

1&2 01.03.2022.

WPA No. 171 of 2022
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CAN 1 of 2022
+
CAN 2 of 2022
Ranjit Sardar and others
Vs.
The State of West Bengal and others
With
CPAN 79 of 2022
Ranjit Sardar and others
Vs.
Satyajit Biswash

Mr. Bijay Adhikary,
Mr. Pradip Sardar,
Mr. Ushananda Jana,
Ms. Susmita Adhikary,
Ms. Doyel Dey
...for the applicant in
the recall application.

Mr. Subir Sanyal,
Ms. Sumouli Sarkar,
Mr. Sudarshan Ghosh

...for the petitioners in
the contempt application.

Mr. Lalit Mohan Mahato,
Mr. Biswabrata Basu Mallick,
Mr. Supratim Dhar

...for the State.

In Re: CAN 1 of 2022 and CAN 2 of 2022

Despite arguments being closed on the recall application on February 15, 2022, the applicant in both CAN 1 of 2022 (for recall) and CAN 2 of 2022 (under Section 340, Criminal Procedure Code), who was the concerned Panchayat Pradhan, being respondent no. 7 in the main writ petition, that is,

WPA 171 of 2022, filed her composite written notes and supplementary written notes of arguments, covering both CAN 1 and 2 of 2022, only on February 25, 2022, although with the leave of Court. Arguments were advanced on both CAN 1 and 2 of 2022 and as many as 15 (fifteen) judgments have been annexed to the said written notes by learned counsel for the applicant in support of both the applications. In such view of the matter, both CAN 1 and 2 of 2022 are taken up for passing orders. There cannot be any impediment in doing so, although only the arguments in CAN 1 of 2022 were recorded to be closed, since both parties had argued substantially on both CAN 1 and 2 of 2022 and the written notes of arguments of the applicant also cover both.

Learned counsel for the applicant-Pradhan argues that the writ petitioners had moved a previous writ petition, bearing WPA No. 20743 of 2021, which was disposed of by the Hon'ble Justice Moushumi Bhattacharya on December 23, 2021 without considering the provisions of Order 23 Rule 1 (3) of the Code of Civil Procedure by not setting aside the notice of motion for removal of Pradhan dated November 23, 2021, which was the subject-matter of the said writ petition. Hence, it is contended, the present writ petition on the same subject-matter or claim is barred. In support of such proposition, learned counsel cites *Visveshwaran Suresh Kumar & Anr. Vs. State of West Bengal & Ors.*, reported at 2018 (1) CHN 472. It is argued that the said first notice of no-confidence motion dated November 23, 2021 would have died a natural death,

had the writ petitioners/requisitionists not come before this court with the previous writ petition. Liberty was granted by the learned Single Judge to move a fresh motion only subject to payment of deficit court fees, which was allegedly not put in by the writ petitioners.

Dealing with such argument before entering into the others, Order XXIII Rule 1 (4) of the Code of Civil Procedure precludes a plaintiff from instituting a fresh suit in respect of the subject-matter of such suit, if no leave is obtained from the court on that score. For applying such principle in the instant case, the context of the Order dated December 23, 2021 passed by the Hon'ble Justice Moushumi Bhattacharya is to be considered.

It was clearly recorded therein that the writ petitioners (who are common in both the writ petitions) had prayed for liberty to move a fresh motion for removal of the Pradhan of the concerned Gram Panchayat (present applicant) on the ground that, under Section 12 (10) of the West Bengal Panchayat Act, 1973, the entire process from receipt of the motion by the Prescribed Authority to any action finally taken by it shall be completed within 30 days, which had already expired on December 23, 2021, when WPA 20743 of 2021 was disposed of, since the notice impugned therein was dated November 23, 2021. The learned Single Judge was pleased to dispose of WPA 20743 of 2021 by granting liberty to the petitioners to move a fresh motion under the provisions of the 1973 Act, subject to

payment of deficit court fees to be put in my the petitioners in the course of that day.

In the first place, the present applicant has not elaborated as to how she became aware that the deficit court fees in WPA 20743 of 2021 had not been deposited in time. Even if such allegation were assumed to be correct, the effect of the same would be that the entire order passed in the said writ petition would stand automatically recalled (since the order was recorded to be subject to deposit of deficit court fees), thereby reviving the said writ petition. Not only the condition of the order, but even the disposal of the writ petition by the Order dated December 23, 2021 would then stand automatically vacated. In that case, the principle stipulated in Order XXIII Rule 1 (4) of the Code of Civil Procedure would not come into operation at all.

That apart, in such case, the worst-case scenario against the writ petitioners would be that their previous writ petition would be kept pending and they would have no specific liberty from this Court to move a fresh motion under the 1973 Act. However, even if no such liberty were to be granted by the co-ordinate Bench, the fact would still remain that the first notice of 'No Confidence' motion had already become infructuous, having spent its force due to expiry of 30 days thereafter, within the contemplation of Section 12 of the 1973 Act. Moreover, the conduct of the writ petitioners in seeking withdrawal of the prior writ petition would amount to implied waiver of the previous 'No Confidence' motion.

The subject-matter of the second writ petition (WPA 171 of 2022) was the second 'No Confidence' application dated December 29, 2021 and not the earlier notice of motion dated November 23, 2021. Hence, the bar stipulated in Order XXIII Rule 1 (4) regarding a fresh suit on the "same subject-matter" would not, in any event, be attracted in the instant case.

As far as the allegation of non-deposit of deficit court fees in terms of the order of the Hon'ble Justice Moushumi Bhattacharya is concerned, the present applicant had not appeared and taken such point at the hearing of WPA 171 of 2022. No relief was sought in the said writ petition against the applicant-Pradhan as such, since the inaction of the Prescribed Authority was under challenge and it would be premature for the Pradhan to contend that she had been adversely affected by the direction on the said Authority to act in accordance with the 1973 Act, as no rights of the Pradhan were affected and no stigma was attached to the Pradhan as a result of the order passed in WPA 171 of 2022, as the matter was still at the nascent stage of notice/application of No Confidence motion. Any decision on such motion was yet to be taken by the Prescribed Authority.

Hence, the first argument of the present applicant is negated. Secondly, learned counsel for the applicant-Pradhan argues that the requisitionists did not allow five working days to the Prescribed Authority for taking any decision. Such allegation is entirely baseless since, as discussed in the Order dated January 10, 2022 passed in WPA 171 of 2022, the respondent

no. 6 in the said writ petition, that is, the concerned Block Development Officer (BDO) had already failed to take a decision on the no confidence motion and/or issue a notice pursuant thereto within the stipulated period of five working days from receipt of the motion, as envisaged in Section 12 (3) of the 1973 Act. Subsequent steps under Section 12(10) of the said Act had also not been taken by the BDO, which was another ground for passing the Order dated January 10, 2022, as reflected from the said order itself.

Hence, the second argument of the applicant-Pradhan cannot be accepted as well.

The applicant's third contention is that the petitioners had misled this court for getting the order dated January 10, 2022 "by not serving the notice of motion dated 29.12.2021 to the Pradhan, the respondent no.7 by hand or by registered post".

The affidavit-of-service on record in the file of WPA 171 of 2022 shows that notice was sent at the correct address of the Pradhan, although service had not been completed on the date of passing of order therein, which at least raises a presumption of service. In any event, no relief had been sought or granted in WPA 171 of 2022 against the respondent no.7 therein, that is, the present applicant-Pradhan, hence rendering prior service on the Pradhan redundant.

Thus, the third contention of the applicant does not stand on firm footing as well.

The fourth argument of the applicant, relying on *Kihoto vs. Zachillu*, reported at 1992 Supp (2) SCC 651, is entirely beside

the point. The proposition, that a person changing political affiliation after getting elected should give up his membership of the legislature and go back before the electorate, does not fall for consideration at the stage of considering the alleged inaction of the BDO on receiving a No Confidence motion. Hence, such proposition is also not applicable in the instant case.

Learned counsel for the applicant next relies on *Rajendra Kujur vs. State of West Bengal* [2015(3) CHN (Cal) 508] in support of the argument that the compliance of the formalities prescribed in Section 12 (2) of the 1973 Act are mandatory. It is alleged that such steps were not complied with by the writ petitioners, as a copy of the motion was allegedly sent to a wrong residential address. It is also submitted that, due to such alleged non-compliance of Section 12 (2), no cause of action arose for the Prescribed Authority to act in consonance with Section 12(3) of the 1973 Act. Convoluting arguments are advanced to strengthen the submission that the writ petitioners did not comply with the provisions of law.

However, the allegations of non-compliance are questions of fact or, at best, mixed questions of law and fact. In a recall application after the writ petition is finally adjudicated, there is no scope for entertaining a *de novo* argument on merits. None of the ingredients of review, that is, any error apparent on the face of the record, discovery of new material or some other similar cause is made out in the instant case, which

defeats the validity of such ground, taken by the applicant-Pradhan.

The applicant's counsel seeks to make out a case that the respondent no. 7-applicant, and not the State respondent, is affected by the order under recall. However, the stage is still premature for the applicant to be affected by the said order. The order merely directed the BDO, who is a functionary of the State, and a Prescribed Authority under the governing statute, to comply with the provisions of Section 12 of the 1973 Act. Nothing was held, nor was any specific allegation upheld, by the said order against the respondent no. 7-applicant. Prior to the BDO taking any final decision against the Pradhan under the 1973 Act, the latter has no occasion to be aggrieved. Thus, it remains unexplained as to how such ground of recall can be sustained.

The applicant seeks to make out a high case of operation of the anti-defection law against the writ petitioners and cites *Sahebrao & Ors. Vs. Collector, Jalna* [2010 SCC OnLine Bom 1703] in such context. However, the said allegation has no bearing on the scope of WPA 171 of 2022 or the order passed therein. Therefore, the question of misrepresentation before this court does not arise by any stretch of imagination, which might have justified recall of the order dated January 10, 2022 or referring the matter against the writ petitioners under Section 340 of the Code of Criminal Procedure.

The reference by learned counsel for the applicant to *Ramgulam Vs. Bhagabat Prasad Patel* [(2020) 9 SCC 510] has

no bearing on the present case, since the order under recall did not affect or necessitate prior notice, on the respondent no. 7-applicant, since it is the respondent no. 6 in the writ petition (the BDO) who, as the Prescribed Authority under the 1973 Act, was merely directed to comply with the provisions of Section 12 of the 1973 Act. Any grievance on the part of respondent no.7, if at all, could only arise once such compliance was made by respondent no. 6 and a decision was taken by the latter.

Even the arguments on violation of Articles 102(1)(a) and 191(1)(a) of the Constitution, by placing reliance on *Shibu Soren vs. Doyanand* [(2001)7 SCC 425], are not at all germane to the instant case.

All the more far-fetched is the applicant's argument that Section 213, and not Section 12 of the 1973 Act, is attracted in the present case. The entire ambit of WPA 171 of 2022 was the failure/refusal/neglect of the concerned BDO, as the Prescribed Authority, to comply with the provisions laid down in Section 12 of the Act. Section 213 of the 1973 Act has not been resorted to by the Prescribed Authority at all, hence no question arises as to the applicability of the said provision. Similarly, the Prescribed Authority has not exercised its power under Section 213A of the 1973 Act at all in the present case. So, the argument on that score is entirely misplaced, as is the principle of Natural Justice reiterated in *Israil vs. State of West Bengal & Ors.*, reported at (2001) 1 CHN 374.

Since Section 213A of the 1973 Act is not attracted in the present case at all, it defies logic as to what purpose would be served by the misplaced reliance of the applicant on *Md. Abu Sattar Molla Vs. State of West Bengal* [(1997) 1 CHN 59].

No case of fraud has either been pleaded in detail or proved in the present case at all, hence rendering academic the applicant's reliance on *K.D. Sharma Vs. Steel Authority of India Ltd.*

It defies logic as to how the court was misled by any party in the instant case, for the court to exercise its inherent power by recalling its order or refer the matter for appropriate inquiry/investigation under Section 340, Criminal Procedure Code. Thus, the reference made by the applicant to *Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd.* [(1996) 5 SCC 550] is utterly misplaced.

The applicant's arguments on Order XII of the Code of Civil Procedure and Section 58 of the Indian Evidence Act and the unnecessary references to "the defection law" is totally outside the scope of the present matter. It appears that learned counsel for the applicant has sought to cite any and every decision that counsel could lay his hands on, which are even remotely connected with the key-word "election", without taking the pains of going through the proposition(s) laid down in each of them.

The question of validity of the service of notice of requisition for removal of the Pradhan under Section 12(2) to the Pradhan was neither raised nor decided in WPA 171 of 2022. In any

event, the same would be open for argument before the Prescribed Authority when issuing a notice or taking a decision on the No Confidence motion.

Section 16 of the 1973 Act has no manner of application in the present case, since it is not the action/inaction of the Pradhan but that of the Prescribed Authority (respondent no. 6 in WPA 171 of 2022) which came up for consideration before this court.

The references to *Ramgulam alias Sadhu Patel Vs. Bhagabat Prasad Patel* [(2020) 19 SCC 510], *Jagjit Singh vs. State of Haryana & Ors.* [(2006) II SCC 1], *Pradip J. Mehta vs. Commissioner of Income Tax* [(2008) 14 SCC 283] do not have any relevance in the present context.

No act of fraud or suppression of relevant material, as alleged by the applicant in the present case, is detected from the records, nor is there any relevance of the arguments regarding sufficiency of the motion before convening the meeting as per Section 12, since the same was not adjudicated upon or argued at the relevant juncture.

The consideration as to sufficiency or legality of the motion itself does not fall within the purview of review jurisdiction. It is well-settled that there is extremely little scope of recalling or modifying an order otherwise than in review, particularly since WPA 171 of 2022 was finally disposed of by the order under review. Hence the multiple decisions cited by the applicant on such point are irrelevant.

The applicant's unnecessarily convoluted written notes of arguments, filed extremely late, although with leave of the court, do not have any bearing on either the need for recall of the order dated January 10, 2022 or, for that matter, give rise to any prima facie case to justify reference under Section 340 of the Criminal Procedure Code.

It is, thus, difficult not to conclude that CAN 1 and 2 of 2022 are mere attempts on the part of the Pradhan to espouse the cause of respondent no. 6, the BDO, against whom the directions in the order passed in WPA 171 of 2022 were passed and to go on multiplying numerous citations merely for the sake of protracting the litigation, more so, to procrastinate the consequences of the previously-filed contempt application. There cannot be any other plausible reason to set up the respondent no. 7 in the writ petition, for taking up the cudgel on behalf of the respondent no. 6, against whom the order dated January 10, 2022 was passed.

The several similar judgments cited on violation of Natural Justice, the powers of the Supreme Court under Article 32 of the Constitution, Order VI Rule 16 of the Civil Procedure Code, allegations of malice, professional misconduct, unclean hands, the high ground of violation of Constitutional mandate, interpretation of statutes, etc. have no bearing whatsoever in the facts and circumstances of the present case.

The reckless allegations of fraud, deliberately misleading the court and the like, made by the applicant, are not backed up

by sufficient particulars of pleading and/or any concrete proof at all.

No case, either for recalling the order dated January 10, 2022 passed in WPA 171 of 2022 or for adopting the procedure stipulated in Section 340 of the Criminal Procedure Code, has been made out by the applicant.

The *crème de la crème* of the appellant's arguments is that this court did not have jurisdiction to take up WPA No. 171 of 2022 on the relevant date, for which the matter should be recalled.

However, on the relevant date, that is, January 10, 2022 the urgent matters of the regular Bench, in the absence of the learned Single Judge presiding over the said Bench, had been assigned to this court, as per the direction of the Hon'ble the Chief Justice, who is the master of the roster so far as the determination and assignment of matters is concerned. Thus, there was no irregularity or illegality in this Bench taking up the matter. Thus, the objection as to jurisdiction has to be turned down.

That apart, it is even doubtful whether mere lack of determination as per roster, *per se*, can render a judgment/order null *ab initio* to justify a total recall of the same, if the matter-in-question is taken up and decided by a co-ordinate Bench of same strength as that of the regular Bench usually taking up such matters.

Hence, both the applications, that is, CAN 1 of 2022 and CAN 2 of 2022 are devoid of any merit and are, consequentially,

dismissed with costs of Rs. 2,000/- payable by the applicant-Pradhan to each of the writ petitioners in W.P.A. 171 of 2022 (opposite parties in the present applications) for both the applications, totalling Rs. 18,000/- for all the nine respondents, covering both CAN 1 and 2 of 2022, for the harassment caused by the applicants to the writ petitioners with the obvious intention of protracting the hearing of the contempt application filed by the writ petitioners and to prolong the outcome of the No Confidence motion taken against the applicant/respondent no. 7-Pradhan.

Urgent certified copies, if applied for, be issued to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

Later

On the prayer of learned counsel for the applicant in the recall application, the above order is stayed for thirty days to enable the said applicant to prefer an appeal against the same, if any. The contempt application will be taken up for hearing on March 10, 2022.

Needless to say, in view of the disposal of the applications, all interim orders, apart from the one passed here and now, automatically stand vacated.

(Sabyasachi Bhattacharyya, J.)