

S/L 5  
12.04.2022  
Court. No. 19  
GB

WPA 6566 of 2022

Rumi Bera (Giri) & Ors.  
Vs.  
The State of West Bengal & Ors.

*Mr. Sujay Bandyopadhyay,  
Mr. Jagajyoti Das,  
Ms. Doyel Dey.*

*...for the Petitioners.*

*Mr. Lalit Mohan Mahata,  
Mr. Prasanta Behari Mahata.*

*...for the State.*

*Mr. Saibal Acharyya,  
Mr. Pradip Paul.*

*...for the intervenors.*

The writ petition has been filed challenging the procedure adopted by the prescribed authority in issuing the notice under Form-1E of Sub-Rule 2 of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975. The petitioner no.1 is the Pradhan of Baghasti No.5 Gram Panchayat and the other petitioners are members of the said gram panchayat, who are supporting the Pradhan. The allegations are:-

- a) The prescribed authority did not grant clear seven days notice from the date of issuance of the notice till the date of the meeting.
- b) The notice did not clearly state the reason for such meeting.

c) The copy of the requisition was not attached to the notice of meeting.

d) The copy of the notice was not affixed in the notice board in the gram panchayat office.

The said motion was brought on April 4, 2022. The postal receipts, which have been handed over to the Court, indicate that the notice was served upon the Pradhan by both the modes at the office as also at the residence. Hence the requisition is in order.

The contention of Mr. Bandyopadhyay that seven clear days notice was not given by the prescribed authority as per the Rules, is taken up for consideration.

Mr. Mahata, learned senior Government advocate appearing for the prescribed authority has handed over a statement prepared by the prescribed authority along with all documents. It appears that the prescribed authority received the motion on April 4, 2022. The prescribed authority satisfied himself that the motion was served upon the office bearer/Pradhan through special messenger and registered post. The notice was issued on April 4, 2022 and the date of the meeting was fixed on April 12, 2022 at 12 noon.

Mr. Acharyya sought to intervene in the proceeding on behalf of the requisitionists.

The law as amended in 2010, reads as follows:-

*“12(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 Gram Panchayat 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.”*

Section 12(3) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the ‘said Act’) provides that the prescribed authority on receipt of the motion must satisfy himself about the compliances of Section 12(2) of the said Act and thereafter issue a notice within five working days from the receipt of the motion indicating that the meeting would be held for consideration of the motion for removal of the Pradhan on a particular date and hour and such notice must be sent at least before seven clear days to each of its existing members. The prescribed authority has prepared a written statement and signed the same himself, indicating that the notices were served both through special messenger and through registered post upon the members. They were delivered on April 6, 2022. The service returns and receipts of delivery by special messenger, in case of all the members have been enclosed with the instruction.

This Court finds that the notice was issued on April 4, 2022 and the meeting has been fixed on April 12, 2022. There were seven clear days between the date of issuance of the notice and the date when the meeting was fixed. The notice was also sent to each of the members on April 4, 2022. The members have received the said notice through special

messenger on April 6, 2022. Copies of such receipts have been annexed to the instructions. Documents showing receipt of notice have also been produced before the Court. The written instructions along with annexures are taken on record.

Having considered the rival contentions of the parties, this Court is of the view that the writ petition is not maintainable for the following reasons:-

- i) The requisitionists, who brought the motion on April 4, 2022 have not been made parties to the proceeding, although it is their requisition for removal of the Pradhan, which shall be put to vote. Substantial rights of such persons would have been affected, if any order would be passed in this proceeding. Thus, the writ petition is bad for non-joinder of parties.
- ii) The fact that the Pradhan received the requisition is not in dispute. There is no allegation of non-compliance of Section 12(2) of the said Act.
- iii) The allegation that the notice was not received before seven clear days from the date of the meeting does not serve any effective purpose in view of Section 12(2) of the said Act, which has been quoted above, for convenience.

- iv) The Statute provides that the notice should be sent with clear seven days between the date of the notice and the date of the meeting. In this case the notice was sent on April 4, 2022 both by special messenger and registered post.
- v) All the petitioners received the notice at least on April 6, 2022 and the meeting is fixed on April 12, 2022, and there are five intervening days.

The opinion of the Court is that the Pradhan and the requisitionists had adequate time to deliberate and take a decision on their strategy before April 12, 2022.

In several decisions this Court has held that provisions of granting seven clear days notice is directory and the only purpose for grant of such time was to ensure that the members could have sufficient time to be present on the date of the meeting after having deliberated on the same. Moreover, the members and the Pradhan, who have moved the writ petition are aware of the requisition. The requisitionists have been trying to remove the Pradhan by bringing requisitions. One of such requisition was set aside, being stigmatic. Liberty was granted to bring fresh requisition. An appeal was preferred by the Pradhan, who is petitioner no.1 herein. No orders have yet been passed in the said appeal. Thereafter, the requisitionists brought a fresh

motion which is before this Court now. All these matters have been suppressed before this Court.

Under such circumstances, the Court finds that the Sub-Rule 2 of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975 cannot override the provisions of Statute, which has been amended in 2010 and which provides that the notice convening the meeting should be sent with seven clear days notice to the members. The notices were sent on April 4, 2022.

In this case, the meeting has been fixed at 12 noon today. At this juncture, the Court does not find that a hyper technical approach should be taken by calculating the seven days from the receipt, when the law has been amended in 2010.

In my opinion, the provision for removing an elected representative such as Pradhan is of fundamental importance to ensure the democratic functioning of the institution as well as to ensure the transparency and accountability in the functions performed by the elected representatives. These institutions must run on democratic principles. In democracy, all persons heading public bodies can continue provided they enjoy the confidence of the persons who comprise such bodies. This is the essence of democratic republicanism. If the Pradhan has lost support of the majority of the members, she cannot remain in office for

a single day. In this case eight out of thirteen members have brought the motion.

In the decision of *Ujjwal Kumar Singha v. State of W.B.* reported in 2017 SCC OnLine Cal 4636, it was held that:

“5. The entire impugned judgment and order is supported with cogent reasons and there is no palpable infirmity noticed therein which would warrant any interference in an Intra-Court Mandamus Appeal. It appears that the appellant/writ petitioner resorted to taking shelter under the high prerogative jurisdiction of the High Court under Article 226 of the Constitution of India only for the purpose of thwarting the well-established democratic principles which govern the running of public institutions such as a Gram Panchayat, being at the lowest tier of self-governance at the village level in the three-tier Panchayati Raj System. In this context, one may take notice of the observations made by this Court in *Farida Bibi v. The State of West Bengal* reported in 2016 (5) CHN (Cal) 258, while following the observations made by the Supreme Court in *Usha Bharti v. State of U.P.* reported in (2014) 7 SCC 663 : AIR 2014 SC 1686, wherein it was observed to the effect that it is the fundamental right of democracy that those who have been elected can also be removed by expressing, ‘No Confidence Motion’ for the elected person. In an institution which runs on democratic principles, a person can continue to be its head so long he/she enjoys the confidence of the persons who comprised such a body. This is the essence of democratic republicanism which was taken note of by the Supreme Court in *Usha Bharti* (supra).

6. The appeal has no merit and is liable to be dismissed along with the application for stay with exemplary costs assessed at 500 G.Ms. which shall be deposited with the State Legal Services Authority for being earmarked for utilisation by the Mediation and Conciliation Committee of the High Court.”

Accordingly, the writ petition is disposed of without any orders. The meeting will be held as per schedule.

However, there will be no order as to costs.

All the parties are directed to act on learned advocate's information.

**(Shampa Sarkar, J.)**