

# Calcutta High Court

HON'BLE JUDGE(S): **ARIJIT BANERJEE, KAUSIK CHANDA, JJ**

**SOMA ROY V. STATE OF WEST BENGAL**

M.A. T. No. 1137 of 2021,, decided on 25/03/2022

**West Bengal Panchayat Act (41 of 1973) , S.12(2)- Removal of Pradhan - Notice - Non-mentioning or wrong mentioning of political affiliation or independent status of requisitioning members - Will vitiate notice of requisition as a whole.**

Non-mentioning or wrong mentioning of political affiliation or independent status of some of the requisitioning members of the Panchayat, would not render the entire notice bad in law. The notice will stand vitiated in so far as those requisitionists are concerned who have not mentioned or wrongly mentioned their political affiliation or independent status. The notice will be bad in so far as the same purports to be on behalf of such defaulting members. However, if even after discounting those requisitionists, it is found that the requisition notice is signed by sufficient number of members i.e. one third of the existing members subject to a minimum of three members, then, the notice should be considered to be good in law on behalf of those members who have correctly mentioned their political affiliation or independent status. **In** the instant case, **11** out of **13** requisitionists correctly indicated their political affiliation or independent status. Even after discounting the two requisitionists who are alleged not to have done so, the notice could legitimately be construed as a good notice on behalf of the other **11** requisitionists and the Prescribed Authority was entitled to act on the basis of such notice.

#### Case Referred :

W. P. A 16007 of 2021, D/- 30/09/2021 (Affirmed)

AIR 2017 (NOC) 403 (CAL.)

AIR 1975 SC 915

#### Chronological Paras

Para No.( 1)

Para No.( 6, 11, 15)

Para No.( 6)

#### Name of Advocates

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Saptansu Basu, Dipankar Pal, Jahangir Alam, Juin Dutta Chakraborty, Kuna! Ganguly, for Petitioner; Atarup Banerjee, Mrityunjoy Chatterjee, Sreejeet Basu Roy, Saswati Adhikary, Lalit Mohan Mahata, Prasanta Behari Mahata, for Respondents.

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- 1. ARIJIT BANERJEE, J.:-**This is an appeal against a Judgment and Order dated September 30,2021 whereby W. P. A 16007 of 2021 was disposed of.
- 2. The** writ petitioner/appellant approached the learned Single Judge challenging a requisition notice dated September 16, 2021, signed by 13 members of the Birnagar - II Gram Panchayat, for convening a meeting for removal of the writ

petitioner as Pradhan of the said Gram Panchayat. Pursuant to such requisition, the Prescribed Authority convened a meeting which was held on October 1, 2021. The writ petitioner's contention before the learned Single Judge was and also before us is, that the Prescribed Authority erred in convening the meeting without satisfying himself that Section 12(2) of the West Bengal Panchayat Act, 1973 (in short 'the said Act') has been complied with inasmuch as the requisitionists Nos. 4, 6 and 9 failed to mention their party affiliation in the registration notice although the law mandates that the same shall be done. The writ petitioner argued that the requisition notice should be set aside and the meeting called on the basis thereof should be cancelled and declared to be bad in law.

3. After hearing learned Counsel for the parties, the learned Judge passed the impugned order, the operative portion whereof reads as follows:

"Having heard the contentions of the learned Advocates for the respective parties, this Court is of the opinion that intervention of the Court is required to the extent that the 3 requisitionists who have failed to mention their party affiliation in the requisition should not be allowed to cast their vote in the meeting to be held on October 1, 2021. The rest of the requisition being in order and there being no other challenge either to the requisition or to the meeting, no further interference is required by the Court. The Prescribed Authority shall continue with the meeting as fixed on October 1, 2021 in accordance with law and reach the same to its logical conclusion in accordance with the provisions of the said Act. The respondent Nos. 9, 11 and 14 shall be restrained from casting their vote in the meeting on October 1, 2021. All further proceedings may continue in accordance with law and they will be entitled to participate in the subsequent meetings and cast their votes."

4. We have heard learned Counsel for the parties.

5. Out of 17 members of the concerned Gram Panchayat, 13 members signed the requisition for removal of the Pradhan. The contention of the writ petitioner/appellant is that the Requisitionists no. 4, 6 and 9 did not mention their political affiliation or independent status in the notice. According to the writ petitioner it was mandatory for the said 3 requisitionists to indicate their political affiliation or independent status. Failure to do so renders the entire notice/motion bad in law. As a corollary, all actions taken on the basis of such notice would be held to be invalid and non-est in the eye law.

6. The writ petitioner has relied on the decision of a coordinate bench of this Court in the case of [Farida Bibi v. State of West Bengal, 2016 (5) CHN (CAL) 258; AIR 2017 (NOC) 403 (Cal)] in support of the proposition that non-mentioning of the political affiliation or independent status of the requisitionists shall vitiate a notice requisitioning a meeting for removal of the Pradhan and no action can be taken on the basis of such notice. Reliance was also placed on the Supreme Court decision in the case of Ramchandra Keshav Adke and Ors. v. Govind Joti Chavare and Ors. (**AIR 1975 SC 915**) in support of the proposition that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden.
7. **The** respondents have contended that the stipulation in Section 12(2) of the Panchayat Act requiring the requisitionists to indicate their party affiliation or independent status is merely directory and not mandatory. Non-mentioning of the same, would not vitiate the notice.
8. The learned Single Judge adopted a practical approach and restrained the three requisitionists in respect of whom grievance was raised by the writ petitioner, from voting at the meeting. Since, keeping aside those three persons, there were ten requisitionists (exceeding one third of the total number of Panchayat members), the learned Judge permitted the meeting to be proceeded with on the basis of the notice of motion that was impugned.
9. We find from the notice requisitioning the meeting for removal of Pradhan that out of 13 members, 11 have indicated their political affiliation or independent status. To be precise, requisitionists Nos. 1, 2, 5, 10, 12 and 13 have indicated that they belong to TMC, requisitionists Nos. 7 and 11 have indicated that they belong to BJP and requisitionists Nos. 3, 4 and 8 have indicated their independent status. The controversy is with regard to requisitionists Nos. 6 and 9 who have written "left out BJP" in the column captioned "name of the political party."
10. The question that arises is whether or not non-mentioning or wrong mentioning of political affiliation or independent status of the requisitioning members, will vitiate the notice of requisition as a whole.
11. **In** Farida Bibi, (supra), in which none of the requisitionists had mentioned their political affiliation or independent status in the notice requisitioning a meeting for removal of the Pradhan, a coordinate bench held that mentioning political affiliation or independent status of the requisitionists is a

mandatory requirement under the statute and quashed the notice requisitioning the meeting.

12. **We** are of the view that non-mentioning or wrong mentioning of political affiliation or independent status of some of the requisitioning members of the Panchayat, would not render the entire notice bad in law. The notice will stand vitiated in so far as those requisitionists are concerned who have not mentioned or wrongly mentioned their political affiliation or independent status. The notice will be bad in so far as the same purports to be on behalf of such defaulting members. However, if even after discounting those requisitionists, it is found that the requisition notice is signed by sufficient number of members i.e. one third of the existing members subject to a minimum of three members, then, the notice should be considered to be good in law on behalf of those members who have correctly mentioned their political affiliation or independent status.

13. **If** the Pradhan or other office-holder in a Panchayat, who are elected by the members of the Panchayat, lose the confidence of the majority of the members, they are liable to be removed from their posts. This is the elementary principle of a democratic set up. Section 12 of the 1973 Act stipulates the procedure following which the majority of members can remove a Pradhan or other officer-holder in whom they have lost confidence for whatever reason. The provisions of Section 12 must be given an interpretation which would uphold a democratic process initiated by the requisite number of members for removal of an office-holder in a Gram Panchayat.

14. **In** the present case the approach adopted by the learned Single Judge meets with our complete approval. 11 out of 13 requisitionists correctly indicated their political affiliation or independent status. Even after discounting the two requisitionists who are alleged not to have done so, the notice could legitimately be construed as a good notice on behalf of the other 11 requisitionists and the Prescribed Authority was entitled to act on the basis of such notice. Such an approach would save a democratic process initiated by the requisite number of members rather than defeating such process without causing any prejudice to the concerned office holder whose removal is sought by the requisitionists. Of course, if in a particular case, after discounting the requisitionists who have failed to mention their political affiliation or independent status, it transpires that the remaining requisitionists do not constitute the requisite number prescribed in Section 12(2) of the 1973 Act, the notice must be held to be invalid and the Prescribed Authority cannot act on the basis thereof.

15. **In** Farida Bibi, (supra), none of the requisitionists had mentioned their political affiliation or independent status in the notice of motion. Hence, the notice was bad in its entirety. However, if out of X number of requisitionists, Y number do not mention their political affiliation or independent status, as the case may be, and if X-Y constitutes the requisite number of requisitionists for calling a valid meeting under Section 12(2) of the Panchayat Act, there is no reason to hold the entire notice to be bad. The notice should be held to be a valid notice on behalf of X-Y number of requisitionists. This, while upholding the fundamental principle of democracy, will not prejudice the office-holder whose removal is sought by issuing such notice.

16. Before parting we may observe that while rightly discounting the requisitionists who failed to mention their political affiliation or independent status in the notice, the learned Judge should not have restrained such requisitionists from voting at the meeting. It is not that at the meeting only requisitionists are allowed to vote. All the members of the Panchayat have the right to vote. Hence, even if the persons concerned could not be considered to be parties to the requisition notice, in our opinion, as members of the Panchayat, they were entitled to exercise their voting right at the meeting. Of course, this is of academic interest in so far as the present matter is concerned since we are told that the meeting was duly held and even without the defaulting requisitionists voting at such meeting, the Pradhan was removed by a majority of votes.

17. **In** view of the aforesaid, no interference with the order under appeal is warranted subject to the clarification in the immediately preceding paragraph. The appeal and the connected application fail and are dismissed. There will be no order as to costs.

18. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

**Appeal Dismissed**