

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
(Appellate Side)

M.A.T. 29 of 2023
With
I.A. No. CAN/1/2023
Razia Sultana
Vs.

The State of West Bengal & Ors.

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellant	: Mr. Ritzu Ghosal, Adv. Mr. Mrityunjoy Chatterjee, Adv. Mr. Ravi Ranjan Kumar, Adv.
For the Respondent No. 5	: Mr. Uday Narayan Betal, Adv. Mr. Partha Sarathi Mondal, Adv.
For the Respondent No. 6	: Mr. Gangadhar Das, Adv. Mr. Tanmoy Chattopadhyay, Adv.
For the Respondent Nos. 7 to 9	: Mr. Sunny Nandy, Adv. Ms. Riya Das, Adv.
For the State	: Mr. Pantu Deb Roy, Adv. Mr. Subrata Guha Biswas, Adv.
For the Intervener	: Mr. Rishav Kr. Thakur, Adv. Mr. Saket Sharma, Adv.
Heard on	: 09.01.2023, 11.01.2023 & 16.01.2023
CAV On	: 16.01.2023
Judgment On	: 03.02.2023

Arijit Banerjee, J.:

1. This appeal is directed against a judgment and order dated January 5, 2023, whereby W.P.A No. 13257 of 2021 was disposed of by a learned Single Judge.

2. The writ petitioner, who is the respondent no. 6 in this appeal, approached the learned Single Judge challenging a requisition notice for her removal as Pradhan of the Banupur Gram Panchayat. The notice was challenged firstly on the ground that it contained a stigma and secondly on the ground that the party affiliations of the requisitionists were not mentioned in the notice.

3. The parties were directed to exchange affidavits. The State respondents and the requisitionists filed affidavits in opposition. From the annextures to the said affidavits, the learned Judge found that the second page of the requisition notice which contained the party affiliations with signatures and other details of the requisitionists, had not been annexed to the writ petition. Accordingly, the second ground for challenging the requisition notice was rejected by the learned Judge.

4. It was further urged before the learned Judge by the writ petitioner that the notice was not properly served on her. The learned Judge held that this was a disputed question of fact which the Court does not need to go into since the learned Judge found the notice to be stigmatic. The learned Judge referred to the decision of a Division Bench of this Court in the case of ***Ujjal Mondal v. State of West Bengal, reported in 2013 (1) CHN (CAL)***

458 as also to the decision of this Court in the case of **Sourendra Nath Das v. The State of West Bengal & Ors. (WPA 11903 of 2021)**.

5. At the time when the writ petition was moved, the writ petitioner had already stood removed as Pradhan by a majority of 9 out of 10. Steps were taken for electing new Pradhan. The writ petitioner filed an application in the writ petition for staying the process of election of new Pradhan. The learned Judge by an order dated September 14, 2021 refused to pass any order on such application. Her Lady-ship, however, observed that all steps taken shall abide by the result of the writ petition. Subsequently, the present appellant was elected as the new Pradhan.

6. At the final hearing of the writ petition, having held that the notice for removal of the writ petitioner as Pradhan was stigmatic, the learned Judge set aside the notice along with all consequential actions taken thereafter, “including the removal of the petitioner and election of the new Pradhan.” The learned Judge, however, granted liberty to the requisitionists “to bring a fresh requisition as per Section 12(2) of the West Bengal Panchayat Act, 1973 (in short ‘the 1973 Act’). If such requisition is brought, the prescribed authority shall act and proceed in terms of the provisions of Sections 12(3) and 12(4) onwards, of the said Act and reach the requisition to its logical conclusion within the time limit prescribed by the Statute. The bar under Section 12(11) of the said Act shall not be applicable.”

7. Being aggrieved by the aforesaid order, the respondent no. 7 in the writ petition has preferred the present appeal. She is aggrieved because her

election as Pradhan has been set aside and the writ petitioner has been reinstated as Pradhan by the order impugned.

8. The requisition notice dated August 9, 2021, addressed to the Block Development Officer / prescribed authority which was under challenge before the learned Single Judge, reads as follows:-

“Respected Sir,

We the undersigned are directly elected members of Banupur (I) Gram Panchayat. We are not satisfied with the work of Kaykashan Khatoon, Pradhan Banupur (I) Gram Panchayat. She is not discharging the duties of Pradhan transparently and, therefore, we think that the development work of the Panchayat is being disrupted. Due to this we are expressing our lack of confidence against her.

As you are the prescribed authority to take action in this regard under West Bengal Panchayat Act 1973, we request you to please take suitable steps in accordance with Law towards removal of Pradhan of Banupur (I) Gram Panchayat.”

9. Appearing for the appellant, Mr. Ritzu Ghosal, learned Advocate, urged two points before us. Firstly, he argued that the writ petitioner has lost the confidence of the majority of members of the concerned Panchayat. Principles of democracy must prevail. There was no reason to set aside the requisitionists’ notice for removal of the writ petitioner as Pradhan. Any and every statement in such a notice, of and concerning the Pradhan whose

removal is sought, does not amount to a stigma. In the present case it is merely stated that the writ petitioner is not discharging her duties as Pradhan transparently and hence in the opinion of the requisitionists, the development work of the concerned Panchayat is being disrupted. Hence, the requisitionists are expressing their lack of confidence in her. There is no such allegation as would amount to a stigma rendering the notice bad in law.

10. The second point argued by Mr. Ghosal was that the removal of the appellant as Pradhan, was beyond the scope of the writ petition. The writ petitioner had merely challenged the requisitionists' notice for her removal as Pradhan. During the pendency of the writ petition the appellant was elected as Pradhan. The learned Single Judge did not pass any interim order staying the operation of the resolution removing the writ petitioner as Pradhan. On an application made for interim relief to stay the process of election of new Pradhan, initiated by the prescribed authority, no restraint order was granted. The appellant was elected as new Pradhan by a majority. Her appointment could not have been set aside in the present writ petition.

11. Mr. Ghosal relied on the decision of a learned Single Judge of this Court in the case of ***Shefali Roy v. The State of West Bengal & Ors.*** (WPA 20653 of 2021), the decision of a Division Bench of this Court in the case of ***Ujjwal Kumar Singha v. The State of West Bengal & Ors., reported in (2017) 2 CHN 258*** and on the decision of the Hon'ble Supreme Court in the case of ***Usha Bharti v. State of Uttar Pradesh & Ors.,***

reported in (2014) 7 SCC 663. We will revert to these decisions later in this judgment.

12. Learned Counsel appearing for the respondent no. 6 / writ petitioner argued that any allegation in a notice for removal of the Pradhan, casting any aspersion on the person's character, would vitiate the notice. He submitted that the scheme of Section 12 of the 1973 Act does not provide for affording an opportunity to the Pradhan or Upa-Pradhan to deal with or answer or refute any allegation made against him/her. If any such allegation is made in the removal notice it may affect the future political prospects of the person concerned without that person being afforded an opportunity of dealing with the allegation. This would violate the principles of natural justice.

13. Learned Counsel submitted that in contradistinction to Section 12, under Section 213 of the 1973 Act, which empowers the prescribed authority, by an order in writing, to remove 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 refused to carry out the provisions of the 1973 Act or of any rules or orders made there under or abuses the powers vested in him under the Act, the prescribed authority can act only after giving the person concerned an opportunity of making a representation against the proposed order. He submitted that the principles of natural justice are in-built in Section 213 of the Act. This opportunity of dealing with allegations, is not made available to the Pradhan or Upa-Pradhan in the scheme of Section 12 of the Act. Hence, it is not permissible to make any

allegation in the removal notice which may amount to any kind of stigma. The notice should simply state that the requisite number of members have lost confidence in the concerned office bearer and seek his/her approval.

14. Learned Counsel relied on the decision of a Division Bench of this Court in the case of ***Ujjal Mondal v. State of West Bengal (supra)***.

15. We have given our anxious consideration to the rival contentions of the parties.

16. The short point that falls for our determination is whether or not the impugned notice for removal of the writ petitioner as Pradhan, is stigmatic.

17. It is well established now that if a notice for removal of Pradhan or Upa-Pradhan addressed by the requisite number of members of a Panchayat to the prescribed authority contains stigma, such notice should not be acted upon. There is sound logic behind this. As argued by learned Advocate for the respondent/writ petitioner, the scheme of Section 12 of the 1973 Act does not contemplate granting an opportunity of hearing to the concerned office bearer who is sought to be removed. Hence, if a removal notice contains allegations against such office bearer, he/she does not get an opportunity to refute such allegations whether at a hearing or by way of a reply or written representation. The allegations may be of various types, some very serious and derogatory and some not so bad. However, any allegation, in whatever words and however articulately framed, whether of financial dishonesty or of recalcitrance, which tends to tarnish the image of the concerned office-bearer, would in our opinion, amount to a stigma. If in

a removal notice statements are included which would give the impression to the members of the society that the concerned office-bearer is completely unfit for and unworthy of the concerned post, the same shall amount to a stigma which is very likely to have an adverse impact on the future political carrier of that person, without that person getting an opportunity to deal with and disprove such allegations. This would clearly be violation of the principles of natural justice and contrary to the rule of law.

18. *Audi alteram partem*-nobody shall be condemned unheard- is perhaps the most important limb of the principles of natural justice. If an allegation is made against a person, on the basis whereof action is proposed to be taken against such person by an authority – be it a Court of law, a tribunal or an executive authority – the person concerned must be afforded adequate opportunity of hearing to respond to the allegations made against him before any action can be taken against him which may have adverse civil consequences for him. This principle of law has come to be considered to be so salutary and sacrosanct that an order passed or action taken by an adjudicating authority or an officer in the administration, is considered to be *null and void* and *non-est* in the eye law. There can be no legal justice without compliance with the principles of natural justice.

19. The position is different in so far as removal of an office-bearer is concerned under Section 213 of the 1973 Act. Under that provision, the prescribed authority has the power to remove an office-bearer on the grounds mentioned therein but only after giving an opportunity to the person concerned to make a representation. Thus the requirement of

observing the principles of natural justice has been built into Section 213 of the Act. In the case of ***Ujjal Mondal v. State of West Bengal (supra)***, a Coordinate Bench, in the contest of service law, discussed various case laws on the difference between termination simplicitor and termination based on misconduct as foundation. The Bench went on to hold as follows:-

“29. The principle of law as discussed in those cases though within the field of service law is squarely applicable in the instant case to interpret section 101 of the said Act relating to bringing a requisition notice of removal on the ground of no confidence. If the removal is due to no confidence only, it is suffice to bring a motion and it will be called as no confidence motion simplicitor, but if the no confidence motion for removal is on allegation of any illegality or on allegation of any disqualification or on allegation of misuse of power, it is not a “no confidence motion for removal” simplicitor, but it is coloured with a foundation without any adjudication, which would be bad in law.

30. Similar to the service matter where principle has been applied to deal with the issue under service jurisprudence, in the election matters under Panchayat Act and other field, civil consequence also has a direct effect as an elected member will suffer from such consequence and it will cause prejudice and bad effect to his political career in the eye of people who send him as their representative in an elected body.

31. Considering that aspect of the matter, we are of the view that requisition notice in view of foundation of various illegal activities as mentioned, goes to the root of the matter and it absolutely bad in law. Prescribed authority ought not to have entertained such requisition notice to convene a meeting of removal of present appellant from the post of Sahakari Sabhapati of concerned Panchayat Samiti.”

20. The precedents relied upon by learned Advocate for the appellant, in our opinion, do not really advance the appellant’s case.

21. In ***Ujjwal Kumar Singha v. The State of West Bengal & Ors.*** (*supra*) the Division Bench dismissed the appeal on the ground that the judgment and order impugned in that appeal was supported with cogent reasons and there was no palpable infirmity therein which would warrant interference in an Intra-Court Mandamus appeal.

22. The Bench went on to observe that the appellant had resorted to taking shelter under the high prerogative writ jurisdiction of the High Court only for the purpose of stalling the well-established democratic principles which governed the running of public institutions such as the Gram Panchayat. There is no discussion as to when a removal notice can be considered to be stigmatic. The earlier decision of a bench of equal strength in the case of ***Ujjal Mondal*** was also not noticed.

23. In the Judgment of a learned Single Judge in the case of ***Shefali Roy v. The State of West Bengal & ors. (Supra)***, the learned Judge noticed

that the allegations were that the Pradhan was working in an autocratic fashion and did not cooperate with the requisitionists. According to the learned Judge these allegations did not amount to any kind of stigma. We may or may not agree with such opinion of the learned Judge. However, we agree with the observation of the learned Judge that the standards for assessing the nature of allegations is a question of degree and would therefore depend on the particular allegations which are brought before a Court. It appears to us that in that case, the learned Judge put more emphasis on the functioning of a gram Panchayat on democratic principles and the entitlement of a disgruntled group of requisitionists to bring a motion of no-confidence against a Pradhan, “provided the conditions under Section 12(2) of the Act are satisfied and the allegations in the notice are not such as would cause damage to the reputation of the Pradhan.”

24. The decision of the Hon’ble Supreme Court in the case of ***Usha Bharti v. State of Uttar Pradesh & Ors. (supra)*** relied upon by the appellant, in our view, is not of much relevance to the issue involved in the present appeal. The said decision highlighted the importance of the bodies like gram Panchayats and Zilla Parishads functioning on democratic basis. The decision highlighted the right of a majority of the members of such a body to remove an office- bearer if such person loses confidence of the majority. There is no discussion in the judgment as to whether or not, if the notice of removal is a stigmatic, the same shall stand vitiated or as to what would amount to stigma.

25. We have already indicated above, what according to us would render a removal notice stigmatic. To repeat, any allegation in the notice which would cast any aspersion on the character of the office-bearer and may tend to affect his/her future political prospects, should be considered to be stigmatic.

26. According to Mitra's Legal & Commercial Dictionary, Sixth Edition, "stigma" is something that detracts from the character or reputation of a person, a mark, sign, etc. indicating that something is not considered normal or standard. It is a blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame and mark or label indicating deviation from a norm. In the context of an order of termination or compulsory retirement of a government servant stigma would mean a statement in the order indicating his misconduct or lack of integrity.

27. The Chambers 21st Century Dictionary, Revised Edition, defines "stigma" as shame or social disgrace, a blemish or scar on the skin.

28. The Concise Oxford English Dictionary, Eleventh Edition, defines "stigma" as a mark of disgrace associated with a particular circumstance, quality or person.

29. In the present case the allegation in the notice is that the Pradhan is not discharging her duties transparently and consequently in the opinion of the requisitionists, the development work of the Panchayat is being disrupted. This is the reason why the requisitionists have expressed their lack of confidence in the writ petitioner. In our view the allegation of lack of transparency on the part of the Pradhan is a serious allegation which may

include an innuendo that the Pradhan is involved in clandestine deals for self-aggrandisement or that the Pradhan does not act fairly or honestly, as a result whereof the residents of the villages under the concerned Panchayat have suffered because of disruption of development work in the locality. These are possible imputations or inferences that can be drawn from the allegations made in the removal notice. If these allegations do not amount to stigma, we do not know what would. These allegations clearly mean that the Pradhan is unfit for the post and is a person of dubious character.

30. In our opinion, the learned Single Judge rightly set aside the notice of removal. The learned Judge also set aside the resolution removing the writ petitioner as Pradhan and the resolution electing the appellant as Pradhan. The appellant was elected during the pendency of the writ petition. Learned Judge, upon being approached by the writ petitioner for an interim order to stall the process of election of a new Pradhan, did not pass any restraint order but observed that all steps taken shall abide by the result of the writ petition. Hence, the election of the appellant was subject to the final result of the writ petition. Since the writ petition succeeded in as much as the learned Judge set aside the notice of removal submitted by the requisitionists, the learned Judge was perfectly justified in setting aside all subsequent acts including election of the appellant as Pradhan. This was a natural corollary and consequence of the notice of removal of the writ petitioner and her removal as Pradhan being set aside and the writ petitioner being reinstated as Pradhan.

31. At the same time, the learned Judge was fully conscious of the democratic rights of the dissatisfied requisitionists. Accordingly, the learned Judge granted liberty to the requisitionists, which liberty in our view they in any event have, to issue fresh notice of removal in accordance with law with a direction on the prescribed authority to carry such notice to its logical conclusion as per law meaning thereby the provisions of Section 12 of the 1973 Act. The learned Judge was also careful to clarify that the bar under Section 12(11) of the Act would not apply in case a fresh notice of removal is issued by the requisitionists.

32. We find no infirmity in the judgment and order under appeal. The appeal and the application are accordingly dismissed.

33. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)