

2.3.2022
Court No. 19
Item no.7
sn

W.P.A. No. 3561 of 2022

**Jyostna Patra
Vs.
The State of West Bengal & Ors.**

Mr. Mahim Sasmal

.....for the petitioner.

Mr. L.M. Mahata

Mr. P.B. Mahata

....for the State.

Mr. Debbrata Saha Roy

Mr. Debasish Banerjee

Mr. S. Naskar

..for the respondents 5 to 14

This is the second attempt of the Pradhan of Nanda Kumar Pur Gram Panchayat, Village and Post Office Nanda Kumar Pur, Police Station Raidighi, District South 24 parganas to disrupt the meeting, for removal of the Pradhan. The meeting was originally fixed on February 28, 2022, but has been shifted to March 4, 2022 for reasons beyond the control of the prescribed authority.

The petitioner has alleged that the motion brought on February 27, 2022 was not served upon the petitioner. The petitioner further submits that the prescribed authority failed to satisfy himself about the compliance of Section 12(2) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act).

The specific case of the petitioner is that the requisitionists had never attempted to serve the motion upon the Pradhan either at the office or at the residence. The petitioner submits that an undated motion pasted on the wall of the Pradhan's office could not be accepted as proper compliance of the provisions under Section 12(2) of the said Act. The motion was neither delivered at the office physically nor sent to the residence as required by the statute. A copy of the motion, which was hung at the office, has been produced before this Court by the petitioner.

The learned advocate for the requisitionists have handed up the track reports downloaded from the website of the postal authority which indicates that the postal articles containing the motion which was sent to the petitioner at the office as also at the residence have not been delivered, as the same was refused. The said documents are taken on record.

The petitioner on the other hand has handed up envelopes addressed to the petitioner which were sent to the residence and office of the petitioner, in which endorsements have been made 'as refused to accept', by the postal authorities.

It is the contention of the petitioner that the said envelopes were supplied by the postal authority. Strangely, the petitioner was handed over the

envelopes by the postal authority instead of sending the same to the addressee. The petitioner submits that the said envelopes contained a communication made to the prescribed authority containing the order passed by this Court on an earlier occasion, but did not contain the requisition.

The prescribed authority has produced a report before the court with supporting documents. It appears that satisfaction was made by the prescribed authority. The statements of the requisitionists about mode of service was taken. The secretary was also questioned and the secretary submitted that between February 15 to February 21, 2022, the said secretary was not in the office and he did not know about the motion. He was not in a position to accept the motion as he did not have any contact with the Pradhan.

The Executive Assistant of the Gram Panchayat submitted a letter before the prescribed authority on February 18, 2022 indicating that on February 17, 2022 and February 18, 2022, he was engaged in some other works and as such he was not able to perform his duty at the gram panchayat office.

It is clear from the statements of the secretary and the executive that the said officials were not available in the office of the Gram Panchayat when the motion was sought to be served. Such statements

corroborated the statements of the requisitionists. It is also evident that the Pradhan of the Gram Panchayat office had no contact either with his secretary or with his assistant and was not attending the office.

It is submitted by the petitioner that as the programme of “Duare-Sarkar” was going on, the petitioner was engaged in the said programme. The Secretary had submitted to the contrary that he was engaged in the Duare-Sarkar programme and he did not have any contact with the Pradhan.

A copy of the motion was pasted in the outer wall of the office, which has been received by the Pradhan, but it is alleged that the said motion was undated. The motion was also sent by registered post to the office as also to the residence of the Pradhan. The postal endorsements show that the postal articles were refused. Strangely, both the envelopes with the endorsement have been produced by the Pradhan, although those were supposed to be returned to the sender. The track reports produced by the requisitionist confirm the endorsement:- ‘refused’.

The prescribed authority has stated that the requisitionists were called for a meeting for recording his satisfaction. The prescribed authority was informed that the No Confidence motion could not be

served in the office on February 17, 2022 and on February 18, 2022. Neither the Executive Assistant nor the Secretary were present in the office. Thus, the motion was pasted at the other wall of the office.

This Court had allowed the motion to be pasted at a conspicuous place in the office, in case, the Pradhan could not be served. The prescribed authority thus satisfied himself on such mode of delivery of the motion as was permitted by the Court. Receipts showing that the motion sent by registered post to the office and the residence of the pradhan was also produced by the requisitionists before the prescribed authority, which has been handed over to the Court.

The requisitionists also made a video recording of the action of pasting the requisition in the outer wall of the gram panchayat office and a CD was produced before the prescribed authority.

Thus, from the above facts, it is clear that the requisitionists made every attempt to comply with the provisions of Section 12(2) of the said Act. The Pradhan does not deny the fact that the motion was affixed on the outer wall of the gram panchayat office.

The fact whether an undated motion was pasted at the outer wall of the petitioner is not an issue. The prescribed authority satisfied himself on

the documents which has been referred to hereinabove and found that there had been substantial compliance of the provisions of Section 12(2) of the said Act.

The Court finds the Pradhan to be irresponsible. She was not available in her office at least between February 15, 2022 to February 21, 2022 as per the statement of the secretary. When the programme of Duare-Sarkar was going on, the Pradhan should have been an active participant in the programme, instead of sending the secretary to do the job. However, the correctness of the statements of the secretary is not a matter to be decided in this proceeding, but the very fact that the Pradhan was not available in the office itself reflects the inefficient and callous attitude of the Pradhan towards her duty. The Pradhan has been aware of the fact that the requisitionists wanted to remove her, all along.

The first requisition failed as the prescribed authority failed to take steps in accordance with law. The requisitionists were not at fault. The second requisition had been attempted to be frustrated by ensuring that none would be available in the office of the Gram Panchayat for service of the motion. Whether the copy of the motion, which was pasted at

the outer wall, was dated or undated makes no different in the peculiar facts of this case.

The Pradhan was at liberty to approach the prescribed authority and raise her objection when she discovered the undated motion pasted on the wall. The factum of pasting of the said requisition is not disputed. Whether the postal envelopes which were handed over to the Pradhan, with endorsement refused contained the motion or contained other documents is not for the writ court to adjudicate. This is not a trial. All that the court is required to see is whether the prescribed authority proceeded in accordance with law. The contention of the prescribed authority is clear.

The requisition was submitted before the prescribed authority. The secretary was not in office between 15 to 18th February and the executive assistant was not in the office on 17th and 18th February, 2022, when the requisition was attempted to be served. The requisitionists thus pasted the requisition on the outer wall of the office of the gram panchayat. A video recording of the incident was incorporated in a CD, which was submitted before the prescribed authority. The postal receipts showing that the motion was sent by registered speed post to the office and the residence of the Pradhan on

February 18, 2022, were submitted before the prescribed authority.

The law specifically provides that the motion has to be acted upon and the notice has to be issued within five working days. The date of refusal of the postal articles is not relevant in the facts and circumstances of this case.

The prescribed authority, who called a meeting on February 18, 2022 was satisfied by the attempts made to serve the motion in the office of the gram panchayat.

He accepted the contentions that the same was affixed at a conspicuous place and the video recording was produced before the prescribed authority in support of such contention. Liberty to affix/paste the said motion was granted by this Court. The factum of sending the same to the residence by registered speed post was ascertained by the prescribed authority on the basis of the postal receipts, which were submitted before the authority.

Nothing further remains to be decided in this writ petition.

This Court cannot enter into a trial with regard to the contentions of the Pradhan.

The documents produced by the parties are taken on record. Let the same kept in a sealed cover.

The Pradhan has sufficient time to mobilise support in her favour before the meeting as she has enough time to deal with the fact that the members have decided to remove her in accordance with law.

The Court is not required to hold a trial in order to ascertain the correctness of the statement of the Pradhan. The requisitionists have a democratic right to remove the Pradhan in accordance with law.

The writ petition is disposed of.

There will be, however, no order as to costs.

The meeting will be held as per schedule.

All parties are act on the basis of the server copy of this order.

(Shampa Sarkar, J.)