

S/L 10
08.09.2021
Court. No. 19
GB

WPA 12268 of 2021

Mukaddar Ali & Ors.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Apurba Ghosh,
Mr. Anindya Ghosh,
Mrs. Esha Banerjee.

...for the Petitioners.

Mr. Anirban Roy,
Mr. Raja Saha,
Ms. Rupsha Chakraborty.

...for the State.

Affidavit-of-service filed in Court today be kept with the record.

None appears on behalf of the Pradhan.

The petitioners are the requisitionists. They brought a requisition for removal of the Pradhan on July 14, 2021. The said requisition was served upon the prescribed authority. The prescribed authority recorded his satisfaction about the compliance of the provision of Section 12(2) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act') on July 15, 2021.

However, due to non-availability of police force during the pandemic situation no notice was issued by the prescribed authority calling for a meeting. By an order dated July 22, 2021 the prescribed authority did not think it prudent to hold the meeting due to rise in the COVID-19 cases and also because adequate police support was not available.

The petitioners pray that once the situation has improved and the Government of West Bengal has issued instructions, thereafter relaxing the restrictions, including allowing opening of cinema halls, nothing can now act as a

deterrent for holding the meeting for removal of the Pradhan in accordance with law on the basis of the requisition dated July 14, 2021.

The allegation of the petitioners is that the prescribed authority has colluded with the Pradhan and refrained from taking steps in accordance with law. The authorities in the same area has held similar meetings for removal of Pradhans and Upa-Pradhans.

In my opinion, the provision for removing an elected representative such as the Pradhan is of fundamental importance, to ensure the democratic functioning of the institution as well as to ensure the transparency and accountability in the functions performed by the elected representatives. These institutions must run on democratic principles. In democracy, all persons heading public bodies can continue provided they enjoy the confidence of the persons who comprise such bodies. This is the essence of democratic republicanism. If the Pradhan has lost support of the majority of the members, he cannot remain in office for a single day. Admittedly the Pradhan has not yet been removed.

In the decision of *Ujjwal Kumar Singha v. State of W.B.* reported in 2017 SCC OnLine Cal 4636, it was held that:

“5. The entire impugned judgment and order is supported with cogent reasons and there is no palpable infirmity noticed therein which would warrant any interference in an Intra-Court Mandamus Appeal. It appears that the appellant/writ petitioner resorted to taking shelter under the high prerogative jurisdiction of the High Court under Article 226 of the Constitution of India only for the purpose of thwarting the well-established democratic principles which govern the running of public institutions such as a Gram Panchayat, being at the lowest tier of self-governance at the village level in the three-tier Panchayati Raj System. In this context, one may take notice of the observations made by this Court in *Farida Bibi v. The State of West Bengal* reported in 2016 (5) CHN (Cal) 258, while following the observations made by the Supreme Court in *Usha Bharti v. State of*

U.P. reported in (2014) 7 SCC 663 : AIR 2014 SC 1686, wherein it was observed to the effect that it is the fundamental right of democracy that those who have been elected can also be removed by expressing, 'No Confidence Motion' for the elected person. In an institution which runs on democratic principles, a person can continue to be its head so long he/she enjoys the confidence of the persons who comprised such a body. This is the essence of democratic republicanism which was taken note of by the Supreme Court in Usha Bharti (supra).

6. The appeal has no merit and is liable to be dismissed along with the application for stay with exemplary costs assessed at 500 G.Ms. which shall be deposited with the State Legal Services Authority for being earmarked for utilisation by the Mediation and Conciliation Committee of the High Court.”

However, as the prescribed authority failed to comply with the provisions of Section 12(3), 12(4) and 12(10) of the said Act, the requisition has become infructuous and has lost its force. The Court is conscious of the rights of the requisitionists and cannot ignore the statutory provisions of Section 12(2) of the said Act.

Under such circumstances, for the reasons stated hereinabove, the requisition dated July 14, 2021 and all subsequent actions and orders passed in respect of the same are set aside and cancelled.

The writ petition is disposed of upon granting liberty to the requisitionists/members to bring a fresh requisition under Section 12(2) of the said Act. If such requisition is brought, the prescribed authority shall act and proceed in terms of the provisions of Sections 12(3) and 12(4) onwards of the said Act and reach the requisition to its logical conclusion. The bar under Section 12(11) of the said Act shall not be applicable. The time frame prescribed by the statute under Section 12(10) shall be adhered to by the prescribed authority.

It is further made clear that the prescribed authority shall be entitled to seek police protection and if such request is made, the police authority shall render all support to the requisitionists as also to the prescribed authority without any

delay and laches. It is also made clear that if the Pradhan tries to evade service of requisition, then the requisitionists shall be entitled to serve the same in his office through his secretary or assistant and if, such service is not accepted, then the requisitionists will be entitled to paste the same in the office of the Pradhan in addition to the modes of service provided under Section 12(2) of the said Act.

This writ petition is, thus, disposed of.

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

All parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)