
(2020) 07 CAL CK 0035

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 5670(W) Of 2020, Civil Application (CAN) No. No.3545 Of 2020

Safikul Islam & Ors.

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 02-07-2020

Acts Referred:

Panchyat (Constitution) Rules, 1975 — Rule 22(4)(b), 22(4)(c)
Constitution Of India, 1950 — Article 226

Citation : (2020) 07 CAL CK 0035

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Yamin Ali, Arif Ali, Pratik Debnath, Ratul Das, Kalyan Bandopadhyay, Suman Sengupta, Dipjyoti Chakraborty, Sumitava Chakraborty, Kishor Dutta, Sayan Sinha

Final Decision : Dismissed

Judgement

Bibek Chaudhuri, J

The petitioners are the members of various Upa-Samitis of Mothabari Gram Panchyat within Kaliachak Block in the District of Malda. Total members

of the said Gram Panchyat are 25, out of which 23 members are elected, while remaining two members are co-opted from Kaliachak Panchyat

Samity.

Respondents No.10-23, had issued a letter dated 13th June, 2020 requesting the respondent No.6 being the prescribed authority and Block

Development Officer, Kaliachak-II for initiating motion of removal of the petitioners from the office of the members of Upa-Samitis of which they are

members on the ground of lack of confidence. The Block Development Officer issued a notice on 17th June, 2020 convening a meeting for

consideration of motion for removal of/lack of confidence against the petitioners at Mothabari Gram Panchyat office on 2nd July, 2020.

It is contended by the petitioners that the said notice issued by the prescribed authority convening the meeting was in violation of Sub-rule 4(b) and (c)

of Rule 22 of the Panchyat (Constitution) Rules, 1975. The notice also does not say anything about the prima facie satisfaction of respondent No.6

convening such meeting. Under such circumstances, the petitioners have prayed for a direction upon the respondent, particularly the respondent No.6

by issuing a prerogative writ of mandamus to withdraw, cancel, rescind and/or alternatively set aside the notice dated 17th June, 2020 convening

meeting on 2nd July, 2020 on the no confidence motion/removal of the petitioners along with other incidental reliefs.

Mr. Yamin Ali, learned Advocate for the petitioner submits that on the basis of a motion dated 13th June, 2020, the respondent No.6 issued the notice

of meeting on motion for removal of members of the Upa-Samitis of Gram Panchyat on 17th June, 2020. According to Mr. Ali, under Rule 22(4)(b) of

the Panchyat (Constitution) Rules, 1975, it is clearly provided that the copy of the motion shall be delivered to the member or members or Sanchaloks

proposed to be removed, as the case may be, either by hand or by registered post at the Gram Panchyat Office and another copy shall be sent by

registered post at the residential address of such members. Thus, the aforesaid Rule provides service of notice of motion upon the members who are

going to be removed by two modes, one by hand or by registered post at Gram Panchyat Office and another by registered post at the residential

address of such members. Mr. Ali further submits that Rule 22(4)(c) states that the Block Development Officer on receipt of the motion shall satisfy

himself that it conforms to the requirement of Clause (b) and on his satisfaction shall especially convenn, by issue of notice with the item agenda in

Form 1F, within five working days of the receipt of the motion. A meeting of the Gram Panchyat to be held in its office fixing date and hour of the

meeting and sending such notice at least before clear seven days to the existing members for consideration of motion and for taking a decision of it. In

the notice it is not stated that respondent No.6 was satisfied on the conformity to the requirement of Clause (b). In the absence of such satisfaction

the notice is bad in Law and accordingly the said notice cannot be given effect to. Learned Advocate General, on the other hand submits that the

notice of the meeting which is scheduled to be held to be at 1 p.m was issued by respondent No.6 on being satisfied with the motion was convent by

more than 1/3 members of the said Gram Panchyat. The petitioners cannot resist holding of the meeting on the basis of technicalities on the ground

that in a democratic process if a member of a Upa-Samity of the G.P lacks confidence of majority members he shall be removed. It is also submitted

by the learned Advocate General that the notice of the meeting was issued by the respondent No.6 in Form-1f prescribed under the rules. Therefore,

the petitioners cannot restrain holding of meeting on the motion.

Learned Advocates on behalf of the respondent No.8 and 9, being the Pradhan and Upa-Pradhan of Mothabari Gram Panchyat submits that a

member of Upa-Samity of the Gram Panchyat can only be removed if he is a habitual absentee from attending the meeting. The petitioners, on the

other hand attended all the meeting of the respective Upa-Samitis and they cannot be discharged their duties honestly and faithfully and cannot be

removed in terms of Rule 22.

Mr. Kalyan Bandopadhyay, learned Senior Counsel on behalf of the respondent Nos.10-15 and 17-23, on the other hand brings my attention by

submitting that all the petitioners were served notices under Rule 22 in both ways but they have suppressed the said fact. In support of his contention

Mr. Bandopadhyay files photo copies of postal track report showing service of notice by registered post to the petitioners.

It is further submitted by Mr. Bandopadhyay referring to a decision of Hon'ble Supreme Court in the case of Ravi Yashwant Bhoir vs. District

Collector, Raigad and Ors reported in (2012) 4 SCC 407 that a duly elected person is entitled to hold office for the term for which he has been elected

and he can be removed only on a proved misconduct or any other procedure established under law like 'No Confidence Motion' was issued by the

majority members of the Gram Panchyat against the petitioners. On the basis of such no confidence motion the meeting was convened following Rule

22 strictly by the Block Development Officer. There is no reason to stop holding of such meeting.

Mr. Bandopadhyay next refers to another decision of this Court in the case of Abdul Wadud vs. Development Officer, Nabagram, Murshidabad and

Ors. reported in 2007(1) SCC CHN 584 .This Court relying on a Division Bench

judgment held that 'the notice of removal' and the notice of 'no confidence' is same. This Court further held that the majority decision regarding removal of Pradhan cannot be disturbed merely on the ground of certain irregularities in the initial letter of request particularly when the confusion regarding the purpose of the said meeting was clarified, and/or removed in the impugned notice wherein the purpose of calling the meeting for discussion the agenda of removal of Pradhan was specifically mentioned and the members participated in the said meeting with the clear idea about the agenda to be discussed in the said meeting.

Having heard the learned Counsels for the parties and on perusal of the application under Article 226 of the Constitution, it is undisputed that

Mothabari Gram Panchyat is constituted with 25 members. Out of the said 25 members, 14 members submitted a no confidence motion against the petitioners before the prescribed authority. The prescribed authority being respondent No.6 issued notice upon the petitioners and other members of

the said Gram Panchyat convening a meeting of Gram Panchyat to discuss the agenda of no confidence/removal of the petitioners. The interim order

passed in *Seaulian Parvin & Anr vs. State of West Bengal & Ors*: WP-30981(W) of 2014 dated 28.11.2014 is not applicable in the facts and

circumstances of the instant case because of the fact that in the said unreported decision the Block Development Officer convened a meeting of the

Upa-Samitis of the Gram Panchyat and not of the Gram Panchyat. Therefore, the notice was held to be bad in law. Another unreported decision in

the case of *Susant Pramanick vs. The State of West Bengal* : WP No.27758(W) of 2014 dated 12.11.2014 is also not applicable on the ground that the

said decision was not passed relying on the earlier reported decision in the case of *Abdul Wadud*.

For the reasons stated above and on careful consideration of the materials on record and the impugned notice dated 17th June, 2020, I do not find any

impropriety or illegality in the notice. The instant writ petition being devoid of any merit is dismissed on contest, however without cost.