

D/L
Item No. 1
18.02.2022
KOLE

**MAT 183 of 2022
With
IA No. CAN 1 of 2022**

**Hosnewara Molla
-Vs.-
The State of West Bengal & Ors.**

*Mr. S. Bandyopadhyay,
Mr. A. Kr. Singh,
Mr. P. Deb,
Mr. J. Chakraborty,*

...for the appellant.

*Mr. Lalit Mohal Mahata,
Mr. P. B. Mahata,*

...for the State.

*Mr. P. Halder,
Mr. S. Panja,
Mr. P. Das,*

...for the respondent nos. 8 to 12.

*Mr. B. Basu Mallick,
Mr. R. Halder,*

...for the private respondent nos. 13, 14 and 15.

By consent of the parties, the appeal and the application are taken up for hearing together.

Admittedly, this is the fifth round of litigation whereby the Pradhan of Sahajadpur Gram Panchayat under Jaynagar II Block, District – South 24 Parganas, has attempted to resist her removal.

In the last round of litigation, the requisition for her removal was set aside by a Single Bench of this Court on the ground that the said requisition cast a stigma upon her. While setting aside the entire process the learned Single Judge observed as follows:-

“ This Court has not expressed any opinion on the competence of the Pradhan to continue in office as the issue shall be decided at the meeting when called for.

The prescribed authority shall be entitled to call for police help if the situation so demands and the police authorities shall ensure and take prompt action so that all police support is given. Delay or laches on the part of the police authority shall be viewed strictly. It is also made clear that if the pradhan tries to evade service of the requisition then the requisitionists shall be entitled to serve the same in her office through her 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 both the modes prescribed by law.

With the above observations, this writ petition is disposed of. There shall be no order as to costs.”

Following the said liberty granted by the learned Single Judge, the prescribed authority convened a meeting on 16th February, 2022. Challenging the aforesaid order of the learned Single Judge, this appeal was filed on February 15, 2022, by the Pradhan. During the pendency of the appeal, the meeting was held and the motion for removal of the Pradhan was carried through by a majority members of the gram panchayat; as a consequence thereof, the appellant has been removed as Pradhan of the said Gram Panchayat.

Before us, Mr. Bandyapadhyay, learned advocate has raised issues with regard to the service of the requisition upon the Pradhan. Admittedly, the requisitionists served the requisition upon the Pradhan by registered post at her office address. Simultaneously, a hand service at her office address was also effected. But those two services were accepted by the Secretary of the said Panchayat on behalf of the Pradhan but not by the Pradhan herself. Another copy of the

requisition was sent by registered post to her residential address on February 2, 2022, which came back with the postal endorsement 'Refused' on February 7, 2022.

Mr. Bandyopadhyay by referring to Section 12(2) of the West Bengal Panchayat Act, 1973 has submitted before us that it is the requirement of the statute that notice of requisition has to be personally served upon the Pradhan being the concerned office bearer. In the present case, the Secretary of the gram panchayat could not receive the notice on behalf of the Pradhan and, therefore, the statutory requirement of Section 12(2) has not been satisfied. It is the further case of Mr. Bandyopadhyay that the prescribed authority while convening a meeting under Section 12(3) must satisfy itself with regard to the requirement of Section 12. In this case, such satisfaction could not be arrived at by the prescribed authority since service of notice upon the Pradhan was not complete in terms of Section 12 of the Act.

Mr. Pankaj Halder, representing the requisitionists, Mr. Basu Mallick, representing the respondent nos. 13, 14, and 15, and Mr. Mahata, appearing for the State have jointly supported the action of the prescribed authority in convening the meeting. They submitted that the service of requisition upon the Pradhan was effected in terms of Section 12(2) of the Act and, therefore, the meeting cannot be said to have been held illegally.

The requirement of Section 12(2) is that firstly, a copy of the requisition has to be served upon the relevant office bearer (Pradhan or Upa-Pradhan) personally in the office of

the Panchayat either by personal service or by registered post. Another notice of requisition has to be sent only by registered post to the residential address of the office bearer.

The fact remains that in this case, the requisitionists in terms of section 12(2) sent a copy of the requisition by registered post to the Pradhan at her office address. It was addressed to the Pradhan only but it was received by the Secretary of the concerned Panchayat. A Secretary of a Panchayat is expected to discharge his functions as entrusted by the Pradhan and it is quite normal for a Secretary to receive any communication which has been addressed to the Pradhan. In our view, the normal course of business requires a Secretary to receive any notice addressed to a Pradhan and bring it to his notice. A presumption has to be drawn in such a case that the notice has been served upon the Pradhan. The burden lies upon the Pradhan to rebut such presumption in the event he denies the service of notice.

The service upon the Pradhan has been seriously disputed in this case, but no averment has been made either in the writ petition or in the stay application filed in this appeal that the Secretary did not bring the said requisition to her notice. No allegation has been made that the Secretary acted in collusion with the requisitionists or otherwise did not act *bona fide*. It has already been noted that the copy of the requisition which had been sent to her residential address, came back with the endorsement 'refused'. Such refusal clearly shows that the Pradhan tried to evade service of the requisition upon her.

The learned Single Judge granted liberty to the requisitionists to serve a copy of the requisition upon the Secretary of the Panchayat, in the event, it was found that the Pradhan was evading service.

In these facts and circumstances of the case, we are of the opinion that the requirement of Section 12(2) has been satisfied by the requisitionists. Therefore, the meeting which was convened by the prescribed authority does not call for any interference. The order impugned in this appeal is upheld.

MAT 183 of 2022 and IA No. CAN 1 of 2022, are accordingly, dismissed.

Urgent photostat certified copies of this order be supplied to the parties, if applied for, as early as possible after compliance with the required formalities.

(Arijit Banerjee, J.)

(Kausik Chanda, J.)