

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A 5288 of 2022

Ajit Kumar Samanta

Vs.

The State of West Bengal and others

For the petitioner	:	Mr. Kishore Dutta, Mr. Dibyendu Chatterjee, Ms. Reshmi Ghosh
For the State	:	Mr. Srijan Nayak, Mrs. Rituparna Maitra
For the respondent nos. 12, 14, 15, 17, 18, 19, 23, 24 & 26	:	Mr. Kamalesh Bhattacharya, Mr. GoutamDey, Mr. Rajesh Naskar, Mr. D. Sarkar, Ms. Ankita Ghosh
Hearing concluded on	:	27.04.2022
Judgment on	:	29.04.2022

Sabyasachi Bhattacharyya, J:-

1. The writ petition has been filed primarily challenging the order dated March 10, 2022 passed by the Prescribed Authority and Sub-Divisional Officer (SDO), Tamluk, District- Purba Medinipore, *vide* Memo No.164/SDO-T/GEN, whereby the petitioner's application for taking appropriate action

against three members of the Gram Panchayat, being respondent nos. 14, 17 and 22, was turned down.

- 2.** The petitioner was elected as Pradhan of the Raghunathbari Gram Panchayat in the year 2018. On December 24, 2021, the petitioner was served with a notice under Rule 5-B(2) of the West Bengal Panchayat (Constitution) Rules, 1975 (hereinafter referred to as 'the 1975 Rules') for a meeting of the Gram Panchayat for consideration of a motion for removal of the petitioner as Pradhan in view of the lack of confidence on January 4, 2022. The meeting was thereafter postponed and subsequently fixed on February 7, 2022. After getting a copy of the notice of such meeting, the petitioner moved a writ petition bearing WPA No.1315 of 2022 before this Court and a Co-ordinate Bench, by its order dated February 4, 2022, disposed of the writ petition by setting aside the notice of 'No Confidence Motion', granting the requisitionists liberty to bring a fresh requisition as per the provisions of Section 12(2) of the West Bengal Panchayat Act, 1973 (for the sake of brevity, 'the 1973 Act').
- 3.** On February 5, 2022, the Block Development Officer (BDO), Panskura-I Development Block issued a notice inviting the petitioner and other members of the Gram Panchayat about the cancellation of a fresh meeting for removal of the petitioner as Pradhan, which was scheduled to be held February 7, 2022.
- 4.** On February 9, 2022, a notice under Section 5-B(2) of the 1975 Rules was served on the petitioner to attend another meeting for consideration of no confidence motion against the petitioner/Pradhan, to be held on February 21, 2022.

5. On February 10, 2022, the petitioner filed an application under Section 11(1)(d) of the 1973 Act before the BDO, Panskura-I for removal of three of the respondents, from their membership of the Panchayat, on the ground that they had not attended three consecutive meetings of the Gram Panchayat in spite of service of notice.
6. Subsequently, the petitioner made an application before the SDO, Tamluk for removal of the Gram Panchayat members on February 12, 2022 on similar ground. The proceeding before the SDO was still pending for disposal at the time of filing of the writ petition. In the meantime, on February 18, 2022, the concerned SDO wrote a letter to the BDO, Panskura-I Development Block to consider the matter regarding removal of the three members and to submit a report by seven days.
7. During pendency of the application for removal of the members, the BDO issued an order of removal of the petitioner/Pradhan on February 21, 2022, stating that, in terms of Section 12(2) of the 1973 Act, for the purpose of removal of the Pradhan of the Raghunathbari Gram Panchayat, six members, as per Clause I of sub-section (2-A), had submitted a 'no confidence motion' in writing against the petitioner on February 8, 2022 and that it was found from the report of the Presiding Officer dated February 21, 2022, along with minutes of the meeting, that the motion was duly supported by the majority of the existing members, that is, the nine members present out of the fifteen existing members of the Raghunathbari Gram Panchayat.
8. As per such direction, the petitioner handed over the charge to Ranju Mondal (Hazra) who was the Upa-Pradhan. On February 21, 2022, when the

petitioner was absent, another removal proceedings of the petitioner, from the Raghunathbari Gram Panchayat, was initiated, despite the pendency of the application for removal of the three members.

9. The petitioner moved another writ petition bearing WPA No.3660 of 2022 against the order dated February 21, 2022, seeking the cancellation of the said order. On March 4, 2022, a Co-ordinate Bench dismissed the writ petition expressing the opinion that the petitioner had failed to show any illegality in the requisition or in the action of the prescribed authority.
10. On March 4, 2022, one Bapan Das was appointed as Pradhan of the concerned Gram Panchayat but, according to the writ petitioner, has still not taken charge of the Panchayat. On March 8, 2022, the BDO was served with a copy of the letter of the Upa-Pradhan of the said Gram Panchayat stating that the newly appointed Pradhan was not taking charge.
11. On March 10, 2022, *vide* Memo No.164/SDO-T/GEN, the SDO, Tamluk passed an order turning down the application of the petitioner for removal of the three members on the ground that the notices of the meetings dated January 24, 2022 and February 1, 2022 were sent to the members of the Gram Panchayat through registered post which was not in accordance with the provisions laid down in Rule 6 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 (in brief, 'the 2004 Rules').The present writ petition has challenged the said order.
12. Learned senior counsel appearing for the petitioner contends that in view of the notices dated January 24, 2022 and February 21, 2022 having been actually served, although *via* registered post, the SDO acted without

jurisdiction in dismissing the petitioner's application for removal on the ground of non-service of notices on the relevant dates.

- 13.** It is contended that although service by registered post is not specifically enumerated in Rule 6 of the 2004 Rules, the same operated as a substituted mode and constituted substantial compliance of Rule 6. It is contended that the purpose of a notice is to impart knowledge and the prior formalities before substituted service, as stipulated in Rule 6, were substantially complied with by the petitioner. In view of the refusal of the said addressees to accept service, the same were only sent by registered post instead of affixation, which was a technical flaw at best. Since such service was effected successfully, the purpose of service of notice was served. Hence, the impugned order of dismissal of the removal application ought to be set aside.
- 14.** Learned counsel next submits that the SDO had not looked into the relevant documents and the notices which indicated substantial compliance of Rule 6.
- 15.** By placing reliance on Section 11(1)(d) of the 1973 Act, learned senior counsel appearing for the petitioner submits that the absence of a member from three consecutive meetings itself operates as removal of the member.
- 16.** It is submitted that since Section 11(1)(d) contemplates the absence from three consecutive meetings as the criterion for removal, as on the date when the no confidence motion was moved against the petitioner, the three members, who had voted against the petitioner already stood disqualified as members in view of their absence in three consecutive meetings. Hence, it is argued, the SDO ought to have considered such circumstances and

allowed the application for removal of the petitioner and three members, which would operate retrospectively to vitiate the election itself.

17. Learned counsel appearing for the respondent-authorities submits that the provisions of Rule 6 of the 2004 Rules were not complied with at all. There was no affixation of notice as envisaged in the said provision. Moreover, the service return containing witnesses' signature was not attached to the notice as per the said provision. Both the above were necessary modalities of service as per Rule 6.
18. Moreover, it is argued that Section 11(d) takes effect only upon an order being passed removing the member from the office, and not automatically, on the third instance of absence.
19. A perusal of Section 11(1) clearly indicates that the Prescribed Authority may, after giving an opportunity to a member of a Gram Panchayat to show cause against the action proposed to be taken against him, by order remove him from office on the grounds as mentioned therein. Clause (d) of sub-section (1) stipulates absence from three consecutive meetings of the Gram Panchayat without leave to be one of the grounds of removal. Thus, the relevant date of removal is the date of the order and not the mere occurrence of the ground.
20. If the petitioner's contention is to be accepted and it is to be held that the mere absence on the third occasion would itself disqualify the membership of the member, it would lead to a patent absurdity, since, in that event, such member would not get any opportunity to show cause at all, in contravention of Section 11 (1).

- 21.** Assuming a hypothetical situation when no order of removal is passed at all despite the concerned member being absent from three consecutive meetings, the removal would never occur, since the criteria of Section 11 (1) are not met. Thus, such removal is dependent on the passing of the order, that too only after giving an opportunity to the absentee member to show cause. Hence, by no stretch of imagination can it be deduced that the removal occurs automatically on the third day of absence of a member, even before an opportunity to show cause is given to her/him and an order is subsequently passed for her/his removal.
- 22.** The presumption in law is that the Legislature enacts laws in its wisdom and being aware of the implications thereof. Rule 6 of the 2004 Rules clearly contemplates the exact mode of service. It is well-settled that if an action is to be taken under a statute, it has to be done in the manner as prescribed in the statute. In the present case, the petitioner did not comply with the provisions of Rule 6 inasmuch as the service was sought to be effected through registered post, without resorting to any affixation of the notice on the outer door of the house of addressee and/or on the notice board. That apart, no service return containing the signature of witnesses was attached to the notice at all. Hence, the SDO acted well within his authority and jurisdiction and in consonance with law in passing the impugned order dated March 10, 2022.
- 23.** Thus, the writ petition fails.
- 24.** Accordingly, WPA No.5288 of 2022 is dismissed on contest, without any order as to costs.

- 25.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)