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19-12-2022
debajyoti
(Ct. no.06)

MAT 1898 of 2022
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IA NO:CAN/1/2022

The Pradhan, Mahishbathani Gram Panchayat & Anr.
Vs.
Mantu Sarkar & Ors.

Mr. Sk. Md. Galib,
Mr. Swarvanu Saha
... For the Appellants.

Mr. Gangadhar Das,
Mr. Tanmoy Chattopadhyay
... For Respondent Nos.1 to 12.

Ms. Sima Adhikari,
Ms. Kakali Naskar
... For the State.

Affidavit-of-Service filed in Court today be taken on record.

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

A judgment and order dated November 23, 2022, whereby WPA 25688 of 2022 was disposed of by a learned Single Judge, is the subject matter of challenge in this appeal.

The appellant herein is the Pradhan of Mahishbathani Gram Panchayat. The Gram Panchayat has 17 members presently. 12 of the members have made a representation to the Prescribed Authority seeking removal of the appellant as Pradhan in exercise of the Prescribed Authority's power under Section 213 of the West Bengal Panchayat Act, 1973 (hereinafter '1973 Act').

Alleging inaction on the part of the Prescribed Authority, who is the Commissioner of Panchayat and

Rural Development, Government of West Bengal, those members approached the learned Single Judge, contending that the representation made by them was not receiving the attention of the Prescribed Authority. Various allegations were made against the appellant herein in such representation and primarily, of dereliction of duty on the part of the Pradhan. The crux of the grievance of the writ petitioners was that the Pradhan was not discharging her functions required by the provisions of the 1973 Act and/or the rules framed thereunder.

Before the learned Single Judge, learned advocate for the Pradhan argued and before us also, the same argument has been advanced that by taking recourse to Section 213 of the 1973 Act, the provisions of Section 12 of that Act cannot be given a go-by and/or cannot be overridden. The learned Judge, however, held that Section 12 and Section 213 operate at different levels and in different fields. While Section 12 contains a provision for removal of the Pradhan by a majority of members, if the majority has lost confidence in such Pradhan, Section 213 empowers the Prescribed Authority to remove the Pradhan if it is found that he/she has wilfully omitted or refused to carry out the provisions of the 1973 Act or any rules or orders made thereunder or abuses the power vested in him or her under the 1973 Act. Before making any such order, however, the Prescribed Authority must give to the person concerned, i.e., the Pradhan, an opportunity of making a representation against the proposed order. This provision recognizes the principles of natural justice and in particular, *audi alteram partem*.

Having held that the provisions of Section 213 of 1973 Act is distinct and separate from Section 12 of

the 1973 Act, the learned Judge disposed of the writ petition with the following direction:

“ The Commissioner being the prescribed authority is directed to dispose of the representation filed by the petitioner in accordance with law, upon granting an opportunity of hearing to the petitioner, the Pradhan and any other person or member whose presence or statements may be necessary for complete adjudication of the issues involved and in order to do substantial justice. The application shall be disposed of within a period of six weeks from the date or receipt of the written objection of the Pradhan.

Needless to mention, this Court has not expressed any opinion on the factual allegations which have been levelled against the Pradhan. The Pradhan shall be entitled to file a written objection to the representation within a period of 10 days from date. A reasoned order shall be passed and communicated to the parties. ”

Being aggrieved, the Pradhan has come up before us by way of this appeal.

Appearing for the appellant, Mr. Galib, learned advocate, has strenuously argued that the writ petitioners have attempted in a circuitous manner to achieve what they cannot do under Section 12 of the 1973 Act. This is because the appellant was elected as Pradhan after removal of the earlier Pradhan, only in September 2021. The appellant took the chair of Pradhan on October 01, 2021. Section 12(12) of the 1973 Act reads as follows:

“ 12(12) Notwithstanding anything contained in sub-section (1), no meeting for removal of the *Pradhan* or the *Upa-Pradhan* under this section shall be convened within a period of two and a half years from the date of election of the *Pradhan* or the *Upa-Pradhan* either at

the first meeting following reconstitution of *Gram Panchayat* or for filling casual vacancy in the said office. ”

Referring to the above provision, Mr. Galib has argued that only a little more than a year has elapsed since the appellant has taken charge as Pradhan and Section 12(12) is a complete embargo on removal of Pradhan before a period of two and a half years elapses from the date of the Pradhan assuming charge.

Learned advocate has also drawn our attention to Articles 40, 243(e) and 243(f) of the Constitution to emphasis that there must be stability in the functioning of a Gram Panchayat. If every now and then a Pradhan can be removed by making representation under Section 213 of the 1973 Act, the local self-government system will suffer. That would again hit at the root of democracy. The statement of object and reasons of the 1973 Act has also been drawn to our attention.

Mr. Galib has also relied on a decision of the Hon’ble Supreme Court in the case of **Bhanumati and Ors. Vs. State of Uttar Pradesh Through its Principal Secretary and Ors.**, reported in **(2010) 12 Supreme Court Cases 1**, and in particular on paragraphs 57 and 58 of the reported judgment which read as follows:

“ 57. It has already been pointed out that the object and the reasons of Part IX are to lend status and dignity to Panchayati Raj institutions and to impart certainty, continuity and strength to them. The learned counsel for the appellant unfortunately, in his argument, missed the distinction between an individual and an institution. If a no-confidence motion is passed against the Chairperson of a panchayat, he/she ceases to be a Chairperson, but

continues to be a member of the panchayat and the panchayat continues with a newly-elected Chairperson. Therefore, there is no institutional setback or impediment to the continuity or stability of the Panchayati Raj institutions.

58. 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. This explains why this provision of no-confidence motion was there in the Act of 1961 even prior to the Seventy-third Constitution Amendment and has been continued even thereafter. Similar provisions are there in different States in India. ”

Mr. Galib has vociferously argued that Section 213 cannot override Section 12 of the 1973 Act. One cannot achieve indirectly what he is not permitted to do directly.

Mr. Galib has also pointed out that Section 213 of the 1973 Act contains a phrase “*notwithstanding anything contained in sub-section (3) of section 9*”. Section 9(3) of the 1973 Act provides that the Pradhan and the Upa-Pradhan shall, subject to the provisions of Section 12 and to their continuing as members, hold office for a period of five years. According to learned counsel, Section 12(12) has to be given full effect and meaning. If that is done, then the writ petitioners are precluded from asking for the removal of the Pradhan by the Prescribed Authority in exercise of power under Section 213 of the 1973 Act prior to expiry of two and a half years from the date when the Pradhan took charge.

We have given our anxious consideration to the submission made on behalf of the appellant. We have not called upon the respondents to make argument.

Section 12 of the 1973 Act provides a democratic process for removing a Pradhan. Just as a Pradhan may be elected by the majority, he may be removed by a majority if he loses the confidence of the majority. This is the principle underlying the functioning of any democracy. Section 12(12) precludes the majority of members from bringing a 'no confidence motion' against an elected Pradhan unless a period of two and a half years expires from the date of his election. This obviously is to give the office of Pradhan some degree of stability. However, after expiry of that period, if the Pradhan has lost the confidence of the majority, he must go. The majority of the members need not make any specific allegation also against the Pradhan in whom they have lost confidence. It is enough that they have lost confidence in the Pradhan for whatever reason.

Section 213 of the 1973 Act reads as follows:

“ 213. Power to remove Pradhan, Upa-Pradhan, Sabhapati, Sahakari Sabhapati, Sabhadhipati and Sahakari Sabhadhipati.-(1) The prescribed authority may, notwithstanding anything contained in sub-section (3) of section 9, sub-section (3) of section 93 and sub-section (3) of section 143, by an order in writing, remove with effect from a date to be specified in the order any member or office bearer of a *Gram Panchayat, Panchayat Samity* or *Zilla Parishad* from his office if in its opinion, he wilfully omits or refuses to carry out the provisions of this Act or of any rules or orders made thereunder or abuses the powers vested in him under this Act.

(2) The prescribed authority shall, before making any order under sub-section (1) give to the person concerned an opportunity of making a representation against the proposed order. ”

Section 213 operates at a different level altogether. While the section recognizes by reference to Section 9(3) that the tenure of Office of a Pradhan is five years, this section says that notwithstanding such tenure, the Prescribed Authority may, in exercise of power under Section 213, after giving due opportunity of hearing to the Pradhan, remove the Pradhan. In other words, to exercise his power under Section 213, in our opinion, the Prescribed Authority need not wait for any particular period of time to elapse from the date when the Pradhan took charge. If the Pradhan fails to discharge his duties and functions envisaged under the 1973 Act and/or rules framed thereunder, then, on an application made by the requisite number of members or may be even *suo motu*, the Prescribed Authority may pass an order removing the Pradhan from office. This power has been brought in by way of amendment in the year 2010, obviously in the interest of better and efficient functioning of the Panchayati Raj. Having a recalcitrant Pradhan, who does not perform his duties, will not be in the interest of the local self-government.

We do not see any apparent conflict between Section 12 and Section 213 of the 1973 Act, which the learned Single Judge rightly held are distinct provisions operating at different levels.

Mr. Galib also referred to an interim order dated September 01, 2021 passed in MAT 884 of 2021, wherein a coordinate Bench has observed as follows:

“ It needs no elaboration that the no-confidence notice itself *qua* an elected leader is stigma enough and it also needs to be clarified that Section 213 of the 1973 Act operates on an administrative field which is distinct from the exercise of choice by

democratically elected Gram Panchayat representatives under Section 12, also of the 1973 Act. ”

We are told that the said appeal was subsequently dismissed for default and the point of whether or not there is any conflict between Section 213 and Section 12 of the 1973 Act was not finally decided. However, the coordinate Bench did observe that Section 213 operates on an administrative field which is distinct from the exercise contemplated under Section 12 of the 1973 Act.

In view of the aforesaid, we are of the considered opinion that the learned Single Judge was justified in distinguishing Section 213 from Section 12 and passing the direction as has been done in the order impugned. We see no reason to interfere with the order under appeal. The appeal and the application, accordingly, fail and are hereby dismissed.

We clarify that like the learned Single Judge, we have also not entered into the merits of the case. We have not gone into the veracity or otherwise of the allegations made by the writ petitioners against the Pradhan in their representation to the prescribed authority. The prescribed authority shall take a decision on the representation without being influenced by any observation in this order or in the order of the learned Single Judge which is under appeal before us.

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

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)