

D/L
Item No. 11
24.03.2022
KOLE

**MAT 412 of 2022
With
IA No. CAN 1 of 2022**

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

Mr. Shuvro Prokash Lahiri,

...for the appellant.

*Mr. J. Lal Dey,
Mr. B. Ahmed*

...for the State.

Mr. M. Mahato,

...for the respondent nos. 10 to 13.

*Mr. B. Bhattacharyya,
Mrs. A. Dey,*

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

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

The Pradhan, who is the appellant in this case, has been admittedly removed in a meeting held on March 17, 2022. Challenging the order impugned dated March 16, 2022, it has been contended before us that the motion of no confidence issued under Section 12(2) for his removal was not in conformity with the statute. Our attention has been drawn to the wordings of the motion of no confidence which reads:

‘We the undersigned lack to express no-confidence against Pradhan.’

It has been argued that no meeting could be held following the said motion. The motion of no confidence is a

statutory motion and it must conform to the requirements of the statute.

We feel it appropriate to quote Section 12(2) of the West Bengal Panchayat Act, 1973, which reads:-

“12(2). For the purpose of removal of the Pradhan or the Upa-Pradhan, one third of the existing members referred to in Sub-section (1) subject to a minimum of three members shall sign a motion in writing expressing their lack of confidence against the Pradhan or the Upa-Pradhan or recording their intention to remove the Pradhan or the Upa-Pradhan, indicating party affiliation or independent status of each of such members and either deliver the motion in person through any of the members or send it by registered post to the prescribed authority; one copy of the motion shall be delivered to the concerned office bearer either by hand or by registered post at the Gram Panchayat office and another copy shall be sent by registered post at his residential address.”

A plain reading of Section 12(2) makes it clear that the following are the requirements of a valid motion for the removal of a Pradhan or an Upa-Pradhan.

- (a) the motion has to be signed by one third of the existing members subject to a minimum of three members;
- (b) the motion should express lack of confidence against the Pradhan or Upa-Pradhan;
- or
- the intention to remove the Pradhan or Upa-Pradhan; and
- (c) the motion should contain party affiliation or independent status of each of such members.

The motion which has been challenged before us, in our view, complies with the requirements of Section 12(2). It was signed by eight out of fourteen members. The party affiliation was also indicated and the expression of lack of confidence against the Pradhan in the notice was also apparent.

It was mentioned in the motion that the same was issued under Section 12 of the West Bengal Panchayat (Amendment) Act, 2010, and addressed to the Prescribed Authority. Therefore, there cannot be any difficulty in construing the same to be a motion under Section 12(2) of the West Bengal Panchayat Act, 1973.

As long as the expression of lack of confidence or intention to remove can be gathered from the motion ignoring the insignificant slip in the language of the motion, the motion cannot be said to be invalid.

The learned Single Judge was of the view that due to mistake the word “lack” had been typed as “like.” In our opinion the learned Judge has rightly observed that such typographical mistake was made bona-fide and did not render the motion invalid.

Secondly, it has been argued before us that the notice issued by the Prescribed Authority under Section 12(3) of the West Bengal Panchayat Act is also in breach of the said Act. Our attention has been drawn to the notice to indicate that the Prescribed Authority did not strike off the words “the motion for removal”. Therefore, it is not clear whether or not the said notice was issued by the Prescribed Authority

for removal of the Pradhan or it was a notice for lack of confidence in him.

The West Bengal Panchayat (Constitution) Rules, 1975 provides for the manner in which a notice under Section 12(3) has to be issued. Rule 5B provides that the said notice has to be issued in Form 1E.

The relevant notice of the Prescribed Authority was issued in Form 1E in terms of Rule 5B of the West Bengal (Constitution) Rules, 1975.

Rule 5B provides that the notice of the Prescribed Authority shall specify the item of agenda, the place, date and hour of the meeting as may be fixed by him.

The said information has duly been provided in the notice. We, therefore, do not accept the contention of the appellant that the notice was not issued in terms of the statutory requirement. A notice under Section 12(3) of the said Act is only a legal consequence or a sequel of a valid motion under Section 12(2) of the Act. The statutory scheme of the West Bengal Panchayat Act, 1973 makes it clear that once a valid requisition has been made under Section 12(2) of the Act, the Prescribed Authority is obliged to issue a notice under Section 12(3).

In this case the motion under Section 12(2) was moved expressing “lack of confidence” in the Pradhan. In the consequential notice under Section 12(3) the words “lack of confidence against Pradhan” was mentioned. Mere omission to strike out the words “for removal” was, therefore, not fatal. Needless to mention that a motion expressing “lack of

confidence” is moved only “for removal” of the Pradhan. Therefore there was no ambiguity or scope for confusion in the mind of the Pradhan or the members of the panchayat, that the said notice was issued for the removal of the Pradhan due to lack of confidence in him.

In view of the above, we do not find any reason to interfere with the order of the learned Single Judge and the same is affirmed.

Accordingly, the appeal being MAT 412 of 2022 and the connected application being IA No. CAN 1 of 2022 are dismissed.

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

(Arijit Banerjee, J.)

(Kausik Chanda, J.)