

16.3.2022  
Court No. 19  
Item no.9  
sn

WPA 4592 of 2022

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

Mr. Suvro Prakash Lahiri .....for the petitioner

Mr. Biswaroop Bhattacharyya  
Ms. Ankita Dey  
..for the Respds.15-19

Mr. Jahar Lal De  
Mr. Benajir Ahmed  
..for the State

None appears on behalf of the requisitionists.

This writ petition has been filed challenging the requisition dated March 4, 2022, brought by eight members of Nowahatu Gram Panchayat under Jhalda 2 Development Block.

a) The first point raised, is that the requisition dated March 4, 2022 suffered from irregularity and should not have been acted upon by the prescribed authority, by convening the meeting for removal of the Pradhan on March 17, 2022.

b) The requisitionists had brought the motion stating as follows:-

“that the undersigned lack to express “No Confidence” against the Pradhan.” According to Mr. Lahiri, the expression ‘lack’ was wrongly used instead of ‘like’ and on this ground alone, the

requisition was vitiated. He submits that the meaning of the motion had changed completely.

c) The next contention is that the prescribed authority in the notice dated March 8, 2022, issued under Form 1E had not struck off the expressions and/or words which were not applicable in this case.

d) Thus the prescribed authority acted in hot haste, in order to support the requisitionists and did not cross out irrelevant portions in the 4th and 5<sup>th</sup> line of the notice under Form 1E.

e) Next the declaration given by some members was not acted upon.

Mr. Mahata submits that the prescribed authority acted in accordance with law and the Pradhan, who had lost confidence of the people, cannot stall a democratic process by such hypertechnical pleas.

Heard the parties. With regard to the use of the expression 'lack' instead of 'like', this Court is of the opinion that the same is a typographical error and a bona fide mistake. The requisitionists have expressed their "No Confidence" by bringing the requisition and had requested the prescribed authority to act in accordance with law. It has been stated that the requisition has been issued pursuant to the provisions of Section 12 of the West Bengal Panchayat (Amendment) Act, 2010. Section 12 was

inserted by the amending Act of 2010. Section 12 deals with the provision for removal of the Pradhan or Upa-Pradhan. Such requisition was brought pursuant to the leave granted by this Court, by an order dated March 3, 2022.

The Pradhan was aware that the requisitionists have been trying to remove him from his office. The earlier requisition was undated and set aside by this Court in WPA 3716 of 2022. The second requisition which has been brought as per the leave of the Court, has now been challenged on the ground of the alleged irregularity, as pointed out hereinabove.

The motion must comply with the provisions of Section 12(2) of the West Bengal Panchayat Act, 1973. In this case, those compliance have been made.

Eight members have brought the “No Confidence” motion, out of fourteen members.

The intention of the requisitionists can be understood from a plain reading of the requisition. Mere typographical error cannot be used as a shield by the Pradhan to avoid the floor tests for his removal on such a hypertechnical objection.

The question as to whether, the requisition can be rejected or disqualified on the ground of such typographical error is totally insignificant as it makes

no difference to the facts of the case. It is not possible to contend that the typographical error indicated anything other than the intention of the requisitionists to remove the Pradhan, for loss of confidence. It is not possible to contend that the typographical error could affect, in any manner, the rights of the petitioner or the members. The intention of the requisitionists, on a plain reading of the said requisition was manifest, obvious and clear beyond doubt. The said error did not alter the meaning of the notice and unless the mistakes are such, which amount to non-compliance of Section 12(2) of the said Act, the requisition cannot be called in question.

Next, the petitioner relies on the declaration by which some of the requisitionists had agreed not to bring the “No Confidence” against the petitioner and as such seeks intervention of the Court by praying for enforcement of the declaration.

This Court is not empowered to enforce the declaration/agreement of private individuals under the writ jurisdiction. The alleged declaration was made on May 5, 2021. This point could have been raised in the earlier proceeding before this Court, as the point was also available to the Pradhan when WPA 3716 of 2022 was moved. In the first round of litigation the earlier requisition was challenged in WPA 3716 of 2022. Thus such prayer for

enforcement of the declaration, is also hit by the principle of constructive res judicata.

Those persons, who had given a declaration not to bring the motion of “No confidence” against the Pradhan, have the option to exercise their voting rights.

This Court under judicial review can only look into the decision making process. The challenge to the action of the prescribed authority of not striking out the non-applicable clause in the sentence beginning “to be held at the hour, place and on the date shown below for consideration of the motion for removal of/lack of confidence against the Pradhan”, is now taken up for consideration.

Section 12(2) of the said Act prescribes that the motion can be brought by 1/3 or not less than three members in writing, expressing their lack of confidence against the Pradhan or recording their intention to remove. In the interpretation of the Court, the motion can be brought expressing the lack of confidence and for removal of the Pradhan. Thus, the notice under Form 1E stating that the meeting had been called “for consideration of the “no confidence” motion for removal of /lack of confidence against the Pradhan”, cannot be faulted. The lack of confidence is a precursor to removal and such meeting is conducted for removal of the Pradhan on

the ground of loss of confidence, in a signal meeting.

No irregularity is found in the notice under From 1E.

The meeting shall be held.

The writ petition is disposed of without any order.

There will be however no order as to costs.

Parties are to act on the server copy of this order and/or learned advocate's communication.

**(Shampa Sarkar, J.)**