

2.
03-03-2022
debajyoti
(Ct. no.06)

MAT 686 of 2021
with
IA NO:CAN/1/2021
Kutub Uddin Molla & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Ramdulal Manna,
Mr. Mukteswar Maity,
Mr. Sayan Mukherjee

... For the Appellants.

Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag

... For the State.

Mr. Md. Sarwar Jahan
Mr. Maidul Islam Kayal

... For the Respondent No.5.

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

Six members of Gazipur Gram Panchayat, 24-Parganas (South) namely, Kutub Uddin Molla, Sujahan Bibi, Marjina Bibi, Sukesh Naskar, Shiripan Bibi Zamadar, and Rahan Halder approached the learned Single Judge by way of filing the present writ petition challenging the show-cause notices dated February 25, 2021, issued against them by the Prescribed Authority and the Sub-Divisional Officer, Diamond Harbour, to show cause as to why necessary proceedings would not be initiated for their removal under Section 11(1)(d) of the West Bengal Panchayat Act, 1973. It was alleged in the show-cause notices that the said six writ petitioners were absent at three consecutive meetings of the Gram Panchayat held on February 04, 2021, February 12, 2021, and February 19, 2021.

During the pendency of the writ petition, the Prescribed Authority issued orders of removal against

Kutub Uddin Molla and Shiripan Bibi Zamadar by an order dated July 02, 2021. By the order impugned in this appeal, the learned Single Judge, noticing the aforesaid facts, disposed of the writ petition with the following directions:

“ Having heard the learned advocates for the respective parties, this writ petition is disposed of in respect of the petitioner nos.1 and 5 as being infructuous with liberty to proceed in accordance with law against the order or removal.

With regard to the petitioner nos.2, 3, 4 and 6, in my view, an opportunity should be given to these petitioners to file another comprehensive reply to the show cause notices separately, with better particulars and documents in support of their contentions. They will be entitled to raise the points with regard to legality of the meeting, namely, contravention of the provisions of Section 16 of the West Bengal Panchayat Act, 1973 and also narrate and prove their contentions and reasons which prevented them from attending the meetings. The said replies are to be filed within a period of two weeks from date before the Prescribed Authority and Sub-Divisional Officer, Diamond Harbour, District - South 24-Parganas. Once the replies are received by the Prescribed Authority, the Petitioner nos.2, 3, 4 and 6 and/or their representatives should be given a hearing and a reasoned order should be passed on the basis of their answers. The petitioners shall be allowed to adduce documentary as also oral evidence.

As the Petitioner nos.2, 3, 4 and 6 are being given an opportunity to answer to the show cause notices afresh, the entire proceedings before the Prescribed Authority shall be held de novo and any decision that may have been taken in the meantime, is set aside.

This order shall not be construed as a decision on the issues with regard to the removal of the Pradhan. Although it is submitted by Mr. Jahan that the B.D.O. has issued an order on July 5, 2021 indicating that the requisition meeting as sought for by the petitioners could not be held, this court refrains from making any observation on this aspect. ”

Before us, Mr. Ramdulal Manna, learned advocate, appearing for the appellants namely, Kutub Uddin Molla and Shiripan Bibi Zamadar submits that the appellants were removed in violation of Section 16 of the West Bengal Panchayat Act, 1973, since the time gap between the three meetings was not maintained. He further submits that under the Act, there is no provision for holding any emergency meeting. Therefore, holding of three consecutive meetings without maintaining the statutory time gap was only with a view to remove the appellants as the members of the said Panchayat.

Mr. Sirsanya Bandopadhyay, learned advocate, appearing for the State, on the other hand, submits that there is a provision for holding an emergency meeting and such meeting can be held by the Pradhan giving three days' notice under the extant Rule. He further submits that the learned Judge was right in granting liberty to the appellants to prefer appeal against the order of removal passed by the Prescribed Authority since there is an appellate forum prescribed under Section 11(2) of the West Bengal Panchayat Act, 1973. It is also submitted by Mr. Bandopadhyay that the order of removal was not under challenge before the learned Single Judge and it was only the show-cause notice which had been challenged.

It appears that though the six writ petitioners stood on the same footing with regard to issuance of the show-cause notices against them, the learned Judge did not interfere with the order of removal as against the appellants simply on the ground that the writ petition had become infructuous insofar as the appellants are concerned.

The appellants and the other four writ petitioners before the learned Single Judge were issued with identical show-cause notices. Upon consideration of the factual aspects of the matter the learned Judge was of the opinion that four writ petitioners should be given the opportunity to file their comprehensive replies. The present appellants, in spite of standing on the same footing, were not granted such relief.

We have seen the orders of the Prescribed Authority dated July 02, 2021, issued against the appellants, namely Kutub Uddin Molla and Shiripan Bibi Jamadar. The non-application of mind on the Prescribed Authority is apparent from a bare reading of the order. The two orders are identical and word for word same. While passing the order of removal, the Prescribed Authority did not apply its mind to the reply of the appellants to the show-cause notices. The relevant part of the said order is quoted below:

“ Whereas, upon perusing his reply to such quest of constitutional obligations and applying his jurisprudence, the undersigned falls short of satisfaction as regards the reliability of the alibi proffered by him for his reason of absence from 3 (three) consecutive meetings as stated above ”

In our view, the said orders are non-speaking orders and the orders of removal against the appellants cannot be sustained on that ground.

A writ court is not precluded from taking into consideration subsequent events and moulding the reliefs accordingly. In this case the order of removal was passed during the pendency of the writ petition. The learned Single Judge should have taken into consideration such subsequent events and passed appropriate orders by moulding the relief.

In that view of the matter, we allow this appeal by setting aside the order of removal dated July 02, 2021, passed by the Prescribed Authority against the appellants. The appellants should also be given a fresh opportunity to give a comprehensive reply to the show-cause notice dated February 25, 2021. The Prescribed Authority shall apply its mind to the said comprehensive reply to the show-cause notice and thereafter, it may pass necessary orders in accordance with law.

MAT 686 of 2021 and I.A. No. CAN 1 of 2021 are accordingly disposed of.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)