

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELALTE SIDE

Before: Hon'ble Justice Shampa Sarkar

W.P.A. No. 4584 of 2022

Tanuja Begam Laskar
Vs.
The State of West Bengal & ors.

For the petitioner	: Mr. Bijoy Adhikary Mr. Nani Gopal Chakraborty Mr. Amitava Pyne Ms. Ushananda Jana Ms. Susmita Adhikary Ms. Doyel Dey
For the respondent nos.7-15	: Mr. Saptanshu Basu..Sr.Adv. Mr. Sudharshan Ghosh Ms. Mrinalini Majumder
For the State	: Mr. Lalit Mohan Mahata Mr. Raja Saha Ms. Tanusree Chanda

Hearing concluded on: 16.03.2022

Judgement on: 29.03.2022

Shampa Sarkar, J.:-

1. The subject matter of challenge is the notice dated March 7, 2022 issued by the prescribed authority under Form 1E, Sub-Rule (2) and Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975, as also the motion dated March 3, 2022 brought by the members, for removal of the Pradhan. The grounds of challenge are as follows:-

- a) The motion was also not served upon the Pradhan by the requisitionists,
- b) The notice under Form 1E, Sub-Rule (2) and Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975, issued by the prescribed authority, was not served upon the petitioner.
- c) The prescribed authority could not have taken steps in view of the pendency of MAT 361 of 2022 and the order dated March 15, 2022 passed therein.

2. The petitioner claims to be the Pradhan of Rajapur Karabeg Gram Panchayat, Jaynagar- I Development Block. The crux of the argument of the petitioner is that the motion dated March 3, 2022 on the basis of which the prescribed authority issued the notice dated March 7, 2022, is not tenable in law, in view of the series of orders passed in respect of similar motions which were brought for removal of the petitioner, from her position as the Pradhan.

3. It is submitted by the petitioner that by an order dated December 23, 2021, passed in WPA 20743 of 2021, a co-ordinate Bench of this Court had granted liberty to the petitioners therein (requisitionists) to move a fresh motion under the provisions of the West Bengal Panchayat Act, 1973. A motion which was brought on November 23, 2021, had not been acted upon within the statutory period. The same was declared to have lost its force. Fresh liberty was

granted. Mr. Pyne and Mr. Adhikari, learned Advocates appearing on behalf of the petitioner submit that the said order dated December 23, 2021 was defective as the earlier motion dated November 23, 2021, had not been set aside. A recalling application had been filed.

4. The requisitionists brought a motion on the basis of the liberty. Again the said motion was not acted upon. Challenging such inaction, WPA 171 of 2022 was filed.

5. Learned Advocates for the petitioner, next submit that by an order dated January 10, 2022, WPA 171 of 2022 was disposed of ex-parte and a direction upon the prescribed authority to convene the meeting, for removal of the Pradhan, was passed. It is further submitted that both the orders mentioned hereinabove, passed by two different co-ordinate Benches of this Court, were sought to be recalled by CAN 1 of 2022 and CAN 2 of 2022. Further reliance has been placed, on an order dated February 25, 2022 by which the learned Judge, who passed the order dated January 10, 2022 had stayed similar notices issued by the prescribed authority under Form 1E, Sub-Rule (2) and Rule 5B of the said Rules. It is contended that in view of the order of stay passed by a co-ordinate Bench, the motion dated March 3, 2022 and the notice dated March 7, 2022 convening the meeting, ought not to have been proceeded with. It is prayed that

the consequences of the meeting along with the motion and notice under Form 1E of the said Rules, must be set aside.

6. Finally, it is submitted that in view of the order passed by the Hon'ble Appeal Court, dated March 15, 2022 in MAT 361 of 2022, the notices impugned and all consequences flowing therefrom, should be set aside and cancelled.

7. The facts before this Court, in a nutshell, are as follows:-

i) The requisitionists as the majority members of the said gram panchayat, had brought a motion on November 23, 2021 for removal of the petitioner. The said motion was not acted upon by the prescribed authority and had become infructuous due to lapse of time. Challenging such inaction, a writ petition was filed. A co-ordinate Bench of this Court, passed an order dated December 23, 2021, granting liberty to the requisitionists to move a fresh motion under the provisions of the West Bengal Panchayat Act, 1973.

ii) Her Lordship was of the view that the motion had lost its force as the statutory period of thirty days to complete the process, expired on December 22, 2021. On the basis of the liberty, the requisitionists brought another motion. The prescribed authority did not take steps to convene a meeting in terms of Section 12(3) of the West Bengal Panchayat Act, 1973, once again.

iii) The requisitionists moved WPA 171 of 2022 before this Court. A co-ordinate Bench, by an order dated January 10, 2022 disposed of the writ petition with a direction upon the prescribed authority to convene a meeting in terms of Section 12(3) of the said Act, on the basis of the motion of no confidence which was brought within January 22, 2022 and complete the entire process within January 27, 2022.

iv) The petitioner preferred a contempt application, inter alia, on the ground that the order of His Lordship was miscommunicated to the prescribed authority and the notice of the prescribed authority issued pursuant to the order was, contemptuous. The application was registered as CPAN 79 of 2022.

v) On February 25, 2022, the learned co-ordinate Bench passed an order in the contempt application, thereby restraining the prescribed authority from acting on the basis of the requisition brought earlier and also restrained the prescribed authority from issuing similar notices, until further orders.

vi) Thereafter, the recalling applications came up for hearing before His Lordship and by an order dated March 1, 2022, the recalling applications were dismissed and the following order was passed.

“Hence, both the applications, that is, CAN 1 of 2022 and CAN 2 of 2022 are devoid of any merit and are, consequentially, dismissed with costs of Rs. 2,000/- payable by the applicant Pradhan to each

of the writ petitioners in W.P.A. 171 of 2022 (opposite parties in the present applications) for both the applications, totalling Rs. 18,000/- for all the nine respondents, covering both CAN 1 and 2 of 2022, for the harassment caused by the applicants to the writ petitioners with the obvious intention of protracting the hearing of the contempt application filed by the writ petitioners and to prolong the outcome of the No Confidence motion taken against the applicant/respondent no. 7-Pradhan. Urgent certified copies, if applied for, be issued to the parties upon compliance of all requisite formalities.

(Sd/-)

Later

On the prayer of learned counsel for the applicant in the recall application, the above order is stayed for thirty days to enable the said applicant to prefer an appeal against the same, if any. The contempt application will be taken up for hearing on March 10, 2022. Needless to say, in view of the disposal of the applications, all interim orders, apart from the one passed here and now, automatically stand vacated.

(Sd/-)"

(vii) The dismissal of the recalling order by an order dated March 1, 2022 is the subject matter of challenge in MAT 361 of 2022. By an order dated March 15, 2022, the Hon'ble Appeal Court stayed the operation of the order dated March 1, 2022 for a period of three weeks or until further orders whichever was earlier.

(viii) As the earlier interim orders were acted, subsisting, the motion dated March 3, 2020 was brought. The same was acted upon by the prescribed authority and the meeting was fixed on March 14, 2022. The meeting was held and the motion was carried by majority.

8. Mr. Mahata, learned Advocate appearing on behalf of the prescribed authority hands up a bunch of documents in order to demonstrate that the prescribed authority had satisfied himself about the service of the motion dated March 3, 2022, upon the Pradhan. It is pertinent to mention that the learned Judge in the order dated March 1, 2022, clearly mentioned that in view of the disposal of the recalling application, all interim orders passed earlier, apart from the order dated March 1, 2022, stood automatically vacated. The other portion of the order dated March 1, 2022 was stayed by His Lordship for a period of 30 days. The requisitionists brought a motion on March 3, 2021. With regard to the allegation of non-service of the motion, the documents handed over by the prescribed authority show that the motion was served in the office of the gram panchayat and was received by the Secretary of the said office. The Pradhan was not available. Postal receipts have also been produced before this Court, which show that apart from serving the motion upon the Secretary of the gram panchayat, in the absence of the Pradhan in his office, the motion was sent by registered post, both to the panchayat office and also the residence of the Pradhan.

9. The prescribed authority upon being satisfied with regard to the modes of service, issued a notice on March 7, 2022, thereby fixing the date of the meeting on March 14, 2022. He next submits that the documents show that the meeting on March 14, 2022 was held and ten members of the gram panchayat had voted in favour of the motion. Accordingly, the prescribed authority issued a letter to the District Panchayat and Rural Development Officer on March 14, 2022 with a copy to the Secretary Rajapur Karabeg Gram Panchayat , Jaynagar- I Development Block, intimating the authorities, of the resolution that was passed at the meeting. The petitioner/ Pradhan was removed, by majority vote.

10. He further submits that the petitioner and the members in his favour, refused to accept the notice dated March 7, 2022. The peon of the Block office, Sri Biswajit Singha submitted a written intimation before the prescribed authority, from which it appears that Pradhan and some of the other members had refused to accept the notice issued by the prescribed authority. The peon made a second attempt to serve the notice and was accompanied by two officers from the local police station. Such attempt failed. Thus, finding no alternative, the said Biswajit Singha with the help of the police, pasted the notices issued under Form 1E of the said rules at the residence of each of the members, including the petitioner. Photographs along with the letters

of Biswajit Singha have been filed by the prescribed authority, through Mr. Mahata, learned senior government Advocate.

11. Mr. Saptanshu Basu, learned senior Advocate for the requisitionists, also produces photocopies of the receipts obtained from the Secretary of the gram panchayat, indicating that the motion was sought to be served in the panchayat office, which was accepted by the Secretary of the gram panchayat, as the Pradhan was not available.

12. Contrary documents have not been produced by the petitioners. Photo copies of the postal receipts, showing that the motion was also sent by registered post to the office and the residence of the Pradhan have been produced and there is no dispute with regard to such contentions. He further submits that, as the recalling applications had been dismissed and all interim orders passed earlier were vacated by His Lordship by the order dated March 1, 2022, the motion was brought on March 3, 2022. According to Mr. Basu, there was sufficient compliance of Section 12(2) of the said Act. The Pradhan was not available either at the office or at the residence. The requisitionists had no alternative, but to serve the copy of the motion meant for the Pradhan on the Secretary of the panchayat office and the Secretary had received the same. Such receipt has also been produced before this Court.

12. He further submits that this was the third attempt on the part of requisitionists to remove the Pradhan in accordance with the provisions of section 12 of the West Bengal Panchayat Act, 1973. That by filing a contempt application and by misleading the court, the Pradhan has been trying to stall the proceedings.

14. Considered the submissions of the respective parties. The requisitionists brought a motion on November 23, 2022. The motion was not acted upon. The statutory period of 30 days expired on December 22, 2022. Challenging the aforementioned inaction of the prescribed authority, WPA 20743 of 2021 was filed. WPA 20743 of 2021, was disposed of with the liberty to the members, to bring a fresh motion as per law. The motion was brought sometime in the end of December 2021 which was again, not acted upon by the prescribed authority. Thus, challenging the aforementioned inaction, WPA 171 of 2022 was filed. WPA 171 of 2021 was disposed of by an order dated January 10, 2022 with a direction upon the prescribed authority to convene the meeting within January 22, 2022 and to complete the process by January 27, 2022. The order was passed in the absence of the pradhan/petitioner.

15. Aggrieved by the communication of the above-mentioned order issued by the members of the gram panchayat, the Pradhan filed CPAN 79 of 2022. The allegation was that the communication of the

members in respect of the order of His Lordship dated January 10, 2022, was misleading and the notice of the prescribed authority dated February 1, 2022, was also in disregard to the order of this court. By an order dated February 25, 2022, the learned Judge restrained the prescribed authority from acting on the notice dated February 1, 2022 and also restrained the prescribed authority from issuing similar notices, until further orders. Thereafter, the applications were filed by the petitioner, praying for recalling of the order dated December 23, 2022 and January 10, 2022. The said recalling applications were dismissed with cost by order dated March 1, 2022. The earlier interim orders passed on February 25, 2022 were vacated. The requisitionists brought a fresh motion on March 3, 2021. The service of the motion on the Secretary of the Panchayat office, is not in dispute. The fact that the motion was sent by registered post to the office and also to the residence of the Pradhan, is also not in dispute. On two earlier occasions, the requisitionists were denied their right to remove the Pradhan, by moving a motion of no confidence, due to the inaction of the prescribed authority and also in view of the litigations which were initiated by the Pradhan by filing the contempt application and the recalling applications. The recalling applications were found to be frivolous, baseless and founded on unsustainable allegations. Those were dismissed with cost. The restriction upon the prescribed

authority from issuing notices was vacated by the order dated March 1, 2022.

16. The impugned requisition was brought on March 3, 2022. The said requisition does not suffer from any illegality. The requisition is also not barred by the statute as the earlier requisitions/motions had not been acted upon. Thus, even if no liberty had been granted, unless hit by the provisions of Section 12(11), the requisitionists were entitled to bring the requisition as the life of the earlier requisitions had lost their force and had died a natural death, due to efflux of time. The impugned requisition is not a consequence of the order passed either in WPA 171 of 2022, or in WPA 20743 of 2021. Those requisitions expired during the pendency of the recalling applications.

17. This Court holds that there has been sufficient compliance of the provisions of Section 12(2) by the requisitionists and the motion cannot be set aside. The Pradhan was neither available at his residence nor at his office and, as such, the requisitionists rightly served the motion upon the Secretary. In addition to the same, the motion was also sent by registered post to the panchayat office and the residence. Delivery of the motion upon the Pradhan, by one mode would be sufficient compliance as has been held by this court in similar matters. The law envisages that the motion has to be delivered either by hand or by registered post at the panchayat office and sent

by registered post to the residence of the Pradhan. In this case, the motion was delivered upon the Secretary of the panchayat office, as the Pradhan was not available.

18. In the absence of a specific pleading that the Pradhan had been attending the office regularly, yet the motion was not served upon her, the allegation that the motion was not received, is not accepted. On the other hand, the motion has been annexed to the writ petition by the petitioner.

19. With regard to the allegation of non-service of the notice dated March 7, 2022 issued under Form 1E, Mr. Mahata has produced the entire records relating to the removal of the petitioner. It appears that the said notice was not accepted either by the Pradhan or by the members who were supporting the Pradhan. A letter to that effect was submitted before the prescribed authority by Biswajit Singha the special messenger (peon) who went to serve the notice. It has been further submitted that with the help of the police officers those notices were affixed at conspicuous places at the residence of each of the members who had refused the same, including the Pradhan. The letter of the peon and the photographs have been produced before this Court.

20. In view of the order dated March 1, 2022 there was no further restriction on the prescribed authority to issue any notice on the

motion dated March 3, 2022. The law does not prevent the requisitionists from bringing the motion as the earlier motions had not been acted upon. An appeal had been preferred from the order dated March 1, 2022. The Hon'ble Division Bench passed an order of stay of the order dated March 1, 2022, by an order dated March 15, 2022. The motion had been carried by majority vote on March 14, 2022.

21. This Court is of the view that as the motion had been carried by majority and the Pradhan had been removed by majority vote, nothing further remains to be decided by this court.

22. The decisions relied upon by Mr. Adhikary in the matter of ***Ramgulam Alias Sadhu Patel vs. Bhagwat Prasad Patel*** does not apply in this case as the matter relates to an application under Order IX Rule 13 of the Code of Civil Procedure and ex-parte dismissal of a suit. The decision in ***Sarguja Transport Service vs State Transport Appellate Tribunal*** reported in ***AIR 1987 SCC 88*** also, does not help the petitioner as the principles underlying the provisions of Order XXIII, Rule 1, of the Code of Civil Procedure, have been decided.

23. Under such circumstances, the Court does not find any defect in the procedure adopted by the prescribed authority in calling the meeting for removal of the Pradhan by a notice dated March 7, 2022, on the basis of the motion dated March 3, 2022. The prescribed authority had satisfied himself with regard to the service of the motion

upon the Pradhan. The prescribed authority also satisfied himself regarding the other compliances of the provisions of Section 12(2) of the said Act. Thereafter, the prescribed authority issued the notice within five working days from receipt thereof and the meeting had been called on March 14, 2022. There had been sufficient compliance of the provisions of Sections 12(3) and 12(4) by the prescribed authority. The Pradhan was removed from office by majority vote on March 14, 2022.

24. 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 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, she cannot remain in office for a single day.

25. In the decision of *Ujjwal Kumar Singha v. State of W.B.* reported in **2017 SCC OnLine Cal 4636**, it was held that:-

“**5.** The entire impugned judgment and order is supported with cogent reasons and there is no palpable infirmity noticed therein which would warrant any interference in an Intra-Court

Mandamus Appeal. It appears that the appellant/writ petitioner resorted to taking shelter under the high prerogative jurisdiction of the High Court under Article 226 of the Constitution of India only for the purpose of thwarting the well-established democratic principles which govern the running of public institutions such as a Gram Panchayat, being at the lowest tier of self-governance at the village level in the three-tier Panchayati Raj System. In this context, one may take notice of the observations made by this Court in *Farida Bibi v. The State of West Bengal* reported in 2016 (5) CHN (Cal) 258, while following the observations made by the Supreme Court in *Usha Bharti v. State of U.P.* reported in (2014) 7 SCC 663 : AIR 2014 SC 1686, wherein it was observed to the effect that it is the fundamental right of democracy that those who have been elected can also be removed by expressing, 'No Confidence Motion' for the elected person. In an institution which runs on democratic principles, a person can continue to be its head so long he/she enjoys the confidence of the persons who comprised such a body. This is the essence of democratic republicanism which was taken note of by the Supreme Court in *Usha Bharti* (supra).

6. The appeal has no merit and is liable to be dismissed along with the application for stay with exemplary costs assessed at 500 G.Ms. which shall be deposited with the State Legal Services Authority for being earmarked for utilisation by the Mediation and Conciliation Committee of the High Court."

26. There was no bar on the part of the requisitionists from bringing the motion. The motion had otherwise satisfied the provisions of Section 12(2) of the said Act. Thus, the Court does not find any irregularity in the procedure adopted by the prescribed authority. The Pradhan who had been removed by the majority vote, cannot continue in office for a single day as the same would not only amount to denial

of a democratic process, but also render the provisions for removal of a Pradhan as nugatory. The entire functioning of the gram panchayat will be hampered. Several attempts have been made by the petitioner to stall such removal. The subject matter of the appeal is neither the motion dated March 3, 2022, nor the notice dated March 7, 2022. The order of the Hon'ble Appeal Court was passed on March 15, 2022 staying the operation of the order dated March 1, 2022, but the motion was moved and carried by the members before the order was passed by the Hon'ble Appeal Court. The subject matter before the learned Appeal Court are the earlier motions and the orders passed by the Hon'ble co-ordinate Benches. The subject matter of contempt, is a separate cause of action. Whether the communication of the members and the notice issued by the prescribed authority on February 1, 2022 amounted to violating the order of the Court, will be decided by the appropriate court. The contempt application shall proceed in accordance with law before His Lordship. Thus, the motion which has been carried on March 14, 2022 has been done in accordance with law. The Pradhan has been removed. The same appears from the communications issued by the prescribed authority, which have been produced before this Court by the learned Advocate for the State respondents. All the documents filed in the Court have been kept on record.

27. Judicial review of administrative action is permissible only on the grounds of jurisdictional error, procedural impropriety, procedural irregularity and irrationality. In this case, this court does not find that the motion dated March 3, 2022 and the procedure adopted by the prescribed authority calling the meeting for removal the Pradhan on the basis of the requisition dated March 3, 2022, suffers from any of the defects mentioned hereinabove and as such the court declines to interfere either with the said motion or with the notice dated March 7, 2022. The Pradhan has already been removed by majority vote and the consequences will follow. This court refuses to interfere with the proceedings.

28. The Court does not find any irregularity either with the motion dated March 3, 2022 nor with the notice issued on March 7, 2022. The removal shall be given effect to. However, it is made clear that all such actions shall be subject to the final decision in MAT 361 of 2022.

29. The writ petition is thus disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties, on priority basis.

(Shampa Sarkar, J.)