

05.04.2022
Item No.30
Court No.6.
AB

M.A.T. 483 of 2022
With
I A CAN 1 of 2022
I A CAN 2 of 2022

Debopam Pradhan
Vs
Pranab Kumar Das & Others

Mr. Pratik Majumdar,
Mr. Abul Kasim Mullick ...for the Appellant.

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

Mr. P. S. Bhattacharya, Sr. Adv,
Mr. Arunava Maiti,
Mr. Raju Bhattacharya,
Mr. Sanjay Patra,
Mr. T. J. Mondal
...for the Respondent Nos.9 to 21.

Mr. Sayak Chakraborty,
Mr. Anish Kr. Mukherjee,
Mr. Wrickbrata Roy....for the Writ Petitioner/
Respondent No.1.

By consent of the parties, the appeal and the applications are taken up for hearing.

Affidavit of Service filed in Court today be kept on record.

In re : IA CAN 2 of 2022

The appellant was not a party before the learned Single Judge. We have heard him on his application for leave to appeal. We are satisfied that he may have reasons to be aggrieved by the order impugned. Leave is granted to him to prefer appeal against the impugned order.

IA CAN 2 of 2022 is, accordingly, disposed of.

In re : MAT 483 of 2022

The writ petitioner is a member of the concerned Panchayet. He approached the learned Single Judge with the grievance that there was violation of the provisions of Section 101(3) of the West Bengal Panchayat Act, 1973 (in short “the said Act”) by the Prescribed Authority while convening the meeting for removal of the Sabhapati of the concerned Panchayet Samity on March 29, 2022.

The learned Single Judge upon hearing all the parties disposed of the writ petition by passing the impugned order dated March 28, 2022, the operative portion whereof reads as follows:

“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.”

It is submitted on behalf of the appellant that if the meeting is held on April 6, 2022, the members including the appellant would not have clear 7 days' notice as contemplated in Section 101(3) of the said Act.

We enquired of learned Counsel for the appellant that if the meeting is held on April 8, 2022, whether there would be clear 7 days' notice. The answer is obviously in the affirmative.

Without going into the correctness or otherwise of the order under appeal, we dispose of this appeal and the connected application by directing that the meeting for removal of the Sabhapati will be held on April 8, 2022, at 12 noon instead of April 6, 2022 as had been directed by the learned Single Judge.

All actions taken in terms of the impugned order shall be treated as valid actions except to the extent we have modified the order.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

MAT No.483 of 2022 stands disposed of along with IA CAN 1 of 2022.

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

(Kausik Chanda, J.)

(Arijit Banerjee, J.)