

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. No. 44 of 2022

With

I.A. No. C.A.N. 1 of 2022

PANCHANAN MAHATO

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the appellant : Mr. Joytosh Majumdar, Adv.,
Mr. Arjun Roy Mukherjee, Adv.,
Mr. Sougata Mitra, Adv.,
Mrs. Ankita Dey, Adv.

For the State : Mr. Raja Saha, Adv.,
Mr. Subhro Prakash Lahiri, Adv.

For the private respondents : Mr. Dipankar Pal, Adv.,
Mr. Monoranjan Mahato, Adv.

Hearing concluded on : 21.01.2022

Judgment on : 10.02.2022

Kausik Chanda, J.:-

In the writ petition, a motion of no-confidence dated December 9, 2021, against some Sthayee Samiti-members of the Jhalda-II Panchayat Samiti including the writ petitioner/appellant, was challenged. The writ petitioner/appellant was the Karmadhyaksha of the said Sthayee Samiti. The writ petitioner/appellant also challenged a notice dated December 15, 2021, convening a meeting on December 28, 2021, under Rule 17(6)(c) of the West Bengal Panchayat (Constitution) Rules, 1975, issued by the Prescribed Authority /Sub-Divisional Officer of Jhalda Sub-Division, Purulia.

2. By an order dated January 10, 2022, the learned Single Judge dismissed the writ petition.

3. Before us, Mr. Joytosh Majumdar, learned advocate for the appellant, submitted that for the removal of a Karmadhyaksha of a Panchayat Samiti, specific provisions have been engrafted in Rule 18 of the West Bengal Panchayat (Constitution) Rules, 1975. Therefore, the attempt to remove the appellant invoking Rule 17(6) of the West Bengal Panchayat (Constitution) Rules, 1975 is not sustainable in the eye of law.

4. By referring to the requisition notice dated December 9, 2021, it was pointed out that the no-confidence motion against the said members was moved “due to their inactive in their Sthayee Samity.” By placing reliance upon a judgment reported at **(2013) 1 CHN (Cal) 458** (*Ujjal Mondal v. State of*

West Bengal) it has been submitted that a prescribed authority could not convene the meeting for the removal of the members on the basis of such no-confidence motion since the allegations contained therein cast stigma upon the said members.

5. It has also been suggested that the said notice dated December 15, 2021, is defective, vague, and ambiguous since it does not specify whether the meeting was convened for removal of the Sthayee Samiti members or it was a no-confidence motion against the said members.

6. Mr. Majumdar has, further, relied upon a judgment reported at **(2010) 11 SCC 694 (State of West Bengal v. Subhas Kumar Chatterjee)** for the proposition that the Court cannot direct the Government to act contrary to rules and the Constitutional courts having the power of judicial review, have jurisdiction only in case of unjust treatment by State action or inaction.

7. Further, reliance has been placed upon a judgment reported at **(2009) 15 SCC 221 (Madhya Pradesh State Cooperative Dairy Federation Limited v. Rajnesh Kumar Jamindar)** to argue that the Court has jurisdiction to review where an administrative order is perverse or arbitrary as also where there is non-discharge of statutory duty by a statutory authority.

8. Mr. Majumdar lastly relied on paragraph no. 40 of the judgment reported at **(2011) 15 SCC 1 (Chief Information Commissioner v. State of Manipur)** for the proposition that when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the Court should not, in the name

of interpretation, lay down a procedure which is contrary to the express statutory provision. Where a statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden.

9. Mr. Raja Saha, learned advocate appearing on behalf of the State, has submitted that the writ petitioner/appellant was a member of the Sthayee Samiti and he was also the elected Karmadhyaksha. Mr. Saha has submitted that Rule 18 of the West Bengal Panchayat (Constitution) Rules, 1975 is invoked for removal of a Karmadhyaksha retaining his status as a member of the Sthayee Samiti. The relevant no-confidence motion was moved for removal of the appellant as a Sthayee Samiti member. Therefore, Rule 17(6) of the West Bengal Panchayat (Constitution) Rules, 1975, was rightly invoked.

10. Mr. Dipankar Pal, learned advocate appearing for the requisitionists also supported the impugned actions of the State. Mr. Pal adopted the submission of Mr. Saha. He, further, argued that since the no-confidence motion was moved by the required number of members, notwithstanding subsequent withdrawal by some of the requisitionists, there cannot be any ground to interfere with the said motion or the action of the prescribed authority in convening the meeting following the said requisition.

11. In the present case, the process for removal of the members of the Sthayee Samiti was initiated in terms of Rule 17(6) of the West Bengal

Panchayat (Constitution) Rules, 1975. The relevant part of the said Rule 17(6) is quoted below:-

“17. ...

(6)(a) The members of a *Panchayat Samiti* or *Zilla Parishad* or *Mahakuma Parishad* as the case may be, may in a meeting specially convened for the purpose, remove any one or more than one or all members elected by it to any of its *Sthayee Samiti* or all such *Sthayee Samitis* simultaneously, by a resolution carried by the majority of existing members: ...”

12. To deal with the first point as urged by Mr. Majumdar, it is necessary to bear in mind that in terms of Section 125 of the West Bengal Panchayat Act, 1973 a Karmadhyaksha/Chairman is elected from the members of a Sthayee Samiti which implies that to hold the position of Karmadhyaksha, one has to be a member of a Sthayee Samiti.

13. The provisions for the removal of Karmadhyaksha of a Sthayee Samiti have been prescribed under Rule 18 of the West Bengal Panchayat (Constitution) Rules, 1975. On the other hand, the procedure for removal of the members of a Sthayee Samiti has been prescribed under Rule 17 of the West Bengal Panchayat (Constitution) Rules, 1975.

14. If a Karmadhyaksha is removed following the procedure prescribed under Rule 18 of the West Bengal Panchayat (Constitution) Rules, 1975, he may still continue to function as a member of a Sthayee Samiti, but if he is removed as a member of the Sthayee Samiti following the procedure contemplated under Section 17(6) of the West Bengal Panchayat (Constitution) Rules, 1975, he is

removed from the office of Karmadhyaksha *ipso facto*. This position of law will be clear from Rule 17(6)(h) of the West Bengal Panchayat (Constitution) Rules, 1975, which reads as follows:-

“17. ...

(h) When the *Karmadhyaksha of a Sthayee Samiti* who had been elected to the said office on being an elected member of the said *Sthayee Samiti*, is removed under this sub-rule, from the office of the member of the said *Sthayee Samiti*, he shall be deemed to be removed from the said office of the *Karmadhyaksha* at the same time on the ground that he is no longer a member of the said *Sthayee Samiti*;

15. The aforesaid sub-rule in no uncertain term postulates that if a member is removed from Sthayee Samiti in terms of Rule 17(6) of the West Bengal Panchayat (Constitution) Rules, 1975, a fortiori, he is removed as Karmadhyaksha.

16. In the present case the requisition notice was clearly for the removal of the members of the Sthayee Samiti and the meeting was also convened under 17(6)(c) of the West Bengal Panchayat (Constitution) Rules, 1975, for removal of some of the members including the appellant from the Sthayee Samiti. It was, therefore, not necessary to take recourse to Rule 18 of the West Bengal Panchayat (Constitution) Rules, 1975, to remove him as Karmadhyaksha as well.

17. It may be noticed that being posed with the second issue as raised by Mr. Majumdar, the learned Single Judge observed, *inter alia*, as follows:-

“That apart, the language of the requisition and the notice was a bit unhappy perhaps, but since English is not the mother-tongue of any of the parties (or, for that matter, the court), such an error cannot be taken to be fatal to the requisition and/or the notice.

It is clearly expressed beyond doubt in both the requisition and the consequent notice that the motion was of no-confidence of the Sthayee Samity members due to their “inactive” in their Sthayee Samity.

Although no specific meaning can be attributed to such expression “inactive”, either on syntax or as per the Dictionary meaning, in the present context, such mention or non-mention of specific ground is immaterial and cannot vitiate the requisition and/or notice, since the meeting was to be held for the purpose of removal of a Samity member and/or Karmadhkshyay, as the case may be, for the limited purpose of indicating that the members have lost no-confidence in the said member.”

18. The language used in the notice of motion cannot be said to be stigmatic so as to stall the process of removal of the members. In ***Ujjal Mondal*** case, the allegations of “various illegal activities” were levelled against a Pradhan of a Gram Panchayat. A Coordinate Bench of this Court applied the principle of law as laid down by the Supreme Court in the case reported at **(1999) 3 SCC 60** (***Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta***) with regard to termination of service of a probationer. The relevant paragraph of ***Dipti Prakash Banerjee (supra)*** is quoted below:-

“21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as “*founded*” on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct

an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.”

19. The said proposition of law has been applied by the said Coordinate Bench in ***Ujjal Mondal*** case in the following language:-

“29. The principle of law as discussed in those cases though within the field of service law is squarely applicable in the instant case to interpret section 101 of the said Act relating to bringing a requisition notice of removal on the ground of no confidence. If the removal is due to no confidence only, it is suffice to bring a motion and it will be called as no confidence motion simpliciter, but if the no confidence motion for removal is on allegation of any illegality or on allegation of any disqualification or on allegation of misuse of power, it is not a “no confidence motion for removal” simpliciter, but it is coloured with a foundation without any adjudication, which would be bad in law.”

20. The present motion of no-confidence cannot be viewed as “founded” on any allegation. The motion was not on “any illegality or on allegation of any disqualification or on allegation of misuse of power” as observed in the ***Ujjal Mondal*** case. In the letter of requisition for no-confidence, the common singular ground “inactive” was taken against as many as twenty-one members who were sought to be removed. It is difficult to accept that such a statement alone forms the foundation. The same was rather, in our view, only a “motive” for removal without intending to invite any civil consequences. Therefore, we do

not see any reason to interfere with the impugned proceedings on the ground that the motion of no-confidence was stigmatic.

21. Moving to the third point, as argued by Mr. Majumdar, we find that the said notice dated December 15, 2021, was issued under Rule 17(6)(c) in “Form 1F” as appended to the West Bengal Panchayat (Constitution) Rules, 1975.

22. The prescribed authority retained the words “Rule 17(6)(c)”, “members” and “removal of / lack of confidence against Member(s)” by striking off the other words/figures in the Form. The relevant part of the said notice dated December 15, 2021 is quoted below:-

“FORM 1F

[see rule 17(6)(c), ~~18(6)(e) and 22(4)(e)~~]

Form of notice of meeting on motion for removal of ~~Member(s)**/Sanchalak(s) of ———/Upa Samiti(s) of Gram Panchayat, Member(s)/Karmadhyaksha of Sthayee Samiti of Panchayat Samiti/Mahakuma/Zilla Parisad.~~

To,
Sri/Smt. Panchanan Mahato, Member, Hirapur-Adardih/
PS-22,
Vill.-Tigra, PO.-Mutukura, PS.-Kotshila, Dist.-Purulia, Pin-
723213.

In pursuance of provisions under rule **17(6)(c), ~~18(6)(e) and 22(4)(e)~~** of the West Bengal Panchayat (Constitution) Rules, 1975, as subsequently amended, notice is hereby given for a meeting of the ***Jhalda-II Gram Panchayat**/Panchayat Samiti/ Mahakuma——/Zilla Parisad/Upa Samiti** ofX.....~~Gram Panchayat~~ **/Purta Karya O Paribahan Sthayee Samiti of Jhalda-II Panchayat Samiti/Mahakuma/Zilla Parisad** to be held at the hour, place and on the date shown below for consideration of the motion for removal of /** lack of confidence against

Member(s)**/~~Sanchalak(s)~~/Karmadhyaksha and for taking decision on it. ...”

23. We do not find any difficulty in reading the said notice dated December 15, 2021, as a notice for “for removal” of the Member(s)/Karmadhyaksha of Sthayee Samiti of Panchayat Samiti in terms of Rule 17(6)(c) of the West Bengal Panchayat (Constitution) Rules, 1975, due to “lack of confidence.” We do not see any ambiguity or scope for any confusion in the said notice.

24. The propositions of law as laid down by the Supreme Court, in the judgments cited by Mr. Majumdar, are well-settled and there cannot be any quarrel with such propositions, but in view of the discussion as made hereinabove, we do not see any applicability of those judgments to support the case of the appellant.

25. In view of the discussion, as above, the challenges fail. M.A.T. No. 44 of 2022 along with I.A. No. C.A.N. 1 of 2022 is, accordingly, dismissed.

26. 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.)