

November 14, 2024
Sl. No. SL 1
Court No.4
s.biswas

MAT 2078 of 2024
With
CAN 1 of 2024

Surjendu Barman and others
vs.
The State of West Bengal and others

Mr. Billwadal Bhattacharyya
Mr. Anish Kumar Mukherjee
Mr. Tamoghna Pramanick
... for the appellants
Mr. Santanu Kr. Mitra
Mr. Subhabrata Das
... for the State
Mr. Soumen Kumar Dutta
Mr. Subham Dutta
Mr. Rajdeep Pramanik
Mr. Sourav Chakraborty
... for the respondent nos.9-13, 15-19, 21-28 & 31
Mr. Atarup Banerjee
Mr. Abu Sohel
... for the respondent no.29

The present appeal arises out of an order passed by the Hon'ble Single Judge on 13.11.2024, rejecting an interim relief. The brief factual background is that a notice of motion for removal of members of the "Sthayee Samity" was issued. The petitioners are the members against whom the notice has been issued. It is their contention that they have received notice without a copy of the motion and therefore they are unable to ascertain reason for which the notice has been taken out and such notice does not subserve the requirement as contained under Rule 17(b)(c) of the West Bengal Panchayat (Constitution) Rules, 1975, hereinafter referred as (Rules).

The learned counsel for the appellants submits that as per Rule 17(b), the notice was required to be served on the statutory authority, namely, the Sub-Divisional Officer and the member or members proposed to be removed (petitioners) either by hand or by registered post at the “Panchayat Samity”. As per the said Rule, a copy of the notice was also to be sent by registered post at the residential address of the members.

The petitioners have averred in the writ petition that the notice has been received, but the notices are devoid of any purported motion and/or ‘no confidence letter’. Thus, it is submitted by the learned counsel for the appellants that the Rule has been violated. It is further submitted that the authority under the Rules, namely, the respondent no.5 Sub-Divisional Officer has issued notice on Form-1F wherein it has been indicated that copy of no confidence letter has been enclosed. Such indication in the notice is contrary to the Rule mandating issuance of notice on the prescribed form namely Form-1F.

Referring to the format of Form-1F in the Rules, it is submitted that the same does not contemplate enclosing copy of the no confidence letter. Such indication has been put based on bias against the present petitioners and because the Respondent

No.5 is favouring the persons who have taken out the No Confidence Motion, he has considered it appropriate to make such indication in notice to somehow show compliance with the requirement of serving a copy of the motion. In spite of such noting having put at the bottom of Form-1F, copy of the motion has not actually been enclosed therein.

It has been submitted that the marking is unsustainable as it is contrary to the Rule. Reference is made in the decision of the Hon'ble Supreme Court in the case of *Chief Information Commissioner and another vs. State of Manipur and another* reported in (2011) 15 SCC 1. The court's attention is drawn to paragraph 14 thereof, which refers to the settled principle arising from the decision in the case of *Taylor vs. Taylor* reported in (1875) 1 Ch D 426 (CA), that where the statute provides for something to be done in a particular manner, all other modes are prohibited.

Having heard the said submission, we have called upon learned counsel for the State to make submission. He has submitted that the petitioners have not made any specific pleading or averment as to in which of the three notices contemplated under the Rule, copy of the no confidence motion was not enclosed.

It is further submitted that from bare perusal of a copy of the notices sent to the petitioners, it is obvious that a copy of the motion was enclosed. Such contention to the contrary only gives rise to a disputed question of fact which is normally not to be gone into in a writ proceedings.

The learned counsel for the private respondents have also appeared. In addition to this submission advanced by the State counsel, it is submitted that though the notices were served on the petitioners on 06.11.2024, they had approached the court on 13.11.2024. Since, copy of the motion was enclosed, they have not taken any immediate steps, otherwise they would have diligently approached this court immediately on receipt of the notice.

Having heard the rival submission and considered the order of the Hon'ble Single Judge impugned in the present proceedings, we prima facie find that averments have been made in the writ petition alleging that there is no service of motion. Which of the three notices was faulty has not been specifically stated. There is nothing on record to show that after receipt of notice on 06.11.2024, the present petitioners have raised any dispute regarding the same not being accompanied by any copy of the motion. There is no such complaint to any of the authority. All these issues are yet to be considered,

with reference to the pleadings to be filed by the State in the present proceedings.

The other members of the “Sthayee Samiti” who are also served notices have appeared through counsel. As of now they have also not raised any such issue regarding there being no copy of motion.

From the above noted facts, submissions and circumstances, we find that a prima facie case has not been made out, so as to stall the no confidence motion, which is to be held today at 2:30 p.m.

We therefore find no reason to interfere with the decision of the Hon’ble Single Judge declining the interim relief. Accordingly, the appeal and application stand disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Madhuresh Prasad, J.)

(Md. Shabbar Rashidi, J.)