

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

S/L 1
21.03.2022
Court. No. 19
GB

W.P.A. 686 of 2022

Beuti Barman Roy
VS
The State of West Bengal & Ors.

*Mr. Saibal Acharya,
Mr. Debjit Kundu,
Mr. Jayanta Deb Sinha.*

...for the Petitioner.

*Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata.*

...for the State.

*Mr. Sarwar Jahan,
Mr. Firoze Hasan,
Mr. Moidul Islam Kayal.*

...for the Respondent Nos.10 & 16.

Affidavit-of-service filed in Court today be kept with the record.

The petitioner is the Pradhan of Barasoulmari Gram Panchayat under Dinhata-I Development Block. The petitioner is aggrieved by the requisition dated March 2, 2022, brought by the elected members of the gram panchayat and the notice dated March 8, 2022 issued by the prescribed authority.

The only challenge before this court with regard to the said requisition and the notice issued by the prescribed authority dated March 8, 2022, fixing the date of the meeting for removal of the Pradhan on March 22, 2022, is that the requisitionists were not called by the prescribed authority for verification of their signatures and to test the compliance of

Section 12(2) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act').

Mr. Acharya, learned advocate appearing on behalf of the petitioner submits that on an earlier occasion when the motion was brought by the requisitionists, the prescribed authority had held a meeting, but in this case, the prescribed authority did not hold a meeting. Satisfaction with regard to the compliance of the provisions of Section 12(2) of the said Act, had not been recorded.

There are no further challenges either to the requisition or to the notice dated March 8, 2022.

The requisition was admittedly signed by the requisitionists and their party affiliation had been mentioned. The requisition was served upon the Pradhan in the manner prescribed under the law. The prescribed authority issued the notice under Form-1E, Sub-Rule (2) of Rule 5 of the of the West Bengal Panchayat (Constitution) Rules, 1975, within five working days from receipt thereof. The meeting has been scheduled to be held within fifteen working days from receipt of the motion. The timelines prescribed by law, has been followed.

Thus, this Court does not find that there has been any non-compliance of the statutory provisions either by the requisitionists or by the prescribed authority. The law does not provide that the prescribed authority must call a meeting upon issuance of notices to each and every member of the gram panchayat, in order to record his satisfaction.

Although, Mr. Jahan, learned advocate for the respondent nos.10 to 16 submits that the requisitionists were called for signature verification by the prescribed authority and they were heard, this Court is of the opinion that neither a formal notice calling for a meeting to record satisfaction nor a formal order recording such satisfaction, is necessary in this regard.

In the matter of ***Gopal Kumar & Anr. versus The State of West Bengal & Ors.*** reported in ***(2015) 1 Cal LT 173***, the Hon'ble Division Bench held that the prescribed authority acts as a post office and only checks the compliances as provided under Section 12(2) of the said Act. It is more ministerial task. The pre-conditions for issuance of a notice under Section 12(3) of the said Act are verified but no formal order need be passed. The law does not impose such an obligation on the prescribed authority. The Hon'ble Division Bench held as follows:

“(22) In our view satisfying himself as regards the sufficiency of the motion really means that the Prescribed Authority has to ascertain with reference to sub-Section 2 whether the requirements mentioned therein are satisfied by the motion. No subjective exercise is involved therein. No executive or administrative order is to be issued by the Prescribed Authority by convening the meeting. It is more of a ministerial task. **In our view, the language of sub-Section 3 is quite clear and the legislature did not require the Prescribed Authority to record his satisfaction or reasons in support thereof as regards the sufficiency of the motion before convening the meeting. We are in agreement with the view of Samaddar, J. in the case of Firoza Begam (supra) that issuance of notice convening the meeting itself indicates the satisfaction of the Prescribed Authority as regards acceptability of the motion.**

(23) We feel that we would be adding words to the statute if we opine that the Prescribed Authority must record his satisfaction and reasons in support therein

prior to issuance of notice convening meeting. This would be impermissible in view of the established principle of law regarding interpretation of statutes as amplified by the decisions of the Honble Apex Court discussed above.

(24) We have checked up the Panchayat Act and/or equivalent legislation of several other States including Assam, Bihar, Himachal Pradesh, Karnataka, Kerala, Panjab, Rajasthan and Uttar Pradesh. None of such legislations provide for the Prescribed Authority to record his satisfaction as regards the sufficiency of a motion convening a meeting.

(25) We further feel that recording of satisfaction by the Prescribed Authority prior to convening a meeting would serve no useful purpose and would be of no consequence. Even if the Prescribed Authority records his satisfaction as to the sufficiency of a motion when, in fact, such motion does not confirm to the requirements of sub-Section 2, such motion would be liable to be quashed by the Court. The motion will speak for itself and all that the court will have to see is whether or not it satisfies the requirements of sub-Section 2. **Hence, it would be a futile and useless exercise to put an obligation on the Prescribed Authority to record his satisfaction in his official records as regards sufficiency of the motion. Such recording will not change the factual scenario or the actual contents of the motion.**

(26) It is also significant that the format of the notice of meeting i.e. form 1E prescribed by Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975 does not provide for any scope for recording the satisfaction of the Prescribed Authority as regards the legal validity of the motion prior to issuance of notice of meeting.

(27) In view of the discussion above we are of the opinion that it was not the intention of the legislation to impose any obligation on the Prescribed Authority to record satisfaction regarding legal acceptability of a motion submitted under section 12(2) of the said Act before issuance of a notice of meeting under section 12(3) of the said Act. We are of the view that it is not necessary for the Prescribed Authority to record any such satisfaction and we agree with the view of the Ld. Judge in the case of Firoza Begam (Supra) that issuance of notice of meeting itself indicates such satisfaction. We answer the question of law referred to us accordingly.”

The requirements of sub-section (2) of Section 12 are as follows:-

“(i) One-third of the existing members of the Gram Panchayat subject to a minimum of three members shall sign a motion in writing.

(ii) The motion in writing will record their lack of confidence against the Pradhan or the Upa-Pradhan or their intention to remove the Pradhan or the Upa-Pradhan.

(iii) The party affiliation or independent status of each of such members shall be indicated in the motion.

(iv) The motion must be delivered in person through any of the members or sent by registered post to the Prescribed Authority.

(v) One copy of the motion shall be delivered to the concerned office bearer either by hand or by registered post at the Gram Panchayat office.

(vi) Another copy of the motion shall be sent by registered post at the residential address of the concerned office bearer.”

In this case, all these pre-conditions have been met and it is admitted by the petitioner, that there has not been any non-compliance of the above pre-conditions. Thus, this Court does not find any illegality in the decision making process of the prescribed authority. The prayer of the petitioner, Pradhan cannot be accepted.

With regard to the Mr. Jahan’s prayer that the police authority may not arrest some of the requisitionists till the voting is over, cannot be entertained in this jurisdiction. It is submitted on behalf of the said requisitionists that the complaint lodged with the police was frivolous and the medical certificate annexed to the writ petition does not disclose that any injury was ever caused to the Pradhan by any of the members. The diagnosis is that the Pradhan is in the family way and she has been advised to get an USG done and the medicines which have been prescribed are ORS and

syrup Cremaffin, which are not used to treat any physical injury.

However, this Court cannot pass any order, which would amount to granting a protection to the said persons. It is submitted by Mr. Jahan that a false FIR has been lodged so that those requisitionists may not attend the meeting and he apprehends that they would be arrested the moment they go for the meeting.

These issues cannot be decided here. Although the Court may find that the medical documents do not reveal any injury, the Court cannot make any observations on such allegations of Mr. Jahan. It is expected that the police authorities will act and proceed in accordance with law. The meeting shall be held on the date and time scheduled.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)