

Item No. 22

10.06.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 9874 of 2022
Monika Dolui & Ors.

v.

The State of West Bengal & Ors.

Mr. Sarwar Jahan
Mr. Tapas Kumar Mondal
Mr. Maidul Islam Kayal
... for the petitioners.

Sk. Mujibar Rahman
Mr. Atarul Haque Moll
... for the State respondents.

Mr. Raja Saha
Ms. Arpita Saha
Mr. Sanjay Mukherjee
... for the respondent nos. 5 & 7.

The petitioners were the members of Jhamtia Gram Panchayat, Police Station- Jaipur, District-Howrah. They were served with show cause notices for removal from the post of Gram Panchayat members under Section 11(1)(d) of the West Bengal Panchayat Act, 1973 on account of absence from three consecutive meetings of the Gram Panchayat.

The said show cause notice mentions that the petitioners were found absent on March 25, 2022, April 28, 2022 and May 19, 2022 respectively without the leave of the Gram Panchayat.

The petitioners were directed to show cause as to why proper proceeding shall not be initiated against them for removal from the said post. The petitioners were also directed to appear for a hearing before the Prescribed Authority & Sub-Divisional Officer, Uluberia, Howrah on June 6, 2022 at 12 noon.

On receipt of the aforesaid show cause notice the petitioners, within the time as prescribed in the notice, submitted the reply to the show cause and also attended the hearing on June 6, 2022.

It has been asserted by the learned advocate appearing on behalf of the petitioners that at the time of hearing certain documents were shown to the petitioners by the authority which were relied upon for the purpose of taking a decision with regard to the removal of the members.

The petitioners submit that it has been specifically mentioned by them in the reply to the show cause notice that the petitioners were not served with the notices of the meetings and accordingly they could not be present in the meetings on the said dates. The petitioners were not supplied with the complaints filed against them for not remaining present in the meetings. The report of the Block Development Officer was also not supplied to them.

The petitioners have annexed documents which were relied upon by the Prescribed Authority for taking a decision in the matter and the said documents were handed over to the petitioners at the time of the meeting itself.

Being aggrieved by the act of the Prescribed Authority in trying to take a decision without giving proper opportunity of hearing to the parties by supplying the necessary documents prior to the hearing, the petitioners filed the instant writ petition before this Court on June 7, 2022.

It appears that, thereafter, on June 6, 2022 an order was passed by the Prescribed Authority & Sub-Divisional Officer, Uluberia, Howrah removing the petitioners as Gram Panchayat members. The petitioners were served with the order of removal of their membership on June 7, 2022 but by that time the writ petition was already filed. The petitioners, accordingly, affirmed a supplementary affidavit on June 8, 2022 and have filed the same in Court today.

The copy of the order of removal dated June 6, 2022 has been annexed to the supplementary affidavit. It appears therefrom that the Prescribed Authority was of the opinion that though the petitioners submitted that they did not receive the notices of the meetings held on March 25, 2022, April 28, 2022 and May 19, 2022 but

they were unable to submit any material evidence in support of their claim. The Prescribed Authority was of the opinion that as the notices were served upon the family members of the Gram Panchayat members, accordingly, the service was in accordance with law.

The Prescribed Authority was also of the opinion that the show cause reply given was not found to be satisfactory and no material evidence with proper justification in support of their unauthorized absence from the three consecutive meetings could be produced. Their absence was without the leave of the Gram Panchayat making them liable to be removed from the posts. The order dated June 6, 2022 also records that as per the request of the members, certified copies of the documents were handed over to the learned advocate of the members at the time of hearing.

It appears that certified copies of the report of the Block Development Officer dated May 25, 2022, letter of the Prodhan dated May 25, 2022, notices in Form-I along with their service returns and the resolution of the meetings held on the dates when the petitioners were allegedly not present in the meetings were handed over to the learned advocate at the time of hearing.

The petitioners pray for setting aside the impugned order dated June 6, 2022 passed by the Prescribed Authority.

Learned advocate representing the Panchayat submits, upon instruction that, proper notices were served upon the petitioners as regards the meetings in question. The writ petition was filed on June 7, 2022 whereas the order impugned was passed on June 6, 2022 and the same is not under challenge in the present writ petition.

It has been submitted that there is an appellate forum and the petitioners may ventilate their grievances before the said authority.

Learned advocate representing the State respondents submits that the Prescribed Authority & Sub-Divisional Officer, Uluberia, Howrah does not have any instruction in the matter.

With regard to the objection raised by the learned advocate appearing on behalf of the Panchayat regarding maintainability of the writ petition at this stage the petitioners rely upon an unreported order of this Court passed by the Hon'ble Division Bench on March 3, 2022 in MAT 686 of 2021 with IA No. CAN 1 of 2021 (Kutub Uddin Molla & Anr. v. The State of West Bengal & Ors.), wherein the Court was of the opinion that the writ Court is not precluded from taking into consideration subsequent events and moulding the reliefs accordingly.

In the present case, the writ petition was filed on the June 7, 2022 after the matter was heard by the

Prescribed Authority on June 6, 2022. The Prescribed Authority though heard the matter on June 6, 2022 but the copy of the order dated June 6, 2022 was served on the petitioners on June 7, 2022 after the writ petition was filed. Accordingly, leave has been granted to the petitioners to rely upon the supplementary affidavit wherein the order of the Prescribed Authority has been annexed.

As the writ petition was filed prior to the communication of the order dated June 6, 2022, accordingly, the petitioners were not in a position to make a prayer for setting aside the order passed by the Prescribed Authority. After the order was communicated to the petitioners on June 7, 2022 immediately on the next day the supplementary affidavit has been filed. Oral prayer has been made for setting aside the said order as proper opportunity to defend them was not provided by the Prescribed Authority.

On a perusal of the order dated June 6, 2022 it appears that the Prescribed Authority found the show cause reply of the petitioners to be unsatisfactory as the petitioners could not produce any material evidence in support of their unauthorized absence.

The petitioners in their show cause reply have specifically mentioned that they did not receive the copies of the notices of the meetings. Certain documents

have been relied upon by the Prescribed Authority to arrive at a finding that the notices of the meetings were duly served upon the said members. Copies of the said documents were handed over to the petitioners, through their learned advocate, at the time of hearing. The petitioners ought to have been supplied the documents which the authority relied upon prior to passing an order. As the documents were handed over at the time of the hearing, the petitioners were not in a position to deal with the same and defend themselves effectively.

It is not for the petitioners to produce any negative evidence regarding non-receipt of the notices of hearing. It is for the Prescribed Authority to produce positive evidence to show that the notices were duly served.

It appears from the order dated June 6, 2022, which is presently impugned before this Court that, the principles of natural justice were not duly complied with at the time of passing the said order. A reasonable opportunity to defend themselves ought to have been allowed by the Prescribed Authority prior to passing the order removing their membership.

The Hon'ble Division Bench in the matter of Kutub Uddin Molla (*supra*) laid down that the writ Court is not precluded from taking into consideration subsequent evidence and moulding the reliefs accordingly.

In view of the same, the Court accepts the prayer of the petitioners for setting aside the order dated June 6, 2022 passed by the Prescribed Authority & Sub-Divisional Officer, Uluberia, Howrah.

The order dated June 6, 2022 is, accordingly, set aside.

The Prescribed Authority is directed to re-consider the prayer of the petitioners by permitting them to deal with the documents which were supplied to them on June 6, 2022 and decide the matter afresh on merits strictly in accordance with law, at the earliest. The Prescribed Authority shall pass a reasoned order and communicate the same to the petitioners immediately thereafter.

The Prescribed Authority shall afford a reasonable opportunity of hearing to the petitioners or their authorized representatives prior to passing the final order in the matter.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)