

28.03.2022
Court No. 19
Item No.5
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WPA 5423 of 2022

Pranab Kumar Das
Vs.
The State of West Bengal & ors.

Mr. Debanik Banerjee
Mr. Sandipan Surangi
Mr. Sayak Chakraborti
Mr. Anish Kumar Mukherjee
Mr. W. Roy

.....for the petitioner.

Mr. P.S. Bhatttacharyya
Mr. Arunava Maiti
Mr. Raju Bhatttacharyya
Mr. Sanjoy Patra ..for the respdts.8-21

Mr. Himadri Sikhar Chakraborty
Ms. Debdooti Dutta ..for the State

The petitioner has alleged violation of the statutory provisions of Section 101(3) of the West Bengal Panchayat Act, 1973(hereinafter referred to as the 'said Act'), by the prescribed authority while convening the meeting for removal of the Sabhapati of Bhagwanpur-I Panchayat Samiti on March 29, 2022.

According to the petitioner/sabhapati, the notice dated March 21, 2022 by which the meeting was convened, was issued prior to the prescribed authority satisfying himself about the compliances of the provisions of sub-section (1) and sub-section(2) of Section 101 of the said Act, 1973.

It is submitted that the prescribed authority had issued a notice on March 21, 2022 upon the requisitionists to meet the prescribed authority at 11-30 a.m. on March 23, 2022 with all evidence and documents for such satisfaction regarding the compliances of Section 101(2) of the said Act. The notice convening the meeting prior to the satisfaction or prior to considering the documents for such satisfaction, is bad in law and in violation of the provisions of Section 101(3) of the said Act.

The law provides as follows:-

“(3) The prescribed authority on receipt of the motion shall satisfy himself that it conforms to the requirements of sub-section (2) and on his satisfaction shall specially convene, by issue of notice, within five working days of the receipt of the motion, a meeting of the Panchayat Samiti to be held in its office fixing date and hour of the meeting and sending such notice at least before clear seven days to each of its existing members for consideration of the motion and for taking a decision on it.

(4) The meeting referred to in sub-section (3) shall be held on a working day which shall not be later than fifteen working days from the date of receipt of the motion by the prescribed authority and the meeting so convened shall not be adjourned or cancelled except in pursuance of an order or direction of a competent court or for any other reason beyond control of the prescribed authority.”

Under such circumstances, this Court is of the opinion that the notice dated March 21, 2022 which was issued for convening the meeting on March 29, 2022 without the prescribed authority satisfying himself about the compliances of Section 101(2) of

the said Act, 1973, cannot be sustained in law, and is set aside.

The provisions of Section 101 and its sub-sections are pari materia with the provisions of Section 12 and its sub-sections of the said Act. In the decision of Gopal Kumar & Anr. .Vs. State of West Bengal & Ors. reported in 2014 SCC OnLine Cal 22353, the Hon'ble Division Bench held as follows:-

“(20) Section 12 (2) of the said Act provides manner in which such a meeting can be requisitioned. It stipulates that one-third of the existing members 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 such office holder. The motion must indicate the party affiliation or independent status of each of the members signing the motion. It must be delivered in person through any of the members or sent by registered post to the Prescribed Authority. One copy of the motion must be delivered to the concerned office bearer either by hand or by registered post at the Gram Panchayat office. Another copy of the motion must be sent by registered post at the residential address of the concerned office bearer. Thus, the requirements of sub-Section 2 are as follows:-

(i) One-third of the existing members of the Gram Panchayat subject to a minimum of three members shall sign a motion in writing.

(ii) The motion in writing will record their lack of confidence against the Pradhan or the Upa-Pradhan or their intention to remove the Pradhan or the Upa-Pradhan.

(iii) The party affiliation or independent status of each of such members shall be indicated in the motion.

(iv) The motion must be delivered in person through any of the members or sent by registered post to the Prescribed Authority.

(v) 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.

(vi) Another copy of the motion shall be sent by registered post at the residential address of the concerned office bearer.

(21) Section 12 (3) provides that the Prescribed Authority upon receiving the motion shall satisfy himself that it conforms to the requirements of sub- Section 2 and upon such satisfaction shall specially convene, by issue of notice, a meeting of the Gram Panchayat for consideration of the motion and for taking a decision on it. An obligation is, thus, cast on the Prescribed Authority to convene a meeting as per the requisition of the members if he is satisfied that the motion complies with the requirements of sub-Section 2. This is not subjective satisfaction and the Prescribed Authority has no amount of discretion in the matter. It is purely an objective satisfaction and the only obligation of the Prescribed Authority is to check if the motion complies with the six requirements of sub-Section 2 enumerated above. Sub-Section (2) is nothing but a check list and the duty of the Prescribed Authority is to see that the requirements indicated in the check list have been complied with by the requisitionists. If satisfied that the six requirements of sub-Section 2 have been complied with, the Prescribed Authority is duty bound to convene the meeting. Equally, if he finds that anyone or more of the requirements are not complied with then the motion is not legally acceptable and he is duty bound not to convene a meeting on the basis of such deficient motion.

(22) In our view satisfying himself as regards the sufficiency of the motion really means that the Prescribed Authority has to ascertain with reference to sub-Section 2 whether the requirements mentioned therein are satisfied by the motion. No subjective exercise is involved therein. No executive or administrative order is to be issued by the Prescribed Authority by convening the meeting. It is more of a ministerial task. In our view, the language of sub-Section 3 is quite clear and the legislature did not require the Prescribed Authority to record his satisfaction or reasons in support thereof as regards the sufficiency of the motion before convening the meeting. We

are in agreement with the view of Samaddar, J. in the case of Firoza Begam (supra) that issuance of notice convening the meeting itself indicates the satisfaction of the Prescribed Authority as regards acceptability of the motion.”

The Court is satisfied with the case made out by the petitioner to the extent that the notice dated March 21, 2022 cannot be acted upon. The prescribed authority has not discharged the obligation of satisfying himself about the compliances of Section 101(2) of the said Act. The requirements as per the check list as provided in the above decision, have not been verified. Although, Mr. Bhattacharyya, learned Senior Advocate for the requisitionists submits that the all the compliances have been duly followed by the requisitionists, it is not for the Writ Court to satisfy itself about such compliances as the statute provides that it is obligatory that such satisfaction has to be made by the prescribed authority, prior to issuance of notice convening the meeting for removal. The requisition is dated March 15, 2022, which was received by the prescribed authority on March 17, 2022. The prescribed authority shall hold the meeting to satisfy himself about the compliances of law on March 30, 2022 at 11-00 a.m. and if the prescribed authority is satisfied with the compliances by the requisitionists, a notice convening the meeting shall be issued on the same

day. The date and time of the meeting for removal shall be April 6, 2022 at time 12 noon. Such period is well within the statutory period as per Section 12(4) of the Act. If the prescribed authority is not satisfied, an order to that effect shall be passed.

The notice convening the meeting on the basis of the order of this Court shall be intimated to all the parties and also sent to the Panchayat Samiti's office by the prescribed authority, which shall be treated as due service of the notice upon the petitioner, in case, the petitioner is not available to accept such notice.

As the petitioner, the requisitionists and the learned advocate for the prescribed authority are before this Court, the order of this Court will also operate as a notice to all, in respect of the dates fixed by this court.

This Court has not gone into the merits of the requisition.

It is made clear, that as the motion is still alive, the provisions of Section 101(11) shall not operate as a bar in this case. The other provisions of Section 12(3) and 12(4) shall be deemed to have been sufficiently complied with, in respect of the other time lines of issuing the notice within five working days from receipt of the motion and of granting seven clear days time to the members for a decision, upon considering the motion.

Accordingly, the writ petition is disposed of.

There will be, however, no order as to costs.

All parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)