

(Through Video Conference)

07.05.2021

Item no. **4-6**

Dd

WPA 8817 of 2021
With
WPA 8822 of 2021
Md Aaledur Sekh & Ors.
Vs
The State of West Bengal & Ors.
with
WPA 9875 of 2021

Mosa Nilufar Iyasmin
Vs.
The State of West Bengal & Ors.

Mr. Prosenjit Mukherjee
... .. For the Petitioner in
WPA 8817 of 2021 & WPA 8822 of 2021
& Private respondent in WPA 9875 of 2021

Mr. Chittaranjan Chakraborty
Mr. Dipjyoti Chakraborty
Private respondent in WPA 8817 of 2021
& WPA 8822 of 2021
... ..For the Petitioner in WPA 9875 of 2021

In Re : WPA 9875 of 2021

This writ petition has been filed by the Prodhan of Mothabari Gram Panchayat for canceling a notice dated 19th March, 2021 issued by the Prescribed Authority/ Block Development Officer, Malda for removal of the Prodhan (the petitioner before this Court).

Learned counsel for the petitioner submits that the petitioner was elected Prodhan of the concerned Gram Panchayat in August, 2018 and has been discharging her duty till date. Counsel challenges the impugned notice dated 19th March, 2021 as being the violation of Section 12 of the West Bengal Panchayat Act, 1973.

Counsel submits that under Section 12(4) of the said Act, the meeting shall be held on a working day and shall not be later than 15 working days from the date of receipt of the Motion by the Prescribed Authority. Counsel also places Section 12(3) under which Prescribed Authority on receipt of the motion shall satisfy himself that it conforms to the requirements of sub-section (2) of Section 12 and shall convene a meeting of the Gram Panchayat within 5 days of the receipt of the Motion by way of notice. Counsel submits that in the present case, the Prescribed Authority received the Motion for removal of the Prodhan on 15th March, 2021 from the private respondents and called for a meeting by a notice dated 19th March, 2021. By the said notice the Prescribed Authority fixed the date of the meeting on 11th May, 2021.

These matters were taken up yesterday and was directed to appear in the list today since the State respondents were not present the matter. Today, counsel for the petitioner places documents showing that the State respondents was served on 19th April, 2021. Learned counsel appearing for the private respondent also submits that the State respondents were intimated yesterday that the matter would be taken up today. Despite the aforesaid, the State respondents are not present in Court today or on the virtual mode.

Upon hearing learned counsel, the relevant facts in the present case is that the Prescribed Authority received the Motion for removal of the petitioner on 15th March, 2021 and convened a meeting by a notice dated 19th March, 2021 under Section 12(3) of the Act. The meeting, however, was scheduled for 11th May, 2021 which is 41 days in excess from the time mandated under Section 12(4) of the Act. Under Section 12 (4) the meeting is to be held not later than 15 working days from the date of receipt of Motion by the Prescribed Authority which is 15 days from 15th March, 2021, i.e., within 30th March, 2021. There is no explanation from the Prescribed Authority as to why the meeting was scheduled on 11th May, 2021 in violation of the mandate of Section 12(4) of the Act.

The contentions of counsel appearing for the private respondents that the meeting for removal of the Prodhan/petitioner could not be held due to the imposition of the Model Code of Conduct relating to the State Assembly Elections cannot be accepted for the following reasons. Even if the Model Code of Conduct prevented the Prescribed Authority from calling a meeting within 30th March, 2021, the same should immediately have been informed by way of a letter or otherwise to the private respondents and the petitioner. No such document is on record. The Prescribed Authority cannot take it upon itself to fix an arbitrary

date which is in violation of a statutory provision without proper notice or explanation for the same.

The other contention made on behalf of the private respondents that the Prodhan should be removed since the Prodhan has lost her majority is also not acceptable since the said issue can only be decided upon a properly convened meeting under the provisions of the relevant Act.

WPA 9875 of 2021 is allowed, in view of the above. The notice dated 19th March, 2021 is set aside. The respondents are accordingly directed not to give effect to the notice dated 19th March, 2021 or to act in terms thereof in any manner whatsoever.

**In Re: WPA 8817 of 2021
With
WPA 8822 of 2021**

These writ petitions have been filed for revoking the notice dated 19th March, 2021, for convening a meeting for removal of the Prodhan and for an inquiry in respect of the affairs of the Prescribed Authority for acting de hors the provisions of the West Bengal Panchayat Act, 1973. The petitioners herein are the private respondents in WPA 9875 of 2021. The petitioner in WPA 9875 of 2021 is one of the private respondents in these writ petitions. Since WPA 9875 of 2021 has been disposed of in the manner as stated above, this Court is of the view that the prayers in

these two writ petitions for revoking the notice for removal of the Prodhan and for conducting an inquiry in respect of the affairs of the Prescribed Authority have become infructuous. WPA 8817 of 2021 and WPA 8822 of 2021 are accordingly disposed of in terms of the above.

Liberty is given to the petitioners to take fresh steps in accordance with law as they may be advised.

Since learned counsel appearing for the petitioners submits that the petitioners will be statutorily barred from calling a meeting within the next one year liberty is given to the petitioners to take appropriate steps in accordance with law.

(Moushumi Bhattacharya, J.)