

(2021) 08 CAL CK 0036
In the Calcutta High Court
Case No : Writ Petition No. 12441 Of 2021

Josnara Khatun

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 10-08-2021

Acts Referred:

West Bengal Panchayat (Constitution) Rules, 1975 — Rule 5B(2)
West Bengal Panchayat Act, 1973 — Section 12(2)
General Clauses Act, 1897 — Section 27

Citation : (2021) 08 CAL CK 0036

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Sabyasachi Chatterjee, Subhrajit Saha, Sreejita Biswas, Anindita Banerj, A. Biswas, Ankur Sharma, Srijib Chakraborty, Aditya Mondal, Lalit Mohan Mahata, Ayan Banerjee

Judgement

The petitioner is the Pradhan of Chandmoni II Gram Panchayat. The petitioner has challenged the notice dated July 30, 2021 issued by the prescribed

authority under Form 1-E, Sub-Rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975,

The first contention of the petitioner is that the prescribed authority has failed to satisfy himself about the compliance of Section 12(2) of the said Act,

especially the service of the motion upon the Pradhan. Mr. Chatterjee, learned advocate appearing on behalf of the petitioner submits that the

requisition was neither delivered to the Pradhan at his office nor was it received by the Pradhan through registered post. The requisition was received

on August 2, 2021 after the notice for holding the meeting for removal had been issued. Reliance has been placed on the provisions of Section 12(2) of

the said Act. Mr. Chatterjee submits that both modes of service upon the

Pradhan, that is delivery by hand and by registered post were mandatory and non-compliance of the same shall render the entire process vitiated.

Mr. Chatterjee further submits that the interpretation of Section 27 of the General Clauses Act with regard to the service by post shall be applicable.

He further submits that in the fact situation, there cannot be any presumption of service but there has to be actual service, that is, receipt of the postal

article. The annexure to the writ petition shows that the documents which were sent to the petitioner by registered post was received by the petitioner

on August 2, 2021, that is after the notice of removal was issued.

Further reliance is placed on two decisions of this Court in the matter of Pabitra Kar vs. The State of West Bengal & Ors. passed in WPA 10552 of

2021 and Rajendra Kujur vs. The State of West Bengal & Ors. passed in WP No.28717 (W) of 2014.

Mr. Mahata, learned advocate appearing on behalf of the State was directed by the Court to take instruction from the prescribed authority as to

whether the Secretary of the Gram Panchayat, who had received the service in the office of the Pradhan, on behalf of the Pradhan, had delivered the

same to the Pradhan or not. The Secretary has filed a declaration through the Block Development Officer, Ratua-I Development Block, in which he

has stated that the requisition was received by him at the office and immediately sent to the Pradhan through one of the temporary staffs to the

Pradhan and an acknowledgement/receipt was also obtained for such service.

He further submits that the prescribed authority had satisfied himself that the Pradhan's office had received a copy of the requisition and the

notice was also sent by registered post.

Mr. Chakraborty submits documents to show that the requisition was served upon the office of the Pradhan, which was received by the Secretary of

the Gram Panchayat, who is an official responsible to discharge the duties of the office of the Pradhan and assist her. He further submits postal

documents to show that the requisition was sent to the residence of the Pradhan by registered post on July 29, 2021.

The requisition was brought on July 28, 2021. The law requires that the meeting should be called within five working days by the prescribed authority,

upon satisfaction of compliance of Section 12(2) of the said Act. Records reveal that the Secretary of the Gram Panchayat received the same on 28th

who has given a declaration in writing that the same was delivered to the Pradhan through a temporary staff of the office and receipt was obtained.

In the decision relied upon by Mr. Chatterjee in *Prabitra Kar (supra)*, the Court was considering whether the prescribed authority had satisfied himself

that either of the two modes of service upon the Pradhan had been effected or not. The Court having found that neither a delivery through the office

nor by registered post was made on the Pradhan and the Pradhan was not in receipt of the notice/requisition at all, held that the prescribed authority

should satisfy himself about compliance of service of the requisition upon the office bearer sought to be removed. In the decision of *Rajendra Kujur*

(*supra*), this Court held that service upon the Pradhan was mandatory and either mode of service upon the Pradhan would satisfy the requirement of

Section 12(2) of the said Act.

Coming to the facts of this case, the Secretary on behalf of the Pradhan received the requisition in his office. The Secretary has given a declaration to

the Block Development Officer concerned/prescribed authority that the copy of the notice was sent to the Pradhan through an employee of the Gram

Panchayat office and a receipt had been obtained. The prescribed authority has also satisfied himself about other compliances as required under the

law as submitted by Mr. Mahata. Secondly, postal receipt showing that the postal article with the requisition was sent to the residence of the Pradhan

on July 29, 2021, is also on record.

Now, if the Pradhan is not available in his office for accepting personal service of the requisition, service through his staff who are engaged in the

office of the Gram Panchayat has to be accepted. The secretary had given a written version to the effect that upon receipt of the said requisition he

had immediately sent the same to the Pradhan.

The law requires that the requisition should be delivered to the office bearer either by hand or by registered post and also sent by registered post to the

residential address also. My prima facie, opinion is that both these modes of service have been complied with. The Pradhan was aware of the

requisition, prior to the issuance of the notice for removal as per the statement of his own Secretary. It is not expected that the requisitionists shall go

in search of the Pradhan all over the village to trace out the Pradhan and physically serve him a copy, especially because the time limit prescribed in

the statute is very short, and must be complied with in letter and spirit.

Service in the office through the Secretary in this case, shall be accepted as good service. A receipt was also obtained after the delivery of the

requisition to the Pradhan. The notice was also sent by registered post. Thus, the decisions relied upon by Mr. Chatterjee do not apply in the facts of

this case. In my prima facie opinion, the provisions of Section 27 of the General Clauses Act provides that service by post would mean registered

service by properly addressing, pre-paying and posting by registered post. In this case, the letter was sent at the proper address by registered post and

the same was also received by the Pradhan. Thus Section 27 of the General Clauses Act has been complied with.

The contention of Mr. Chatterjee that the registered post was received after the notice of motion was issued is not relevant as the requisition was

already sent to the Pradhan by her Secretary.

In view of the observations made hereinabove, I do not find any reason to pass an interim order staying the requisition meeting to be held on August

11, 2021. Police assistance shall be rendered. All help and support to the prescribed authority shall be extended by the police for the entire period

when the meeting continues. The law prescribes that there shall be seven clear daysâ?? notice before the meeting is held. Here this has been

complied with. Non-service of requisition would become fatal if the Pradhan would have no knowledge of the meeting. Here the Pradhan is aware of

the requisition and none of the other members have come up with any allegations of non-service of the requisition.

In my opinion, the provision for removing an elected representative such as Pradhan is of fundamental importance to ensure the democratic

functioning of the institution as well as to ensure the transparency and accountability in the functions performed by the elected representatives. 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. If the Pradhan has lost support of the majority of the members,

he cannot remain in office for a single day.

Let separate affidavits-in-opposition be filed by the prescribed authority, the requisitionists and the Secretary of the Gram Panchayat office within six

weeks. Reply thereto, if any, be filed within two weeks thereafter.

All actions taken in the meantime shall abide by the result.

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