

Calcutta High Court

HON'BLE JUDGE(S): **SHAMPA SARKAR, J**

RAHUJA BIBI V. STATE OF WEST BENGAL

W.P.A. No. 15058 of 2021,, decided on 14/01/2022

(A) West Bengal Panchayat Act (41 of 1973) , S.12(3), S.12(4)- Pradhan of Panchayat - Removal - Earlier requisition being stigmatic, liable to be set aside - Prescribed Authority cannot be directed to proceed in accordance with said requisition for removal of Pradhan. 2013 (1) CHN (CAL) 458 : AIROnline 2012 CAL 59, Relied on.

(Para 9)

(B) West Bengal Panchayat Act (41 of 1973) , S.12(3), S.12(4), S.12(11)- Pradhan of panchayat - Removal - Grant of leave to bring fresh requisition - Pradhan can be removed by majority of Panchayat members, at meeting specially convened for that purpose, pursuant to requisition brought by one third of panchayat members - Majority of members need not bring requisition in order for it to be valid - Though S. 12(11) prescribes time limit within which a second requisition cannot be taken cognizance of - Since no date was fixed for special meeting, bar u/S. 12(11) will not apply - Petitioners granted liberty to bring a fresh requisition.

(2015) 1 CHN 445 (DB) : 2016 AIR CC 1547 (CAL), Relied on.

(Para 18, 20, 23, 24, 25)

Case Referred :

Chronological Paras

2016 AIR CC 1547 (CAL) (Rel. on)

Para No.(18)

AIROnline 2012 CAL 59 (Rel. on)

Para No.(5, 6, 7)

AIR 2012 Cal 86

Para No.(12, 14, 22)

Name of Advocates

Sarwar Jahan, Debashis Ghorai, Binay Shaw, for Petitioners; L. M. Mahata, P. B. Mahata, Pratik Dhar, Ritwik Pattanayak, for Respondents.

1. **ORDER** :-The writ petitioners are some of the elected members of Dharmada Gram Panchayat. The respondent No. 11 was elected as the Pradhan of the said gram panchayat. The respondent Nos. 12 to 17 are the other elected members of the said gram panchayat.

The writ petition has been filed challenging the inaction of the prescribed authority in acting in terms of the provisions of the Section 12(3) and 12(4) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act).

2. **The** facts are as narrated herein. Initially, the petitioners claiming to be majority members brought a motion on August 10, 2021 for removal of the Pradhan. Falling prey to political pressure, the petitioners wrote a letter to the prescribed authority dated August 13, 2021, expressing their desire not to proceed with the requisition. The prescribed authority by an order dated August 16, 2021 cancelled the motion dated August 10, 2021, granting the requisitionists leave to bring a fresh motion of no confidence. On the basis of the leave granted by the prescribed authority, twelve out of nineteen members brought a fresh requisition on September 10, 2021 with a request to the prescribed authority to convene a meeting in terms of Sections 12(4) of the said Act, for removal of the Pradhan. The requisition was served upon the prescribed authority. It has been alleged that despite receiving the requisition dated September 10, 2021, the prescribed authority failed to take steps in terms of Sections 12(3) and 12(4) of the said Act. It has been further alleged

that neither did the prescribed authority satisfy himself about the compliances of Section 12(2) of the said Act, nor did he issue a notice calling for a meeting, within five working days from the receipt of the requisition as provided under the statute. Aggrieved, the petitioners moved this writ petition before this Court for a direction upon the prescribed authority to convene a meeting in accordance with the provisions of the statute and the rules framed there under, so that the entire process would be completed within the period prescribed under Section 12(10) of the said Act.

3. The writ petition had come up for hearing for the first time on September 27, 2021. This court was of the opinion that the requisition dated September 10, 2021 could not be allowed to be proceeded with, as the same was stigmatic. The state respondents as also the learned senior advocate for the Pradhan raised objections with regard to the requisition alleging that the foundation of the requisition was allegations of corruption, unethical conduct and misbehaviour with the staffs and other members of the gram panchayat. This court was of the view that the requisition which was stigmatic could not be proceeded with and the same should be set aside and cancelled.

4. **Mr.** Dhar, learned senior advocate appearing on behalf of the Pradhan submitted that even if the requisition was set aside on the ground of the same being stigmatic, no leave could be granted to the requisitionists to bring a fresh requisition in the facts of this case.

5. **In** view of the decisions of the court in the matter of Ujjal Monda! v. State of West Bengal, reported in (2013) 1 Cal HN 458 and Sourendra Nath Das v. The State of West Bengal and Ors. passed in WPA 11903 of 2021 the requisition is liable to be set aside.

6. **In** the matter of Ujjal Monda! (supra) the Hon'ble Division Bench of this Court held that the requisition notice/no confidence motion was entertainable only when there was no foundation for bringing the motion. The

relevant portion is quoted below:

"24. Having regard to section 101 of the said Act, we are of the view that a 'no confidence motion' is entertainable for removal of Pradhan where there should not be any ground or foundation of bringing 'no confidence motion' and if 'no confidence motion' is carried on that ground, it will invite civil consequence or evil consequence to the Office Bearers relating to his political career naturally and as such, natural justice principle will have play in the matter, thereby a breach of Article 14 of the Constitution of India."

7. This court in the matter of Sourendra Nath Das v. The State of West Bengal and Ors. (WPA 11903 of 2021) held as follows:

"Having considered the submissions made by the petitioner and the learned advocates for the prescribed authority, this court is of the opinion that a reading of the requisition notice (which is in bengali), as a whole, would indicate that in the opinion of the members, the pradhan has proved to be incompetent as he did not perform his duties and developmental works, causing deprivation to the people of the locality from the benefits all governmental projects, and thus the members had lost confidence in their leader and wanted his removal.

The effect of such a requisition is that the pradhan being incompetent to perform his duties had caused suffering to the people and would be consequently removed as the members lost confidence on account of such non-performance. The pradhan has a career. If the requisition is allowed to stand, it would be a reflection of his inability and incompetence in performing his duties as a leader of the gram panchayat. This is the foundation of the requisition. The 'no confidence' is based on the allegation of incompetence and inability of the pradhan and the suffering caused to the people in the locality due to such incompetence. This is not a simple requisition for removal of the pradhan. The removal if carried through in

the meeting will carry a stigma that the pradhan was removed as he failed to perform his duties and developmental works.

In my opinion, the decision of Ujjal Monda! (supra) applies. Even if the allegations are not as serious as misappropriation or misconduct, incapacity or incompetence of a political leader to perform works in the locality which has cause disillusionment, unhappiness and suffering to the people in the locality are allegations which can be viewed with seriousness. The future prospects of the pradhan might be jeopardized. He will also not get a chance to explain his conduct. Thus, the requisition notice and subsequent notice are set aside for the reasons stated hereinabove."

8. The matter was heard at length after granting an opportunity to the parties to file their affidavits. Mr. Jahan fairly submitted that as per the decisions of this Court on the point of stigma, the motion should be set aside but liberty should be granted to the requisitionists to bring a fresh motion in accordance with law.

9. As the requisition is set aside, on the ground of the same being stigmatic, the prayers in the writ petition directing the prescribed authority to proceed in accordance with law on the basis of the said requisition cannot be allowed.

10. Now comes the question of granting leave to bring a fresh motion. Mr Jahan learned advocate appearing on behalf of the requisitionists submitted that Section 12(11) of the said Act would not operate as a bar in this case as the requisitionists had withdrawn the earlier requisition dated August 10, 2021 even before the prescribed authority had decided to convene the meeting. The prescribed authority had not even called upon the requisitionists to satisfy him with regard to the compliances under section 12(2) of the said Act. The motion was withdrawn by the requisitionists before the prescribed authority acted on the same.

Accordingly, the motion was cancelled by the prescribed authority. At best, the cancellation could be taken as a decision of the prescribed authority recording noncompliance of the provisions of the Section 12(2) of the said Act as the members who signed the motion were undecided. The prescribed authority granted leave to the requisitionists to bring a fresh motion once again. A motion for removal of the Pradhan was thereafter brought on September 10, 2021 which is the subject matter of the present writ petition.

11. Mr Jahan submitted that the leave granted by the prescribed authority to bring a fresh motion for removal of Pradhan was in accordance with law and such decision was not challenged by the respondent No. 11 at any stage. Subsequently, the respondent No. 11 has come up with the plea that the requisition was barred under Section 12(11) of the said Act and should not be proceeded with. According to Mr. Jahan, the statute has clearly mentioned that only when the requisition was not carried by the majority of its existing members at the scheduled meeting, subsequent motion for the removal of the Pradhan could not be taken cognizance of for a period of one year from the date appointed for such meeting. According to Mr. Jahan, the interpretation of Section 12(11) of the said Act would be that if the majority of the members could not carry the motion in the meeting convened for the removal of the Pradhan, only then the bar under Section 12(11) would operate. He further submitted that one third of the existing members referred to in the subsection (1) of Section 12 subject to a minimum of three, could bring a motion for removal of the Pradhan. Thus, the law did not prescribe that the majority of the

members should bring the motion. On the contrary, the law prescribed that majority of the members should carry the motion.

The only logical interpretation of this provision would be that the motion was to be carried and or passed by the majority at the meeting and not as interpreted by Mr. Dhar.

12. Mr. Jahan relied on a decision of this court in the matter of Md. Ali Reza and Ors. v. The State of West Bengal and Ors., reported in (2012) 3 Cal LJ 36 : **(AIR 2012 Cal 86)**.

13. Mr. Mahata, learned senior government advocate submitted that the Webster's dictionary meaning of the word 'carried' in reference to a meeting would mean, 'to pass by majority'. According to Mr. Mahata the requisition was a proposal to remove the Pradhan, brought by the existing members as referred to in sub-section (1) of Section 12. One third of the existing members, subject to a minimum of three could bring the motion, but the law prescribed that in order to remove the Pradhan, the requisition should be passed by a majority at a meeting held as per the West Bengal Panchayat (Constitution Rules), 1975. Referring to Section 12(11) of the said Act, Mr. Mahata submitted that the prohibition was that a second motion for the removal of the same office bearer could not be taken cognizance of within a period of one year from the date appointed for such meeting. According to Mr. Mahata had it been a case where the requisition would have to be carried by the majority from the date of the motion, until the meeting was held, in that case, Section 12(11) would have been differently worded. According to Mr. Mahata, Section 12(11) bars a fresh requisition for removal of the same office bearer for a period of one year from the appointed date of the meeting, which meant that the meeting had to be fail either for lack of quorum or because the majority of

the members of the gram panchayat did not vote in favour of the motion.

14. **Mr. Pratik Dhar** learned advocate appearing on behalf of the Pradhan submitted that the majority of the members brought the motion for removal of the Pradhan on August 10, 2021. The majority of the members withdrew the said motion by writing a letter to the prescribed authority. According to Mr. Dhar, the motion was not carried from the stage of the requisition to the stage of the final decision of removal. The expression 'carried' would mean the entire action of bringing the motion, serving the same upon the prescribed authority, convening the meeting and finally putting the said motion to vote at the meeting convened by the prescribed authority. If at any time in this entire process, the motion was withdrawn, Mr. Dhar, submitted that the same would mean that the motion was not carried by majority. According to Mr. Dhar Section 12(11) contemplated of two situations one being the motion not being carried and the other being lack of quorum in the meeting. Referring to the decision in Mohammed Ali Reza (supra), Mr. Dhar placed reliance on the following paragraph :

"7. A plain reading of the above provision of law postulates either of the two conditions which puts an embargo and/or fetter on a notice of any subsequent motion for removal of the same office bearer for the period of one year from the date appointed for such meeting. One such condition is, if the motion for removal of a Pradhan is not carried by the majority of the existing members of the Gram Panchayat. The other condition is, if a meeting cannot be held for want of quorum. Since, in the facts and circumstances of the instant case, we are not concerned with the first condition, it would be worthwhile to understand the implication of the second condition, which carries the phrase, 'the meeting cannot be held for want of quorum'. Two words, 'meeting' and 'quorum' are relevant in the

context of the above quoted phrase. The word, 'quorum', denotes the number of members of any body of persons whose presence at a meeting is requisite in order that business may be validly transacted. The other word, 'meeting', must mean to usually consist of more than one person or at least, one person, in certain exceptional circumstances, (see Shackleton on the Law and Practice of Meetings, 11th Edition)."

15. Relying on this paragraph, it was submitted that when the meeting failed for lack of quorum

such failure was relatable to the meeting itself. However, when the requisition was not carried by the majority and withdrawn before the meeting, the motion also failed and the said failure was not relatable to the meeting, and the embargo will operate from the date of withdrawal of the requisition.

He urged that when the majority of the members withdrew the first motion by writing a letter to the prescribed authority, the second motion could not be acted upon and as such the bar under Section 12(11) of the said Act would be squarely applicable. No motion for removal of the respondent No. 11 could be taken cognizance of within one year from the withdrawal and the court would not be empowered to grant leave to the requisitionists to bring a fresh motion in accordance with law.

16. The question which now falls for determination is whether leave can be granted to the requisitionists by this Court to bring a fresh motion of no confidence in terms of the provisions of Section 12(2) of the said Act. The requisitionists had brought a motion on August 10, 2021 which was withdrawn by them even before the prescribed authority had satisfied himself with regard to the compliance of the Section 12(2) of the said Act. By a letter dated August 16, 2021, the prescribed authority cancelled the requisition granting liberty to the requisitionists to bring a fresh motion.

Such order of cancellation could at best be treated as a decision indicating that the provision of Section 12(2) had not been complied with, that is, the requisitionists were not unanimous in their decision and on second thoughts did not want to continue with their intention to remove as recorded in said proposal/requisition. The leave granted by the prescribed authority was not challenged by the Pradhan. On the basis of the leave granted by the prescribed authority, a fresh requisition was brought by the requisitionists on September 10, 2021. This court need not answer the question as to whether the prescribed authority could have granted leave to bring the fresh motion, as none of the parties have urged the said issue.

17. The provision of Section 12(11) is quoted below:

"If the motion is not carried by the majority of its existing members or the meeting cannot be held for want of quorum, no notice of any subsequent motion for the removal of the same office bearer shall be taken into cognizance within a period of one year from the date appointed for such meeting."

18. **Section 12(1)** of the said Act makes it clear that the Pradhan may, at any time be removed from his office by the majority of the existing members of the gram panchayat, expressing their lack of confidence against the Pradhan or recording their decision to remove the Pradhan at a meeting specially convened for the purpose. Section 12(2) provides that for the purpose of removal of Pradhan, one third of the existing members referred to in the subsection (1) of Section 12 subject to minimum of three, shall sign a motion in writing expressing their lack of confidence against the Pradhan or recording their intention to remove the Pradhan. Section 12(3) provides that the prescribed authority on receipt of the motion shall satisfy himself whether the requirements under sub-section (2) of Section 12 had been met and on his satisfaction, shall specially convene a meeting by issuing a notice within five

working days from the receipt of the motion. The meeting shall be held in the office of the gram panchayat. The date and hour of the meeting shall be fixed in the said notice and at least seven clear days time would have to be given to each of the existing members for consideration of the motion and for taking a decision on it. In this case, the law prescribes that a minimum of three members can bring a motion indicating their lack of confidence in the Pradhan. Section 12(1) provides that the removal has to be made by majority. A harmonious construction of section 12(1) and 12(2) of the said Act would show that the Pradhan can be removed by a majority of the members of the gram panchayat at a meeting specially convened for the purpose and such meeting shall be held pursuant to a requisition brought by one third of the members of the gram panchayat which shall be not less than three members, indicating their intention to remove the Pradhan or their lack of confidence. The following conditions must be complied with and the prescribed authority must be satisfied of the same: [Gopal Kumar and Anr v. The State Of West Bengal and Ors. reported in (2015) 1 CHN 445 (DB) : (2016 AIR CC 1547 (CAL))]

- (i) One-third of the existing members of the Gram Panchayat subject to a minimum of threemembers 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.

19. The prescribed authority upon being satisfied that the above requirements have been complied

with, shall issue a notice convening a meeting within five working days from receipt of the motion, but upon giving seven clear days to each of the members to think and decide on the motion.

20. The arguments of Mr. Dhar cannot be accepted in this case, as the expression carrying the motion by majority could only be related to the meeting. Carrying the motion could not be interpreted to mean that majority of the members should support the motion from the time the same was brought, till the time the same was put to vote at the meeting. The removal should be by majority vote at the meeting, but the motion could be brought by one third of the members which shall not be less than three members. Thus when the law prescribes that at least 113rd (not less than three members) could bring the requisition and meeting could be held on the basis thereof, the question of the majority of the existing members supporting or passing the motion would occur only at the meeting convened by the prescribed authority.

21. **The** requisition can only be carried by the majority members at the meeting itself and Section 12(11) clarifies that position. It has been clearly stated that the bar would operate for a period of one year from the specified date of the meeting. The computation of one year would be from the date of the meeting. In this case, the prescribed authority did not even satisfy himself about the compliances of section 12(2) when the first requisition was brought on August 10, 2021. Here, the date of the meeting had not been appointed and as such the bar would not operate in this case.

22. Reference is made to the decision of Md. Ali Reza (Supra). The relevant

portion is quoted below:

"9. In the absence of any meeting held on 22nd March, 2011, there was no embargo and/or fetter on the part of the Prescribed Authority, being the Block Development Officer, Murarai-11 Development Block, Birbhum, to have called for a meeting for removal of Pradhan of Rudranagar Gram Panchayat to be held in terms of the requisition notices issued by the petitioners."

The argument of Mr. Dhar that the motion is a piece of paper and a tangible object which has to be physically carried up to the stage of the meeting cannot be accepted for the precise reason that the statute itself provides that one third of the members (not less than three) can bring a motion expressing their lack of confidence or desire to remove the Pradhan. Here the motion is a proposal or expression of the desire of the members to remove the Pradhan. The same is served upon the prescribed authority and upon the office bearer sought to be removed. Thereafter, the entire duty of ensuring that the said motion is ultimately put to vote at a meeting subject to compliances of the requirement of Section 12(2) of the said Act, is upon the prescribed authority. The liability of the requisitionists who brought the motion under the law ends with the compliance of Section 12(2) and thereafter it is the prescribed authority who takes over the motion and puts the same to vote in accordance with the provisions of Section 12(3) and 12(4) of the said Act. It is not the duty of requisitionists to carry the motion up to the stage of the meeting as an object as suggested by Mr. Dhar.

23. The argument of Mr. Dhar that not carrying the motion would be synonymous to withdrawing the motion before the prescribed authority acts upon it, cannot be accepted and Section 12(11) of the said Act will not operate as a bar in this case. When the majority of the members need not

bring the requisition in order for it to be valid, the law cannot be interpreted as if it casts a liability on the majority of the members to see that there is no withdrawal of motion before the motion is put to vote. If the interpretation of Mr. Dhar is taken to be the correct one, then the legislature would not have prescribed that the motion could be brought by one third of the elected members (subject to minimum of three) but the removal would have to be by the majority. The argument of Mr. Dhar that the motion would have to be brought by majority and supported by majority even before the same is put to vote is contrary to the provisions of Section 12(1), Section 12(2) and Section 12(11) of the said Act.

24. Moreover Section 12(11) of the said Act prescribes the time limit of one year from the appointed day of the meeting within which a second requisition cannot be taken cognizance of. In this case, no date was fixed for the meeting. The bar will not apply and as such leave can be granted to the requisitionists to bring a fresh motion, in accordance with law.

25. **The** requisitionists are granted liberty to bring a fresh requisition as per Section 12(2) of the West Bengal Panchayat Act, 1973. 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.

26. **It** is further made clear that the prescribed authority shall be entitled to seek police protection and if such request is made, the police authority shall render all support to the prescribed authority without any delay and laches. It is also made clear that if the Pradhan tries to evade service of the requisition, then the requisitionists shall be entitled to serve the same in

his office through his secretary or assistant and if, such service is not accepted or effected, then the requisitionists will be entitled to paste the same at the office of the Pradhan in addition to serving the same by the modes prescribed by the statute.

27. Accordingly, the writ petition is disposed of.

28. However, there will be no order as to costs.

Parties are directed to act on the communication of the learned advocates.

Order Accordingly