

S/L 05
03.03.2022
Court No.19
Cp

WPA 3716 of 2022

Sudhir Mahato
Vs.
The State of West Bengal & Ors.

Mr. Shuvro Prakash Lahiri

... for the Petitioner.

Mr. Dipankar Pal
Mr. Manoranjan Mahata

.....for the respondent nos. 10, 11, 12 & 13.

Mr. Biswaroop Bhattacharya
Ms. A. Dey

... for the respondent nos. 15 to 19.

Mr. Lalitmohan Mahata, Sr. Govt. Advocate
Mr. Prasanta Behari Mahata

....for the State.

The petitioner is the Pradhan of Nowahatu Gram Panchayat, District – Purulia. The petitioner has challenged the notice issued under Form – 1E of Sub-Rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975 (hereinafter referred to as ‘the said rules’) calling for a meeting on March 4, 2022 for removal of the Pradhan.

Mr. Pal, learned advocate represents some of the requisitionists. Mr. Bhattacharya, learned advocate represents the other members, who are supporting the Pradhan. Mr. Mahata, learned senior government

advocate represents the prescribed authority and other State authorities.

Mr. Pal and Mr. Mahata both submit that the writ petition has been filed on a completely wrong premise inasmuch as, the requisition dated January 7, 2022 was not the subject matter of the notice issued by the prescribed authority calling for the meeting for removal of the Pradhan. Another requisition was brought on February 22, 2022 which was received by the prescribed authority on February 22, 2022 and also by the Executive Assistant of the office of the Pradhan. The Pradhan was aware of such notice in view of the fact that the Executive Assistant had accepted the said requisition.

To this, Mr. Lahiri, learned advocate appearing on behalf of the Pradhan, submits that the purported requisition which has been referred to by the requisitionists is undated. An undated motion was served in the office of the prescribed authority. That the Pradhan received the said undated notice in his residence only after the prescribed authority issued the notice on February 24, 2022. He submits that when the law prescribes a thing to be done in a particular way, it should be done in that way or not at all. He also submits that any letter or notice or requisition without any date would carry no value in

the eye of law and the prescribed authority could not have acted upon an undated motion. According to him, absence of the date in the motion would have a cascading effect in the ultimate result of removal as the statute provides time lines with regard to actions to be taken by the prescribed authority on the basis of the motion.

Mr. Mahata submits that the date of receipt of the motion should be calculated as the date of the motion itself. He submits that such technical irregularities should not stand in the way.

Mr. Bhattacharya supporting Mr. Lahiri, submits that the other members were not even aware of the subsequent requisition which was purportedly brought on February 22, 2022. Such members have a right to participate in the meeting and, as such, they have a right to inspect the records before the prescribed authority to ascertain who were the members who had brought the requisition and when the same was brought.

The contention of the Pradhan that the requisition was received at the residence only on February 27, 2022 and the meeting was called prior to the same is not relevant as the date of posting the motion to the residence of the Pradhan was prior to the issuance of the notice under Form 1E.

The background leading to such proceeding before this court is relevant for determination as to whether the undated motion should be accepted by the court as a valid motion. On January 7, 2022 the requisitionists brought a motion. The petitioner received the said motion. No steps were taken on the basis of the said motion within the statutory period. Thereafter, the impugned notice dated February 24, 2022 was issued fixing the date of the meeting on March 4, 2022 for removal of the petitioner (Pradhan). Clearly the impugned notice dated February 24, 2022 was issued beyond the statutory period, if the requisition dated January 7, 2022 was acted upon. The respondents/requisitionists and the prescribed authority submit that the motion which was acted upon was brought subsequently on February 22, 2022. The motion which was brought on February 22, 2022 and allegedly received by the petitioner on February 27, 2022 is a replica of the motion dated January 7, 2022. The serial numbers of the members mentioned in the undated motion are the same as the earlier one. The writing below “copy forwarded for information”:- are the same and identical. Only the date has not been mentioned. There is no difference between the two motions. The subsequent motion is an exact copy of the motion dated January 7, 2022. This

creates doubt in the mind of the court about the circumstances under which the undated motion was acted upon by the prescribed authority. Thus, the contention of Mr. Mahata that the date of service of the motion should be treated as the date of the motion cannot be accepted in view of the facts mentioned hereinabove. The fate of the earlier motion is not evident. The prescribed authority is also silent about the earlier motion.

Moreover, not mentioning the date may be a careless mistake or a technical flaw, but in the facts of this particular case, the requisitionists who are elected members of the gram panchayat and representatives of the people should have acted in accordance with law and taken care that such requisitions and motions were not issued in a reckless and careless manner. The provisions of law have given the requisitionists ample power to remove the Pradhan, for lack of confidence. The petitioner is an elected member and was elected by the members of the gram panchayat, as the Pradhan, at a meeting held as per law. As such, when the requisitionists exercise their power to remove the Pradhan only by bringing a motion of no confidence, to which, the Pradhan does not even have any opportunity to oppose, such motion must be brought with responsibility and with the diligence it

deserves. Unless corroborated by cogent evidence the factum of bringing the motion on February 22, 2022 cannot be proved. That would only lead to consumption of more time. Instead, the court is of the opinion that in order to dispel all doubts and to bring transparency, the requisitionists may be given liberty to bring a fresh requisition in accordance with law. The undated requisition should not be acted upon

Under such circumstances, the meeting scheduled to be held on March 4, 2022 and the notice dated February 24, 2022 are set aside and cancelled. Also, the undated requisition which was purportedly acted upon, accordingly, is set aside and cancelled.

In my opinion, the provision for removing an elected representative such as the Pradhan is of fundamental importance to ensure the democratic functioning of the institution as well as to ensure the transparency and accountability in the functions performed by the elected representatives. These institutions must run on democratic principles. In democracy, all persons heading public bodies can continue provided they enjoy the confidence of the persons who comprise such bodies. This is the essence of democratic republicanism. If the Pradhan has lost support of the majority of the members, he/she cannot remain in office for a single day.

The requisitionists are granted liberty to bring a fresh requisition with immediate effect in accordance with the provisions of Section 12(2) of the said Act. If such requisition is brought, the prescribed authority shall act and proceed in terms of the provisions of Section 12(3) and 12(4) of the West Bengal Panchayat Act, 1973 in order to reach the requisition to its logical conclusion. The time period prescribed by the statute shall be strictly adhered to. The bar under Section 12(11) of the said Act shall not apply.

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 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 shall be no order as to costs.

All parties are to act on the basis of the server copy of this order and on the basis of learned Advocate's communication."

(Shampa Sarkar, J.)