

10.03.2022
Item no.8.
Court No.6.
AB

M.A.T. 307 of 2022
With
IA CAN 1 of 2022

Jyotsna Patra

Vs

The State of West Bengal & Others

Mr. Mahim Sasmalfor the Appellant.

Mr. Debabrata Saha Roy,
Mr. Debasish Banerjee,
Mr. Subhankar Das,
Mr. Supreem Naskar
.....for the Respondent 5 to 14.

Mr. Anirban Ray,
Mr. Raja Saha,
Mr. Biswabrata Basu Mullickfor the State.

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

The appellant has challenged an order dated March 2, 2022, passed by the learned Single Judge dismissing the writ petition.

The challenge before the learned Single Judge at the instance of the appellant was in relation to the propriety of a meeting scheduled on March 4, 2022, for her removal as the Pradhan of Nandakumarpur Gram Panchayat.

It is the contention of the appellant that the service of the notice of motion for her removal was not

in terms of Section 12(2) of the West Bengal Panchayat Act, 1973.

It was, further, contended that the Prescribed Authority without arriving at any satisfaction as to the compliance of Section 12(2) had convened the meeting.

It was the finding of the learned Single Judge that two copies of notice of motion were sent to the appellant; one at her office and another at her residence. Both the notices came back with the endorsement “refused”. The learned Single Judge further found that pursuant to an order passed on an earlier round of litigation, a copy of the requisition notice also was affixed to the outer wall of the concerned Panchayat.

The learned Single Judge also found that the Prescribed Authority only after being satisfied as to the service of notice, convened the meeting on March 4, 2022.

Before us, it has been strenuously argued by the appellant that she was not served with the notice of motion. She subsequently collected the postal articles from the post office and found that there was a lawyer’s notice inside the envelope, but no requisition notice was found inside the envelope.

It has further been submitted that the notice of motion, affixed on the wall of the Panchayat, was undated. Learned advocate for the appellant has made

over a paper to us claiming the same to be the original notice of motion, which was allegedly pasted on the outer wall of the Panchayat office. He submits that since the said notice was undated, the meeting following the said notice is illegal.

We are not satisfied with the argument as advanced by the appellant.

It is very difficult for us to accept the said paper as the original notice of motion. The said alleged notice is fresh and unsoiled. The paper does not bear any feature to suggest that the same was affixed to the outer wall of the Panchayat with glue for some days.

If the postal articles come back with the endorsement “refused”, a presumption has to be drawn that service was effected. Though a direction was passed on an earlier round of litigation to paste a notice in a conspicuous place if the Pradhan refuses to accept service, we are of the view that substituted service has not been contemplated under the West Bengal Panchayat Act, 1973 and therefore, it is inconsequential whether the notice which was allegedly hung on the outer wall of the Panchayat contained any date or not.

We are, however, not in a position to decide the factual issue whether the notice was displayed or whether the postal articles which were sought to be

served on the Pradhan contained any document other than the requisition notice.

Admittedly, following the meeting held on March 4, 2022, the Pradhan was removed by the majority-members. If the appellant desires to challenge her removal on any other ground other than non-service of notice, she will be at liberty to do so as per law.

Since we have not called for affidavits, the allegations in the stay petition are deemed not to be admitted by the respondents.

MAT No.307 of 2022 stands dismissed along with IA CAN 1 of 2022.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)