for the said meeting was sufficient compliance of law.

This Court refers to the provisions of law. Section 101(1) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act), provides that at any time, the Sahakari Sabhapati of a Panchayat Samity may be removed from his office by the majority of the existing members of the Panchayat Samity expressing their lack of confidence against the Sahakari Sabhapati or upon recording their decision to remove. The section itself provides that the Sahakari Sabhapati may be removed from his office by the majority of the existing members of the Panchayat Samity expressing their lack of confidence. Sub-Section 2 of Section 101 provides that one-third of the existing members referred to in Sub-Section 1 shall sign a motion in writing expressing their lack of confidence against the Sahakari Sabhapati or recording their intention to remove upon compliances of certain requirements. A harmonious reading of Sub-Section 1 and Sub-Section 2 of Section 101 would mean that the right to remove the Sahakari Sabhapati conferred upon the elected members was on the ground of lack of confidence. This democratic right could be exercised coterminously. Such removal was on the ground that the elected members had

lost their confidence in their leader and did not want him to continue in office as an office bearer. The other method of removal is provided in a different section of the amended Act.

Removal is achieved only when the existing members bring a motion expressing that they had lost confidence in the Sahakari Sabhapati or they want to remove the office bearer and the motion is passed by majority.

In such cases of removal, no grounds would be necessary except that the majority had lost confidence in the office bearer and/or wanted to remove her. In case of removal of any other nature, a proceeding has to be initiated and the proceeding is to be reached to its logical conclusion upon following the principles of natural justice.

Thus, this Court does not think that the notice impugned before this Court is bad-in-law and two separate notices would have to be issued, one for removal and the other for lack of confidence. The procedure for the meeting has been laid down in Section 101(3) to Section 201(9). Only when the majority of the members cast their votes in favour of the motion for removal on the ground of loss of confidence, can an order be passed by the prescribed authority recording such removal. The entire transaction is in one proceeding and the law does not envisage that separate proceedings have to be initiated for such removal. In the same meeting, once the majority of the members have cast their vote in favour of the motion showing their lack of

confidence in the Sahakari Sabhapati, the said office bearer shall be removed.

Reliance is place on a decision of the Division Bench of this Court in the matter of Smt. Astami Biswa (Dey) versus The State of West Bengal & Other passed in CAN No.2250 of 2015 with AST No.27 of 2015. The relevant portion of the said judgment is quoted below:

The controversy arises out of the notice dated 9 September, 2014 issued by the prescribed authority, convening a meeting to be held on 19 September, 2014 at 12 noon, the agenda whereof reads as follows:-

“for consideration of the motion for removal of/lack of confidence against Prodhan and for taking decision on it.”

The judgements relied upon both by the appellant and the respondents were rendered before the amendment, introduced to Section 12 of the West Bengal Panchayat Act, in the year 2010. The amended provision contained in Sub-Section 1 of Section 12 reads as follows:-

“Subject to other provisions of this section, the Prodhan or the Upa-Prodhan of a Gram Panchayat may, at any time, be removed from his office by the majority of the existing members of the Gram Panchayat, referred to in Clause (i) of sub-section (2A) of Section 4, expressing their lack of confidence against the Prodhan or the Upa-Prodhan or recording their decision to remove the Prodhan or the Upa-Prodhan, at a meeting specially convened for the purpose.”

The aforesaid provision may be compared with the pre-amendment provision which reads as follows:-

“12. Removal of Prodhan and Upa-Prodhan. - (1) Subject to the other provisions of this section, a Prodhan or an Upa-Prodhan of a Gram Panchayat may, at any time, be removed from office by a resolution carried by the majority of the existing members referred to in clause (i) of subsection (2A) of section 4

at a meeting specially convened for the purpose. Notice of such meeting shall be given to the prescribed authority.”

The pre-amended law provided simplicitor for a resolution by the majority removing the Prodhan, whereas the post-amendment provision provides for removal of the Prodhan by the majority either by recording their lack of confidence or by recording their decision to remove the Pradhan. Prior to the amendment there might have been some scope to raise the contention as to whether lack of confidence was the premise and removal was the conclusion whereby there might be a contention that two separate motions were required, but the scope for any such controversy has been eliminated by the amendment introduced in 2010 with effect from 1st July, 2010. Under the law, subsequent to 1 July, 2010, a Prodhan can be removed by expressing lack of confidence against him.

A Prodhan can also be removed for any reason other than lack of confidence. Therefore, the judgements cited by Mr. Basu do not really help him. The notice issued by the prescribed authority contained the agenda “for consideration of the motion for removal of/lack of confidence against the Prodhan and for taking decision on it.”

Even assuming that Mr. Basu is right that lack of confidence and removal are not synonymous nothing really turns on that. The notice by no means is ambiguous because it has conveyed to the members of the concerned Gram Panchayat that the meeting is for consideration of removal of the Prodhan.

It may be contended that it was also a notice for consideration of lack of confidence against the Prodhan. Lack of confidence shall also result in removal of the Prodhan. The motion was admittedly carried by 11 out of 15 members. Resultant effect was that the Prodhan stood removed.

We are, as such, of the opinion that the controversy is altogether without any merit.”

Although the above is a case with regard to removal of the Pradhan, the provision of Section 12 are ‘pari materia’ with the provisions of Section 101 of the said Act and as such the writ petition is dismissed without any order in favour of

the petitioner. The meeting shall be held as fixed on January 6, 2022.

In my opinion, an office bearer can be removed on expression of 'lack of confidence' of the majority of the members and also on recordal of their decision to remove him in the same meeting, and by a requisition notice the members may request the prescribed authority for convening a meeting for both these purposes. Two separate meetings need not be convened for such purpose. The expression 'removal' and 'lack of confidence' have been employed by the lawmakers interchangeably, to convey the same implication. Focus of the said provision is on removal and expressing loss or lack of confidence appears to be an optional measure which the requisitionist members may undertake for removal of the office bearer upon whom they have lost confidence.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocates' communication.

(Shampa Sarkar, J.)