

---

**(2016) 01 CAL CK 0065**  
**In the Calcutta High Court**  
**Case No : W.P. 20150 (W) of 2015.**

Jinnatun Khatun

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

---

**Date of Decision :** 27-01-2016

**Acts Referred:**

West Bengal Panchayat Act, 1973 — Section 12(10), 12(11)

**Citation :** (2016) AIR(Calcutta) 221 : (2016) 2 CalLT 193

**Hon'ble Judges :** Samapti Chatterjee, J.

**Bench :** Single Bench

**Advocate :** Piyush Chaturvedi, Learned Advocate, Ardhendu Sekhar Biswas, Learned Advocate and Saikat Banerjee, Learned Advocate, for the Appellant; Arindam Chatterjee, Learned Advocate and N.K. Singh, Learned Advocate and Subhabrata Datta, Learned Advocate and Tapas

**Final Decision :** Allowed

---

## Judgement

Samapti Chatterjee, J. - The petitioner has filed the present writ petition challenging the impugned order under Memo dated 14th July, 2015 passed by the Prescribed Authority and BDO, Hemtabad Development Block, Hemtabad, Uttar Dinajpur whereby the order issued by the said Prescribed Authority and BDO speaks as follows :-

"That in conformity with the statutory provision as laid down in subsection (4) of section (9) of the West Bengal Panchayat Act as amended up to date, Upa-Pradhan of Bishnupur G.P. Sri Saki Mohammad shall exercise the powers, perform functions and discharge the duties of the Pradhan until further order."

2. Mr. Piyush Chaturvedi, learned Advocate appearing for the petitioner submitted that the impugned order dated 14th July, 2015 was actually given effect to on 17th August, 2015 as the appeal preferred by the private respondents was disposed of on 10th August, 2015 by holding, inter alia as follows :-

"We have considered the fact and circumstances of the case. On e the decision to remove the Pradhan became effective the original cause of action of the writ petitioners ceased to exist on the basis of the original writ petition. The petitioners were not in a position to get any relief because the order for removal had already been passed. So long as that order is not set aside, the order passed on 2nd January, 2015 cannot also be made operative once again. Therefore, the order under challenge is patently bad and is set aside."

In the said order, Their Lordships were pleased to grant leave to the petitioners only to the effect that ?this will not, however, preclude the writ petitioners from challenging the order of removal if they are entitled in accordance with law.?

With this liberty, the petitioner immediately thereafter, filed the present writ petition challenging the impugned order under Memo dated 14th July, 2015 which was actually given effect to from 17th August, 2015.

3. Mr. Chaturvedi further submitted that this impugned order is bad in law since it has not been issued within the period as prescribed under sub-section (10) of Section 12 of the West Bengal Panchayat Act, 1973. Sub-Section (10) of Section 12 of the said Act is set out hereunder :

"S.12. \*\*\*\*\*

(10) On receipt of the minutes of the meeting and the report under sub-section (9), the prescribed authority shall, within next five working days, take such action, as he may deem fit and the entire process commencing from submission of motion to the prescribed authority up to the action finally taken by him shall be completed within thirty days"

It is however, submitted by Mr. Chaturvedi that as per sub-section (10) of Section 12 of the said Act, the entire process would be completed within thirty days. Mr. Chaturvedi further contended that the entire process under sub-section (10) of Section 12 postulates from removal of the Pradhan upto appointment of the new Pradhan in place and stead of the earlier Pradhan. Mr. Chaturvedi further drew my attention to subsection (11) of Section 12 of the said Act where it prescribes as follows :

"S.12.\*\*\*\*\*

(11) If the motion is not carried by the majority of its existing members or the meeting cannot be held for want of quorum, not notice of any subsequent motion for the removal of the same office bearers shall be taken into cognizance within a period of one year from the date appointed for such meeting"

4. Mr. Chaturvedi further emphasised that since the earlier motion, which is the subject matter of the earlier writ petition being W.P. 28680 (W) of 2014 is still pending for final adjudication, therefore, the Prescribed Authority is barred from taking further motion in respect of the same cause of action.

5. The aforesaid submission is vehemently opposed by Mr. Arindam Chatterjee,

learned Advocate appearing for the respondents.

6. Mr. Chaturvedi further contended that the meeting was fixed on 6th January, 2014. Notice of meeting was quashed on 14th October, 2014. Against that order appeal preferred by the State Authority where the Division Bench observed as follows:

On 19th December, 2014 second notice was issued. The Authority conveyed a meeting on 2nd January, 2015 and the petitioner moved a writ petition before this Court obtaining interim order of stay of operation of the notice for a limited period of 30 days. Matter was dismissed for default subsequently on 22nd June 2015 and an application for restoration of the said matter was filed on 13th July, 2015 and on 14th July, 2015 the prescribed authority directed the petitioner to handover the charge.

7. Mr. Chaturvedi further vehemently urged that the conduct of the prescribed authority is very unfair as the prescribed authority failed to comply the provision of the law.

8. Mr. Chaturvedi further contended that as per sub-section 10 of Section 12 the entire process should be completed within 30 days but it was not completed within 30 days by the Prescribed Authority. More so, Mr. Chaturvedi also submitted that 30 days starts from submission of the "Motion". The second "Motion" was submitted on 19th December, 2014. Not only that earlier notice issued on 24th September, 2014 which is still alive. Therefore, sub-section 11 of Section 12 is a statutory bar since the earlier "Motion" is still pending for adjudication.

9. Mr. Chaturvedi further vehemently urged that provision of Section 12 is mandatory in nature. Therefore, any action taken on the basis of the earlier "Motion" should be set aside. In support of his contention Mr. Chaturvedi relied on a decision reported in 2005 (4) CHN Page 159 Paragraph-6 (Rasul Mohammad and Ors v. State of West Bengal and Ors) which is quoted below :

"Para-6-It further appears from the said notice that the Pradhan was requested to convene a meeting for the said purpose within 16.5.2005 which is contrary to the scheme as contained in section 16 of the West Bengal Panchayat Act, 1973 which provides that in the event such a request is made by the requisitionists, the Pradhan is required to convene a meeting within 15 days from the date of receipt of such request failing which the requisitionists themselves can call a meeting for the said purpose."

Mr. Chaturvedi also relied on a decision reported in 2001 (1) CLJ Page 647 (Raghunath Manna and Anr v. State of West Bengal and Ors) Paragraphs-5-10.

10. Mr. Chaturvedi also submitted that second "Motion" on 19th December, 2014 is bad, illegal, arbitrary and contrary to law as it was within the period of one year as the first "Motion" was taken on 24th September, 2014 and second "Motion" was taken on 19th December, 2014.

11. Mr. Chaturvedi also vehemently urged that from 2nd January, 2015 till 30th March, 2015 interim order was continuing. Only on 22nd June, 2015 the matter was dismissed for default. Therefore, that period of interim order i.e. from 1st January, 2015 till 30th March, 2015 should be excluded from the 30 days which starts from 19th December, 2014 as the order of removal issued on 14th July, 2015 beyond 30 days as per statute, therefore the same is vitiated.

12. Mr. Arindam Chatterjee, learned Advocate appearing for the private respondents submitted that the impugned notice was issued within the stipulated period as indicated under sub-section (10) of Section 12 of the West Bengal Panchayat Act, 1973. Mr. Chatterjee further submitted that there is no violation of the sections as has been submitted by Mr. Chaturvedi learned Advocate for the petitioner.

13. Mr. Chatterjee further contended that the Court should look into the order passed by the Appeal Court on 10th August, 2015 which appears at page 67 of the writ petition.

Mr. Chatterjee also submitted that by virtue of the order passed by the Hon'ble Division Bench, it is clear that once the decision to remove the Pradhan became effective, the original cause of action of the writ petitioner ceased to exist on the basis of the original writ petition. Therefore, Mr. Chatterjee contended that the removal of the petitioner has already been accepted according to the Division Bench order dated 10th August, 2015 which was, however, disputed by Mr. Chaturvedi learned Advocate for the petitioner and Mr. Chaturvedi submitted that the Hon'ble Division Bench has given liberty to the petitioner to challenge the removal order.

Therefore, the action taken by the Prescribed Authority to hold election in respect of the new Pradhan which was held on 01.12.2015 at 11:30 is bad in law as the removal of the petitioner is under challenge. If the appointment of the new Pradhan is given effect to then the writ petition will become infructuous.

14. Per contra, Mr. Subhabrata Dutta learned Advocate appearing for the State submitted that it is not correct that sub-section 11 of Section 12 was not complied with as in the present case provision under sub-section 11 of Section 12 has been complied by the authority.

15. Mr. Dutta further contended that out of total 17 members 11 members on 24th September, 2014, expressed their lack of confidence on the petitioner as Pradhan and took decision for removal of Pradhan by putting their signatures and thereby requested the Prescribed Authority and Block Development Officer, Hemtabad Block to take decision on that issue. Thereafter on 24th October, 2014 the Prescribed Authority upon satisfaction of the requisition notice of the requisitionists issued notice for convening meeting for consideration of "Motion" for removal of the Pradhan on the ground of lack of confidence and for taking decision in the said meeting scheduled on 16th October, 2014 at the office of the Bishnupur Gram Panchayat at 11.30 A.M.

Challenging the said notice on 14th October, 2011 the petitioner moved a writ petition being W.P No.28680 (W) of 2014 and the Hon'ble Court was pleased to quash the notice dated 25th October, 2014 with the observation that the said order will not prevent the members of the Gram Panchayat or making new requisition for removal of the Pradhan and the Prescribed Authority shall act on such requisition in accordance with law. Against that order the requisitionists (respondent no.8 to 18) filed a Mandamus Appeal and on 13th November, 2014 the Hon'ble Division Bench held that the notice ought not to have been quashed for want of compliance of sub-section 4 of Section 12 of the Act. Therefore, the impugned order was set aside and the matter was placed before the Learned Single Judge for final disposal.

16. Mr. Dutta further contended that 11 members out of total members of 17 expressed their lack of confidence on the Pradhan and took decision for removal of the Pradhan by putting their signatures on 19th December, 2014 under Section 12 sub-section 3 of the West Bengal Gram Panchayat (Amendment) Act, 2010. On 24th December, 2014 the Prescribed Authority upon satisfaction of the requisitionists issued notice on the same date for convening meeting for consideration of the "Motion" for lack of confidence against the Pradhan and for taking decision which was scheduled on 2nd January, 2015.

17. Challenging the said notice the petitioner filed a writ petition being W.P. No.4439 (W) of 2015 and obtained an interim order on 1st February, 2015. On 22nd June, 2015 the writ petition was dismissed for default and on 16th July, 2015 the Prescribed Authority passed order thereby accepting resolution dated 16th January, 2015 adopted by majority member and also passed order for removal of the Pradhan. Only on 22nd July, 2015 the Learned Trial Judge after restoring the writ petition passed an order of extension of interim order for a period of eight weeks against which the authority preferred appeal and on 10th August, 2015, the Hon'ble Division Bench by an order dismissed the writ petition being W.P. No.34449 (W) of 2014. Before parting with his submission Mr. Dutta submitted that the present writ petition does not deserve any interference of this Hon'ble Court.

In support of his contention Mr. Dutta relied on a Supreme Court decision reported in 2010 (12) SCC Page 1 (Bhanumati and Others v. State of Uttar Pradesh Through Its Principal Secretary and Others) Paragraph-58 which is quoted below :

"Para-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. Dutta also relied on an unreported Division Bench decision of this Hon'ble High Court passed on 3rd March, 2014 in M.A.T. No. 2098 of 2014 with C.A.N. No.11741 of 2014 (Minara Bibi and Others v. Muslima Bibi and Others). Some portion of the said unreported decision relied by Mr. Dutta is quoted below :-

"Therefore, we do not find any reason why the elected members of the gram panchayat should be prevented from electing a new Pradhan in accordance with law. Accordingly, we direct the prescribed authority namely, the respondent no.5 to take immediate necessary steps for electing the new Pradhan in respect of Kushmore-I Gram Panchayat without any further delay in accordance with law and upon strictly observing the prescribed procedures under the statute.

Needless to mention that after election of the new Pradhan, the Upa Pradhan will hand over the charge to the Pradhan so that the said Pradhan can run the affairs of the gram panchayat in accordance with law.

With the aforesaid observations and directions, we set aside the impugned order under appeal passed by the learned single Judge and dispose of both the application as well as the appeal upon treating the said appeal as on day's list."

Mr. Dutta also relied on decision reported in 2007 (4) CHN Page 605 (Upananda Chatterjee v. State of West Bengal and Others) Paragraph-21 which is quoted below :-

"Para-21-In our view, the provisions of giving seven clear days' notice as mentioned in the second proviso to section 16 of the Act is a directory provision and not a mandatory one as rightly held in the case of Alope Pramanik (supra) while construing a similar provision of the same statute. It is now settled by the Apex Court that if a particular statutory provision is a procedural one, even the use of the word "shall" in such provision will not make it mandatory unless consequence of disobedience has been indicated in the statute. The exceptions to the previously mentioned rule of interpretation are in the cases where there is either "no notice", or "no opportunity" or "no hearing". In this connection, we may refer to the following observations of the Supreme Court in the case of State Bank of India v. S.K. Sharma, reported in AIR 1996 SC 1669 at 1683.

"A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

In the case of violation of a procedural provision, the position is this procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice viz, whether such violation has prejudiced the delinquent

officer/employee in defending himself properly and effectively."

18. Considering the submissions advanced by the learned Advocate of the respective parties and after perusing the record I find that an interim order was passed by this Hon<sup>ble</sup> Court on 2nd January, 2015 by directing the prescribed authority and Block Development Officer, Hemtabad Development Block, Hemtabad, District-Uttar Dinajpur to the effect that if any meeting for no confidence/removal against the petitioner has already been held that should not be given effect to for a limited period of two weeks from date and the said order was time to time extended till 30th March, 2015. From 30th March, 2015 till the date of issuance of the impugned order dated 14th July, 2015 the petitioner was allowed to function as Pradhan of the concerned Panchayat.

I also find that during that period by the letter dated 9th March, 2015 and affidavit dated 27th February, 2015 majority of the members of the said Gram Panchayat withdrew their consent for removal of the petitioner in writing and submitted such desire before the prescribed authority and Block Development Officer concerned. Furthermore, prior to passing of the interim order dated 14th July, 2015 the Block Development Officer should have considered the withdrawal of consent submitted by some members of the said Panchayat.

19. I also find that the authority conveyed a meeting on 2nd January, 2015 and the petitioner moved before this Hon<sup>ble</sup> Court and obtained interim order for 30 days though the said writ petition was dismissed for default on 22nd June, 2015. Restoration application also filed on 13th July, 2015 and on 14th July, 2015 the petitioner was directed to handover the charge by the authority. In my view that action of the prescribed authority and the B.D.O was not in accordance with law. Admittedly it was not done within 30 days as per Section 12 Sub Section 11 as discussed above. Not only that the interim order was restored on 22nd July, 2015. Sub-Section 10 of the Section 12 of the said Act prescribed that entire process should be completed within 30 days but in the present case it was done by the authority beyond 30 days. It is also evident from records that 30 days starts from submission of Motion, admittedly on 19th December, 2014 2nd Motion was submitted and it is also an admitted fact that earlier notice was issued on 24th September, 2014 and the same is still alive as per sub-Section 11 of Section 12 of the said Act, the second notice is thus statutorily barred, since the earlier Motion was still pending for adjudication.

20. I cannot overlook that the provision of Section 12 is mandatory in nature. Therefore any subsequent action taken on the basis of the notice dated 24th November, 2014 should be set aside.

21. I also cannot ignore the fact that the 2nd Motion dated 19th December, 2014 was issued within the period of one year, therefore, the 2nd Motion is bad in law as the 1st Motion was issued on 24th September, 2014 and the 2nd Motion was issued on 19th December, 2014 which is not permissible in law.

22. It is also cannot ignored that from 2nd January, 2015 till 30th March, 2015

interim order passed by this Hon?ble Court was very much in force, therefore, that period should have been excluded from 30 days which starts from 19th December, 2014. That being the scenario the impugned removal order passed on 14th July, 2015 beyond 30 days as per statute cannot be sustained in the eye of law and stands vitiated.

23. I have considered the citation relied on by Mr. Dutta that decision adopted by the majority should be accepted. But the situation of the case in hand is something otherwise. The Court has to only concentrate on the issue whether sub-Section 10 and 11 of Section 12 of the said Act has been complied with or not. Admittedly, the provisions of sub-Section 11 of Section 12 has not been complied with in the present case by the authority at the time of passing the removal order. Sub Section 11 of Section 12 of the said Act clearly provides that no meeting for the removal of Pradhan or the Upa-Pradhan under Section 12 shall be conveyed within a period of one year from the date of election of the Pradhan or the Upa Pradhan.

24. On the basis of the above discussions I am of the view that the impugned memo dated 14th July, 2015 passed by the prescribed authority and Block Development Officer, Hemtabad Development Block, Hemtabad, Dist-Uttar Dinajpur thus accepting the resolution of the meeting for removing the petitioner from the office of the Pradhan of Bishnupur Gram Panchayat and thereby to declare the office of Pradhan stands vacated with immediate effect cannot be sustained in the eye of law.

25. Accordingly the impugned order dated 14th July, 2015 passed by the prescribed authority and B.D.O is set aside and quashed. Needless to mention that since the election of new Pradhan is not a subject matter of challenge before this Court and also the Hon?ble Division Bench by order dated 10th August, 2015 passed in A.S.T No.220 of 2015 and A.S.T.A No.132 of 2015 only directed the petitioner to challenge the removal order in a separate proceedings in accordance with law. Therefore, in the present writ petition Court cannot pass any order in respect of election of new Pradhan, but that will not preclude the writ petitioner from challenging the election of new Pradhan in a separate proceedings in accordance with law if she is entitled to.

26. With this direction this writ petition is allowed without any order as to costs.

27. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties after fulfilling all the formalities.