

07.07.2021
Court No. 19
Item no.03
CP

WPA 7807 of 2021
with
CAN 1 of 2021
with
CAN 2 of 2021

Kutub Uddin Molla & ors.
VS
The State of West Bengal & ors.

(via video conference)

Mr. Subhrangshu Panda
Mr. Mukteswar Maity

....for the petitioners.

Mr. Md. Sarwar Jahan

...for the pradhan.

Mr. Sirsanya Bandhopadhyay
Mr. Arka Nag

....for the State.

CAN 1 of 2021 and CAN 2 of 2021 are applications which have been filed with a prayer for early hearing of the writ petition. As the matter has been listed before this court and the learned advocates for the respondents are also present, no order need be passed in these applications. Accordingly, CAN 1 of 2021 and CAN 2 of 2021 are disposed of.

This writ petition was filed challenging a show cause notice dated February 25, 2021 issued by the Prescribed Authority and Sub-Divisional Officer,

Diamond Harbour, District – South 24-Parganas, requiring the petitioners to show cause as to why necessary proceedings would not be initiated for their removal. The necessity to issue such a notice was the failure on the part of the petitioners to attend the meetings on February 4, 2021, February 12, 2021 and February 19, 2021. During the pendency of the writ petition, the petitioner no. 1 and the petitioner no. 5 have been removed by two separate orders both dated July 2, 2021. It is the contention of the petitioners that the show cause notices were issued arbitrarily and with mala fide intention with the sole purpose of ensuring that the petitioners be removed as a counter blast to their requisition to call a meeting for removal of the pradhan. It is further submitted that inability to attend the three consecutive meetings on February 4, 2021, February 12, 2021 and February 19, 2021 could not be a ground for their disqualification and removal in view of the fact that the meetings could not have been called without a gap of minimum 15 days in between and with 7 days clear notice before each meeting.

It appears from the records that an answer to the show cause has been filed by the petitioners but the points with regard to legality of the meeting and the other factual aspects which prevented the

petitioners from attending the meetings, have not been stated properly.

Mr. Bandhopadhyay, learned Junior Standing Counsel appearing for the State, submits that the writ petition has become infructuous, insofar as, the petitioner nos. 1 and 5 are concerned who have been removed. He next contends that the petitioners should appear before the prescribed authority and prove the aspects stated in their replies to the show cause notices. Whether the petitioners were out of station as they were facing a life threat or whether they were unwell etc. are the factual aspects which the petitioners have to substantiate before the Prescribed Authority at the hearing. Mr. Bandhopadhyay further submits that the show cause itself does not amount to a decision. The Prescribed Authority could also be convinced to decide in favour of the petitioners once the hearing is given to the petitioners.

Mr. Jahan, learned advocate appearing on behalf of the pradhan, submits that the petitioners are trying to enlarge the scope of this writ petition by seeking interim orders of stay of the proceedings before the Prescribed Authority so that the requisition meeting called by them could be held and their demand for removal of the pradhan would be reached to its logical conclusion. Mr. Jahan refers to

the Division Bench judgment of this court and submits that the contentions of the petitioners that the Division Bench had directed the Prescribed Authority to hold the meeting for removal of the pradhan, cannot be accepted as there are no directions upon the Prescribed Authority. Only an observation that the letter by which the requisition meeting was called by the petitioners should be taken to its logical conclusion in accordance with law has been made by the Division Bench.

Having heard the learned advocates for the respective parties, this writ petition is disposed of in respect of the petitioner nos. 1 and 5 as being infructuous with liberty to proceed in accordance with law against the order of removal.

With regard to the petitioner nos. 2, 3 4 and 6, in my view, an opportunity should be given to these petitioners to file another comprehensive reply to the show cause notices separately, with better particulars and documents in support of their contentions. They will be entitled to raise the points with regard to legality of the meeting, namely, contravention of the provisions of Section 16 of the West Bengal Panchayat Act, 1973 and also narrate and prove their contentions and reasons which prevented them from attending the meetings. The said replies are to be filed within a period of two

weeks from date before the Prescribed Authority and Sub-Divisional Officer, Diamond Harbour, District – South 24-Parganas. Once the replies are received by the Prescribed Authority, the Petitioner nos. 2, 3, 4 and 6 and/or their representatives should be given a hearing and a reasoned order should be passed on the basis of their answers. The petitioners shall be allowed to adduce documentary as also oral evidence.

As the Petitioner nos. 2, 3, 4 and 6 are being given an opportunity to answer to the show cause notices afresh, the entire proceedings before the Prescribed Authority shall be held de novo and any decision that may have been taken in the meantime, is set aside.

This order shall not be construed as a decision on the issues with regard to the removal of the Pradhan. Although it is submitted by Mr. Jahan that the B.D.O. has issued an order on July 5, 2021 indicating that the requisition meeting as sought for by the petitioners could not be held, this court refrains from making any observation on this aspect.

With the above observations, this writ petition is disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)