

(2021) 08 CAL CK 0092
In the Calcutta High Court
Case No : Writ Petition No. 13268 Of 2021

Md. Bafatullah

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 26-08-2021

Acts Referred:

West Bengal Panchayat (Constitution) Rules, 1975 &mdash Rule 5B(2)
West Bengal Panchayat Act, 1973 — Section 12(2), 12(3)

Citation : (2021) 08 CAL CK 0092

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Gangadhar Das, Swarvanu Saha, Raja Saha, Shamim-ul Bari, Pratik Dhar, Cardina Roy, Dhananjay Banerjee, Arup Kumar Bhowmick

Judgement

Mr. Das, learned Advocate appearing on behalf of the petitioner/Pradhan, submits that two modes of service of the requisition upon the Pradhan as per the provision of Section 12(2) of the said Act has not been complied with. He further submits that the prescribed authority without satisfying himself with the compliance of Section 12(2) of the said Act, could not have issued the notice under Form 1E of sub-rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975.

Mr. Dhar, learned Senior Advocate appearing on behalf of the respondent No.10 who is one of the requisitionists, submits that the requisition was brought pursuant to a liberty granted by this Court on August 10, 2021. As the first requisition was frustrated because of the inability of the prescribed authority to convene the meeting in apprehension of breach of peace, the requisitionists, whose democratic rights were denied, moved this Court by filing W.P.A. No.12301 of 2021. This Court set aside the earlier requisition, as the same had lost its force due to expiry of the statutory time, and granted liberty to the requisitionists to bring a fresh requisition. On the basis of such liberty, the present requisition was brought on August 12, 2021.

Mr. Banerjee, learned Advocate appearing on behalf of the respondent Nos.11 to 16, submits that the requisition was served upon the Pradhan in terms of the provisions of Section 12(2) of the said Act. Documents have been handed over before this Court which show that the copy of the requisition was served and delivered in the office of the Pradhan on August 12, 2021. The Secretary of the Gram Panchayat has affixed the seal. Another seal has been affixed on the receipt showing service to the Pradhan. The said requisition was also delivered in the office of the Gram Panchayat on August 18, 2021 by registered speed post. A copy of the requisition was also sent to the residential address of the Pradhan, as it appears from the postal receipt submitted before the Court. The said postal article was also delivered on August 18, 2021.

It is further submitted by the petitioner that the notice was issued on August 18, 2021 and the prescribed authority could not have satisfied himself of the compliances under Section 12(2) of the said Act. No other challenges have been thrown to the requisition and the notice of the meeting. Prima facie, from the original receipt submitted before this court, the factum of service of the requisition in the office of the prescribed authority and further delivery of two copies in the office of the Gram Panchayat, one received by the Secretary of the Gram Panchayat himself and one received on behalf of the Pradhan is available. The seal bears a short signature. In my prima facie view, the first mode of service of requisition, as contemplated under Section 12(2) of the said Act, has been complied with. It appears from the postal receipts that the postal articles had been sent to the residential address of the Pradhan on August 12, 2021. The name of the village and PIN code of the said address has been mentioned in the receipt. The item delivery on August 18, 2021 has also been confirmed as per the track reports.

The law provides that 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 and another copy shall be sent by registered post at his residential address.

Thus, prima facie, in my opinion, the provisions of Section 12(2) of the said Act has been complied with as the requisition was received in the office of the Gram Panchayat on August 12, 2021 which has not been denied by the petitioner. The contention of the petitioner is that the same was not received in the residential address, whereas, the postal receipt shows that, it was sent to the residential address of the petitioner by registered speed post on August 12, 2021 and the track report showing delivery of the same on August 18, 2021 has been produced. The prescribed authority rightly satisfied himself. In the decision of *Rajendra Kujur v. The State of West Bengal & Ors.* passed in WP 28717(W) of 2014, this Court has held that at least one mode of delivery should be complied with before the meeting is held. In this case, both the modes of service to the Pradhan as per law has been complied with. The Pradhan was aware of the requisition on August 12, 2021 itself. Moreover this High Court in the decision of *Gopal Kumar & Another v. The State of West Bengal & Others* reported in 2015

(1) CHN Cal 445 has held that subjective satisfaction of the prescribed authority is not required and no order recording such satisfaction is required to be passed. Prima facie, I do not find any reason to interfere with the meeting to be held on September 2, 2021. The meeting will be held as per the notice.

However, the documents produced before this Court are required to be filed in the form of an Affidavit. The prescribed authority shall also file an affidavit-in-opposition, dealing with the afore-mentioned contentions.

Let affidavit-in-opposition be filed within a period of four weeks; reply thereto, if any, be filed within a period of two weeks thereafter.

Liberty is given to the parties to mention the matter before the appropriate Bench after the abovementioned period. All actions taken in the meantime shall abide by the results of the writ petition.

All parties are to act on the basis of the server copy of this order.

Pendency of this application will not preclude the SDO, Chanchal from disposing of the pending application in accordance with law.