

25.01.2022
Sl. No. 10

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**W.P.A. 1159 of 2022
(Through Video Conference)**

**Abu Taleb Gazi
Vs.
The State of West Bengal & ors.**

Mr. Mohinoor Rahaman
Ms. Maria Rahaman

...for the Petitioner.

Mr. Jahar Lal De
Ms. Smita Das Dey

... for the State

Mr. Surajit Basu
Mr. Manoj Kurmi
Ms. Ranu Mondal

... for the respondent nos.6,7 & 8

Affidavit of service is taken on record.

The petitioner is the Karmadhyaksha, Purta Karya O
Paribahan Sthayee Samity of Hasnabad Panchayat Samity.

The petitioner is aggrieved by the requisition notice dated January 10, 2022 as also the notice dated January 14, 2022 issued by the prescribed authority. The requisition notice dated January 10, 2022 was brought by some of the members of the said Panchayat Samity for removal of the petitioner under provisions of Rule 18(6)(b) of the West Bengal Panchayat (Constitution) Rules, 1975 (hereinafter referred to as 'the said Rules'). The petitioner is aggrieved by the issuance of the notice dated January 14, 2022 issued by the prescribed

authority fixing the date for removal of the Karmadhyaksha on January 27, 2022. The ground for challenge is that the requisition/motion was not sent to the Karmadhyaksha by both the modes as contemplated under Section 18(6)(b) of the said Rules. It is contended that the meeting should not be held.

Reference is made to the decision of Gopal Kumar Vs. State, reported in 2015(1)C.H.N. (Cal) 445.

Mr. Surajit Basu, learned Advocate appearing for the requisitionists submits that requirement for service of the motion, by both the modes as contemplated under Rule 18(6)(b) of the said Rules was not followed in view of the fact that the petitioner had stopped attending the office of the Panchayat Samity and as such, there was no use in sending the notice to the petitioner by registered post and delivery of the same by hand as per the said Rules was not possible.

Mr. De, learned Advocate for the State and Mr. Basu, learned Advocate for the requisitionists submit that the office bearer purposely avoided service and he could not be found either at the residence or at the Samity office. Instructions were also given to the staff not to accept any letter on behalf of the petitioner. Under such circumstance, compliance of the said Rules had become extremely difficult. When the petitioner had received service by one mode, the same should be taken as good service and the meeting should proceed.

Admittedly, a copy of the motion was delivered by registered post at the residence of the Karmadhyaksha. However, another copy was neither sent by the registered post to the Panchayat Samity office or delivered by hand at the office.

Having considered the provisions of law and the decision of Gopal Kumar (supra), this Court is of the opinion that the provisions of service of motion upon the office bearer sought to be removed are pari materia with Section 12(2) of the West Bengal Panchayat Act, 1973. They are mandatory and as such, the requisitionists ought to have followed the provisions as provided by the said Rules, which is as follows :-

“ one copy of the motion shall be delivered to the concerned Karmadhyaksha either by hand or by registered post at the *Panchayat Samity* or *Zilla Parishad* office, as the case may be, and another copy shall be sent by registered post at his residential address.”

The relevant portion of Gopal Kumar (supra) is quoted below:

“Thus, the requirements of sub-Section 2 are as follows:-
 (i) One-third of the existing members of the Gram Panchayat subject to a minimum of three members shall sign a motion in writing.
 (ii) The motion in writing will record their lack of confidence against the Pradhan or the Upa-Pradhan or their intention to remove the Pradhan or the Upa-Pradhan
 (iii) The party affiliation or independent status of each of such members shall be indicated in the motion.

(iv) The motion must be delivered in person through any of the members or sent by registered post to the Prescribed Authority.

(v) One copy of the motion shall be delivered to the concerned office bearer either by hand or by registered post at the Gram Panchayat office.

(vi) Another copy of the motion shall be sent by registered post at the residential address of the concerned office bearer."

Thus, in view of the non-compliance, the requisition dated January 10, 2022 and the notice dated January 14, 2022 are set aside and cancelled. The meeting shall not be held on January 27, 2022. All actions taken on the basis of the requisition are set aside.

The right of the requisitionists to remove their leader in accordance with law is a democratic right which has been repeatedly upheld by the Apex Court and also this Court.

Under such circumstances, the requisitionists are granted liberty to bring a fresh requisition in accordance with law. If such requisition is brought, the same shall be reached to its logical conclusion in accordance with the provision of Rules 18(6)(b),(c),(d),(e) and (f). The bar under Rule 18(6)(g) shall not be applicable.

It is further made clear that the prescribed authority shall be entitled to seek police protection and if such request is made, the police authority shall render all support to the requisitionists as also to the prescribed authority without any delay and laches. It is also made clear that if the Pradhan tries

to evade service of requisition then the requisitionists shall be entitled to serve the same in his office, through his secretary or assistant and if, such service is not accepted, then the requisitionists will be entitled to paste the same at the office of the Pradhan in addition to sending the same by registered post to the residence of the Pradhan.

With the above observations, this writ petition is disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order as also on the learned Advocates communication.

(Shampa Sarkar, J.)