

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 13216 OF 2021

With

CAN 1 OF 2021

Susama Mondal

VS.

State of West Bengal & Ors.

For the Petitioner : Mr. Partha Sarathi Deb Barman,
Mr. Jahangir Alam,
Mr. Biswajit Sarkaradvocates

For The State : Mr. L.M.Mahata
: Mr. A.K. Saha advocates

For the
Respondent
Nos. 5-11 : Mr. Tapash Kr. Mondal,
Ms. Priya Deyadvocates

For the Respondent
nos.12-15 :Mr. Kunal Gangulyadvocate

Heard on : 20.04.2022

Judgment on : 28.04.2022

Hiranmay Bhattacharyya, J.:

1. This writ petition has been filed seeking a writ in the nature of mandamus for quashing the notice dated 18.08.2021 issued

by the Prescribed Authority fixing the date of meeting for consideration of the motion for removal of the writ petitioner from the office of the Pradhan of Islampur Gram Panchayat (for short “the Gram Panchayat”).

2. This case has a chequered history. Petitioner claims to have been elected as the Pradhan of the Gram Panchayat. A writ petition being WPA 11500 of 2021 was filed by the requisitionist alleging inaction on the part of the Prescribed Authority in calling for a meeting on the basis of the requisition brought by them for removal of the Pradhan. The said writ petition was disposed of by giving liberty to the requisitionists to bring a fresh requisition.
3. Thereafter on 23.07.2021 a fresh motion was moved by the requisitionists praying for removal of the writ petitioner from her post. On the basis of the said requisition, a notice for removal of the Pradhan was issued by the Prescribed Authority on July 28, 2021. The said notice was challenged by the writ petitioner in WPA 12332 of 2021 alleging that the requisition was not served upon her. The said writ petition being WPA 12332 of 2021 was disposed of by an order dated August 10, 2021 by setting aside the notice dated July 28, 2021.
4. The requisitionists, thereafter, issued a letter dated 12.08.2021 to the Prescribed Authority requesting him to convene a meeting for removal of the writ petitioner from the

post of Pradhan as majority members of the Gram Panchayat has lost confidence upon her. On the basis of the said letter, the Prescribed Authority issued a notice dated 18.08.2021 fixing the date of meeting on 27.08.2021 for consideration of the motion for removal of the petitioner from the office of the Pradhan of the Gram Panchayat.

5. The said notice dated 12.08.2021 is the subject matter of challenge in this writ petition.
6. Mr. Deb Barman drew the attention of the court to the letter dated August 12, 2021 more particularly the subject matter of the said letter which stated that it is a no confidence motion for removal of Prahdan under Section 12 read with Section 16 of the West Bengal Panchayat Act, 1973 (for short “the Act”). He contended that such requisition cannot be accepted and acted upon as the same was not brought under section 12(2) of the said Act but was brought under the provisions of law which stood amended in the meantime. By referring to the provisions laid down in Sub-section 11 of Section 12 of the said Act Mr. Deb Barman contended that since the earlier meeting fixed on 12.08.2021 could not be held, it shall be deemed that the motion of the requisitionists for removal of the Pradhan was not carried by the majority of its existing members and therefore the Prescribed Authority could not have taken cognizance of the subsequent motion dated 12.08.2021. He thereafter referred to Rule 5B(3) of the West

Bengal Panchayat (Constitution) Rules 1975 (for short “the 1975 Rules”) and contended that nothing transpires from the materials on record that the Prescribed Authority has handed over the service returns of the notice to the Presiding Officer before he proceeded for the meeting. He also referred to Rule 5B(4) of the 1975 Rules and contended that the Presiding Officer failed to perform his statutory duty of ascertaining and apprising the members present that the notices have been duly served upon all members. Mr. Deb Barman referred to the decision of the Hon’ble Supreme Court of India in the case of *Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and Ors.* reported at (2003) 2 SCC 111 in support of the well settled proposition of law that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. He also referred to the judgment of the Hon’ble Supreme Court of India in the case of *Usha Bharti vs. State of Uttar Pradesh and ors.* reported at (2014) 7 SCC 663 and contended that a no confidence motion can only be passed upon observing the procedures prescribed under the relevant statute.

7. Mr. Lalit Mohan Mahata, learned advocate for the State seriously disputed the contentions made by Mr. Deb Barman. By referring to the affidavit-in-opposition filed by the state respondents, he contended that the Prescribed Authority issued a notice for convening a meeting for consideration of

the motion for removal of the Pradhan on 27.08.2021. He further contended that the petitioner has been removed in the meeting held on 27.08. 2021 by the majority members and the order of removal was given effect to. He referred to a decision of the Hon'ble Supreme Court of India in the case of *B.S.E. Brokers' Forum, Bombay and ors. vs. Securities and Exchange Board of India and Ors.* reported at (2001) 3 SCC 482 in support of his submission that mere omission or error in reciting correct provision of law in the notice does not denude the authority from exercising its statutory power.

8. The learned advocate for the respondent no. 5 to 11 contended that the meeting for consideration of the motion for removal of the Pradhan was held on 27.08.2021 which was attended by the majority members and a decision was taken to remove the Pradhan.
9. I have heard the learned advocates for the parties and perused the materials placed.
10. Petitioner has challenged the authority of the Prescribed Authority to take cognizance of the requisition dated 12.08.2021 on two fold grounds firstly, that the said requisition was not made under Section 12(2) of the Act and secondly, such cognizance is barred under Section 12(11) of the Act.

11. Challenge as to the legality of the requisition dated 12.08.2021 is to be decided first as the same goes to the root of the matter. I have gone through the requisition dated 12.08.2021 as a whole. The requisitionists have specifically stated therein that the majority members of the Gram Panchayat have lost confidence upon the Pradhan, that is the writ petitioner herein, and they want her removal from the office of the Pradhan. It is not in dispute that there are total 12 elected members of the Gram Panchayat . Though, only the first page of the requisition dated 12.08.2021 has been annexed at page 30 of the writ petition but from the affidavit-in-opposition filed by the state respondents it appears that the no confidence motion was issued by seven elected members of the Gram Panchayat. However, writ petitioner restricted her challenge only on the ground that the notice was not issued under subsection 2 of Section 12 of the said Act. Thus, this court is restricting its scrutiny in so far as the requisition dated 12.08.2021 is concerned only as to whether the same could be said to be a motion under section 12(2) of the said Act. From the body of the said letter it is evident that all the requisite informations prescribed under Section 12(2) of the said Act have been furnished therein. The expression of lack of confidence against the Pradhan and their intention to remove her by the majority members is also evident from the said letter.
12. Section 12 of the said Act lays down the procedure for removal of the Pradhan. Sub-section 2 of Section 12 provides for a motion

in writing by one third of the existing members referred to in Sub-section 1 of Section 12 subject to a minimum of three members in writing and also putting their signature thereon expressing their lack of confidence against the Pradhan or recording their intention to remove the Pradhan indicating party application or independent status of each of such members.

13. Sub-section 3 of Section 12 of the said Act provides that the Prescribed Authority on receipt of the motion shall satisfy himself that it conforms to the requirements of Sub-section 2 of Section 12 and on his satisfaction shall convene a meeting for consideration of the motion and for taking a decision on it.
14. It is well settled that the intention of the parties signing on the letter is to be gathered by reading the letter as a whole and not merely on its nomenclature or caption.
15. From a bare reading of the body of the motion dated 12.08.2021, it is evident that the requisitionists invoked the provisions of Section 12(2) of the Act for removal of the Pradhan. The Prescribed Authority has also acted in terms of the powers vested upon him by virtue of Section 12(3) of the said Act by treating the same to be a motion under Section 12(2) of the Act.
16. The Hon'ble Supreme Court in *B.S.E. Brokers' Forum* (supra) reiterated the well established principle in law that so long as the impugned power is traceable to the statute concerned mere omission or error in reciting the correct provision of law does not

denude the power of the authority from taking statutory action so long as its action is legitimately traceable to a statutory power governing such action.

17. Thus, by applying the proposition of law laid down in *B.S.E. Broker's Forum* (supra) this court is unable to accept the submission of Mr. Deb Barman that mere error in reciting the correct provision of law shall denude the Prescribed Authority from taking cognizance of the requisition dated 12.08.2021.

18. This Court shall now consider whether the Prescribed Authority was justified in taking cognizance of the subsequent motion for removal of the Pradhan within a period of one year from 12.08.2021.

19. The earlier requisition dated July 28. 2021 for removal of the writ petitioner from the post of Pradhan was challenged by the writ petitioner in WPA No. 12332 of 2021 alleging that the requisition was not served upon her in terms of Section 12(2) of the said Act. In course of hearing of the said writ petition, the learned Additional Government Pleader representing the Prescribed Authority submitted that the Prescribed Authority did not satisfy himself as to whether a copy of such requisition was served upon the Pradhan. On the basis of such admitted fact, a co-ordinate Bench of this court, by an order dated 10.08.2021, disposed of the writ petition by setting aside the said notice. However, it was observed in the said order that the disposal of

the writ petition shall not prevent the requisitionists from bringing a fresh requisition under Section 12(2) of the said Act. The portion of the said order dated 10.08.2021 which is relevant for deciding the writ petition is extracted herein below:-

“This writ petition is disposed of by setting aside the notice dated July 28, 2021. There is no quarrel with the proposition of law that the requisitionists have a right to remove the Pradhan if they have lost confidence upon her. However the provisions of the statute under Sections 12(2),12(3),12(4) onwards have to be followed.

The disposal of the writ petition shall not prevent the requisitionists from bringing a fresh requisition under Section 12(2) of the said Act. If such requisition is moved, the prescribed authority shall satisfy himself about the compliance of Section 12(2) of the said Act and proceed with the requisition in terms of the Section 12(3) and reach the requisition to its logical conclusion within the time framed fixed by the statute.”

20. Thus, it is evident that the order dated 10.08.2021 did not put any embargo upon the requisitionists from bringing a fresh requisition under Section 12(2) of the said Act. After the said order dated 10.08.2021 was passed, the Prescribed Authority cancelled the meeting scheduled to be held on 12.08.2021 by issuing a memo dated 11.08.2021. The subject matter of the instant writ petition is the fresh requisition dated 12.08.2021 for removal of the writ petitioner from the post of Pradhan.

21. The question is whether cognizance could have been taken by the Prescribed Authority of such requisition in view of the bar laid down under Subsection 11 of Section 12 of the said Act. The said provision is extracted herein below:-

*“12. Motion of no confidence or removal of Pradhan or Upa-Pradhan-(1)******

(11) If the motion is not carried by the majority of its existing members or the meeting cannot be held for want of quorum, no notice of any subsequent motion for the removal of the same office bearer shall be taken into cognizance within a period of one year from the date appointed for such meeting.

*(12) *****”*

22. The bar under Subsection 11 of Section 12 of the said Act comes into operation only if the motion is not carried by the majority of its existing members or the meeting cannot be held for want of quorum.

23. The earlier requisition dated July 28, 2021 was set aside in WPA 12332 of 2021 and consequently the meeting scheduled to be held on 12.08.2021 on the basis of the said requisition had been cancelled by the authority prior to the scheduled date of such meeting. Section 12 of the Act requires the process of removal of Pradhan to be initiated by the requisitionists by a

motion in writing and the same is to be carried at the meeting held for consideration of the motion and for taking decision on it. If the motion is not carried at the meeting held for such purpose, the bar under Section 12(11) may be attracted. Since no meeting was held on 12.08.2021 for the reasons as indicated hereinbefore and not for any fault of the requisitionists, this court is of the considered view that the bar under Sub-section 11 of Section 12 of the said Act is not attracted in the instant case. This Court, therefore, holds that the Prescribed Authority was justified in taking cognizance of the requisition dated 12.08.2021 for removal of the writ petitioner from the post of Pradhan.

24. Now it is time to deal with the other limb of submissions of Mr. Deb Barman that the provisions laid down in Rule 5B(3) and 5B(4) of the 1975 Rules has not been followed by the authorities in the instant case.

25. The writ petitioner was served with the notice dated 18.08.2021 as will be evident from the fact that a copy of the same has been annexed at Page 31, annexure P-7 to the writ petition. In view thereof, it does not lie in the mouth of the petitioner to contend that procedures laid down in the 1975 Rules have not been complied with. Petitioner having chosen not to attend the meeting cannot be said to have direct knowledge as to what transpired at the meeting. Even if the argument of Mr. Deb Barman is accepted that there was no recording of such compliance in the minutes of the meeting, the same *ipso facto*

does not vitiate the entire proceeding as it is well settled that Rules or procedures are the handmaids of justice and not the mistress of justice and substantial justice has to be preferred upon the procedural technicalities.

26. However, this court after going through the records is satisfied that there has been substantial compliance of the statutory requirements. In the affidavit-in-reply, the petitioner tried to make out a new case that procedures laid down in Rule 5B(3) and (4) has not been followed in the instant case. No credence can be given to such statements as the respondent authority had no opportunity to deal with such allegations. Thus, this Court is unable to accept the submission of Mr. Deb Barman that the procedures prescribed under the 1975 Rules has not been followed in the instant case.

27. The writ petitioner also could not satisfy this court that the motion does not confirm to the requirements of sub-section 2 of section 12 of the Act and it is also not the case of the petitioner that she has not been served with the motion. Therefore, this court is unable to accept the submission of the petitioner that the Prescribed Authority without being satisfied of the compliances under section 12(2) of the said Act convened the meeting.

28. In *Usha Bharti* (supra) the Hon'ble Supreme Court while dealing with the issue as to whether Section 28 of the Panchayat

Act of the State of Uttar Pradesh was inconsistent with the provisions contained in Article 243(N) of the Constitution of India held that no confidence motion can only be passed upon observing the procedure prescribed under the relevant statute. The said observation has to be considered in the context of the issue which was the subject matter before the Hon'ble Supreme Court. In paragraph 53 of the said decision the Hon'ble Supreme Court held that the provision for removing an elected representative such as Panchayat Adhyaksha is of fundamental importance to ensure the democratic functioning of the institutions as well as to ensure the transparency and accountability in the functions performed by the elected representatives. In the case on hand, the vires of the provision for removal of the Pradhan is not under challenge. As such the said decision is of no assistance to the petitioner.

29. The majority members of the Gram Panchayat lost confidence upon the writ petitioner and in order to ensure smooth democratic functioning of the Gram Panchayat, the removal of the writ petitioner from the post of Pradhan was necessary. The writ petitioner was removed by the majority members from the post of Pradhan by following the provisions laid down in the Act and the rules framed thereunder. Writ petitioner failed to demonstrate any violation of the provision of law in this regard. The writ petition is thus, devoid of any merit and the same is liable to be dismissed.

30. There is no quarrel to the proposition of law laid down by the Hon'ble Supreme Court of India in *Bhavnagar University* (supra) that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The state and other authorities while acting under the provisions of an act are only creature of statute and they must act within the forecorners thereof.
31. In the instant case the writ petitioner has failed to satisfy this court that the authorities while acting under the provisions of the said Act exceeded their jurisdiction vested upon them by the said Act. Thus, the decision in *Bhavnagar University* (supra) is of no assistance to the petitioner in the instant case.
32. For the reasons stated hereinbefore the writ petition stands dismissed without, however, any order as to costs.
33. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.- Sanchita)