

10th January,
2022
(AK)
SPL 02

W.P.A 21121 of 2021

Panchanan Mahato
Vs.
The State of West Bengal and others

(Via Video Conference)

Mr. Jayatos Majumdar
Mr. Arjun Roy Mukherjee
Mr. Sougata Mitra
Mr. Rameshwar Sinha
Ms. Jahanara Begum
Ms. Ankita Day

...for the petitioner.

Mr. Raja Saha
Mr. S.P. Lahiri

...for the State.

Mr. Dipankar Pal
Mr. Manoranjan Mahata

...for the private respondents.

The present challenge has been preferred by the petitioner, who is the Karmadhakshyay of a Panchayat Samity, by virtue of a notice issued on December 9, 2021 (Annexure-P1 at page-20 of the writ petition).

Learned senior counsel appearing for the petitioner argues that the notice is bad in law on several scores.

First, it is pointed out that the notice has been given purportedly under Rule 17(6)(c) of the West Bengal Panchayat (Constitution) Rules, 1975, as subsequently amended, for the purpose of removal of the petitioner

from the post of Karmadhkshyay as well as on the basis of lack of confidence against the petitioner.

It is submitted that the notice is, as such, patently ambiguous in respect of the alleged illegality or irregularity committed by the petitioner.

That apart, two of the requisitionists subsequently wrote letters intending to withdraw their signatures on the requisition. Apart from that, two others did not sign on the notice.

It is submitted that such omission vitiates the requisition, and consequent notice, as a whole.

Learned senior counsel, by specifically pointing out the description of the petitioner as Karmadhkshyay in the caption of the notice dated December 9, 2021, item – 2 (a), indicates that the same falls within the purview of Rule 18 of the said Rules and not Rule 17 (as captioned in the notice).

Learned counsel appearing for the State as well as for the private respondents indicate that even if four of the members/requisitionists were to be discounted from the requisitionists, the total number of the requisitionists remain 17, which is more than one-third of the total number of members of the said Panchayat Samity, which is 21.

Secondly, it is argued that Rule 17 is specifically to remove a member of the Sthayee Samity of a Panchayat

Samity, whereas Rule 18 deals with removal from the post of Karmadhkshyay of a Sthayee Samity. In the present case, the petitioner was sought to be removed from the membership of the Sthayee Samity itself and not merely the post of Karmadhkshyay and, as such, Rule 17(6)(c) is the relevant provision and not Rule 18.

That apart, it is argued that the no-confidence motion contemplated in the notice is for the purpose of removal of the member. Since the ultimate goal of the no-confidence motion is the removal of the petitioner, the notice does not suffer from any irregularity or illegality merely for the reason that both the said purposes were mentioned in the notices.

It is further argued by the private respondents that the 'withdrawal' by two of the requisitionists is not material or relevant after the requisition is sent.

It appears from the respective provisions, being Rule 17 and Rule 18 of the said Rules, that the scope and purview of the two are clearly and distinctly demarcated; whereas Rule 17 deals with the proposed removal of a member, as member, of the Sthayee Samity of a Panchayat Samity, Rule 18 deals with the mere intended removal from the office of Karmadhkshyay.

In the present case, although in the caption of the notice, it was indicated that the petitioner is a Karmadhkshyay and member of Panchayat Samity, there

is no ambiguity in the content of the notice issued by the respondent-authorities, annexed at page-26 of the writ petition, and/or the notice dated December 9, 2021, insofar as the mere mention of the designation of the petitioner as Karmadkhshyay cannot erase the mention of the petitioner also as a member of the Panchayat Samity, which attracts the operation of Rule 17.

That apart, the language of the requisition and the notice was a bit unhappy perhaps, but since English is not the mother-tongue of any of the parties (or, for that matter, the court), such an error cannot be taken to be fatal to the requisition and/or the notice.

It is clearly expressed beyond doubt in both the requisition and the consequent notice that the motion was of no-confidence of the Sthayee Samity members due to their “inactive” in their Sthayee Samity.

Although no specific meaning can be attributed to such expression “inactive”, either on syntax or as per the Dictionary meaning, in the present context, such mention or non-mention of specific ground is immaterial and cannot vitiate the requisition and/or notice, since the meeting was to be held for the purpose of removal of a Samity member and/or Karmadkhshyay, as the case may be, for the limited purpose of indicating that the members have lost no-confidence in the said member.

In the present case, although Panchanan Mahato was described both as a Karmadkhshyay and member of the Panchayat Samity in the requisition, it was clearly indicated in the body of the same as well as the notice that the notice was being issued under Rule 17(6)(c) of the 1975 Rules for “consideration” of the motion for removal of/lack of confidence against the petitioner.

The petitioner has, all through the notice, been mentioned as a member of the Sthayee Samity and the expression ‘Karmadkhshyay’ has been scored through all along.

As such, there cannot be any iota of doubt that the operation of the notice would stand limited to Rule 17(6)(c) and not Rule 18 of the 1975 Rules.

That apart, it has rightly been contended by the respondents that even if four of the requisitionists are deemed to stand omitted from the entire list, the tally of the requisitionists comes to above one-third and more than three members, which meet the criteria as stipulated in Rule 17.

Since there is logic in the contention that the mention of ‘removal’ *ipso facto* cannot vitiate the notice, as the lack of no-confidence expressed is for the very purpose of removal of the petitioner as a member of the Sthayee Samity, which has also been indicated in the notice to the effect that the meeting would be for

consideration of the removal on the ground of lack of confidence against the petitioner, there is no irregularity on the face of the notice.

As far as the alleged stigma in view of usage of the expression “inactive” is concerned, the same only refers to the Samity members who are the requisitionists and not to the petitioner at all.

It is clearly indicated in the requisition dated December 9, 2021 that the ‘following’ members of the Panchayat Samity expressed their lack of confidence/no-confidence due to “their inactive” in the Samity. That apart, the expression “inactive” is too latent and/or inappropriate grammatically in the context of the requisition to cast any stigma, if at all, on the petitioner.

In such view of the matter, I do not find any irregularity and/or illegality in the requisition dated December 9, 2021 and the subsequent notice dated December 15, 2021 sent in the context of the petitioner’s intended removal, not from the post of Karmadkhshyay only but as a member of the Sthayee Samity itself.

In such view of the matter, WPA 21121 of 2021 is dismissed without, however, any order as to costs.

It is made clear that since the operation of the requisition notice and the subsequent notice under Rule 17 were stayed during pendency of the writ petition, it is made clear that the due date of commencement of the

said notice will be the date of passing of this order, that is, January 10, 2022 and the provisions as stipulated in Rule 17 of the 1975 Rules shall operate accordingly insofar as the time-frames envisaged therein are contemplated.

Interim order, if any, shall stand vacated.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)