
(2014) 09 CAL CK 0112
In the Calcutta High Court
Case No : Writ Petition No. 25281(W) of 2014

Samiul Islam

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 29-09-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420
West Bengal Panchayat Act, 1973 — Section 12

Citation : (2015) 1 CHN 239 : (2015) 2 WBLR 139

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Amitava Chaudhury and Dipika Banu, Advocate for the Appellant;
Asish Sanyal, Pratip Kumar Chatterjee and Goutam Banerjee, Advocate for the Respondent

Judgement

Debasish Kar Gupta, J.—This writ application is directed against a notice dated August 26, 2014 of meeting on motion for removal of the petitioner from the Office of Pradhan, Parulia Gram Panchayat, District-Murshidabad (annexure P-3 at page 26 of this writ application). The above notice was issued in accordance with Rule 5B read with Form 1E of West Bengal Panchayat (Constitution) Rules, 1975 (hereinafter referred to as the said Rule, 1975).

2. It is submitted by Mr. Amitava Chaudhury, learned Advocate appearing on behalf of the petitioner, that the petitioner was on medical leave from August 11, 2014 to October 11, 2014. According to the petitioner, the copy of motion issued by the requisitionists and the copy of notice of meeting on motion for removal of the petitioner from the Office of Pradhan of the Gram Panchayat under reference were not served upon him. According to the petitioner, the impugned actions are not sustainable in law in the light of the provisions of sub-Section (2) of Section 12 of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act, 1973).

3. It is submitted by Mr. Asish Sanyal, learned Counsel appearing on behalf of

the added respondent Nos. 9 to 19, that the provisions of sub-Section (2) of Section 12 of the said Act were complied with. It is submitted by Mr. Sanyal that the notice for motion dated August 25, 2014 was issued by the requisitionists for removal of the petitioner from the office under reference after expressing their lack of confidence against the petitioner. On the basis of the above notice the impugned notice dated August 26, 2014 was issued. It is further submitted by Mr. Sanyal that the above notice was sent to the petitioner but he was not available at his residence at the material point of time to receive the same. Drawing the attention of this Court towards the statements made in Clause (VI) of paragraph 4 of the affidavit-in-opposition filed on behalf of the respondent Nos. 9 to 19 it is submitted by Mr. Sanyal that the petitioner was absconding due to rejection of an application for granting pre-arrest (anticipatory) bail in connection with Khargram P.S. Case No. 292/14 dated June 25, 2014 under Sections 406/ 409/ 420/ 120B of IPC. It is also submitted by Mr. Sanyal that a meeting of the above Gram Panchayat took place on September 5, 2014. The resolution for removal of the petitioner from the Office of the Pradhan of Gram Panchayat under reference was adopted by 14 elected members out of 16 members of the above Gram Panchayat.

4. Reference is made to the decision of Alope Pramanik Vs. State of West Bengal and Others, .

5. Having heard the learned Counsel for the respective parties as also after considering the facts and circumstances of this case, I am of the opinion that the decision making process of the respondents for removal of the petitioner from the office of Pradhan is required to be reviewed in accordance with the provisions of sub-Section (2) of Section 12 of the said Act, 1973.

6. So far as the question of service of the aforesaid notices are concerned the following conditions as prescribed in sub-Section (2) of Section 12 are to be complied with:-

(i) One third of existing members subject to a minimum of three members should sign a motion in writing expressing their lack of confidence against the petitioner or recording their intention to remove the petitioner from the office under reference.

(ii) The party affiliation or independent status of each of the aforesaid members (requisitionists) should be mentioned in the above motion.

(iii) The above motion should be delivered in person through any of the members or should be sent it by registered post to the prescribed authority.

(iv) One copy of the motion should be delivered to the concerned office bearer either by hand or by registered post at the office of the Gram Panchayat.

(v) Another copy of the above motion should be sent by registered post at the residential address of the concerned office bearer.

7. So far as the condition of servicing the motion upon the concerned office bearer is concerned, it is fulfilled once a copy of the said motion is delivered to the concerned office bearer either by hand or by registered post at the office of the Gram Panchayat concerned and another copy of the said motion is sent by registered post at the residential address of the concerned office bearer. Therefore, sending of a copy of the above motion at the residential address of the concerned office bearer in addition to delivery of a copy of the above motion either by hand or by registered post at the office of the above Gram Panchayat is sufficient compliance of the conditions prescribed in sub-Section (2) of Section 12 of the said Act, 1973.

8. It is not in dispute that the petitioner was not attending his office at the material point of time on the ground of his medical leave. Therefore, there was no scope of delivery of the above motion upon the petitioner at his office leaving aside the allegation of his absconding after rejection of his pre-arrest (anticipatory) bail in connection with the criminal proceeding under reference.

9. That apart, it is the settled proposition of law that in normal course, a high authority, as the Pradhan of a Gram Panchayat, is not required to accept all communications by his own hand. If a motion is handed over to the Secretary of a Gram Panchayat for the purpose of forwarding the same to the Pradhan, the presumption would be that the Secretary, upon receipt of the same, did forward it to the Pradhan to bring to his knowledge that such a motion had been received. Reference may be made to the decision of *Josoda Mondal-Vs.-The State of West Bengal & Others*, reported in 2002(3) CHN 193. The relevant portion of the above judgment is quoted below:

"6. The job assistant is directly under the Pradhan. He is the executive head of the Gram Panchayat, and working directly under the Pradhan. In the normal course, a high authority, as the Pradhan, is not required to accept all communications by his own hand. If a requisition is handed over to the job assistant for the purpose of forwarding the same to the Pradhan, the presumption would be that the job assistant, upon receipt of the requisition, did forward the same to the Pradhan to bring to his knowledge that such a requisition has been received. The Pradhan thereupon is required to act. But a person, who is working directly under the Pradhan, would not forward the requisition to the Pradhan is incomprehensible."

10. It appears from the annexures to the affidavit-in-opposition affirmed on behalf of the respondent Nos. 9 to 19 that the above motion was delivered to the secretary of the above Gram Panchayat due to absence of the petitioner at his office for the reason recorded hereinabove.

11. So far as the condition of service of the notice for motion at the residence of the petitioner was concerned, it was fulfilled once a copy of the above motion had been sent to the petitioner by registered post. It appears from the annexure to the affidavit-in-opposition affirmed on behalf of the respondent Nos. 9 to 19

that the above motion had been sent to the petitioner by registered post which was returned back with the endorsement "non-availability" of the petitioner at his residence.

12. Therefore, taking into consideration the admitted fact of absence of the petitioner at his office for which the requisitionists were not responsible in any way and that of returning back of a copy of the above motion due to non-availability of the petitioner at his residence, I am of the opinion that there was no error or impropriety in the decision making process of the prescribed authority to issue the impugned notice.

13. In view of the above, this writ application is dismissed.

14. There will be, however, no order as to costs.

15. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.