

S/L 9
13.08.2021
Court. No. 19
srm

W.P.A. 12279 of 2021

Md. Tipu Sultan & Ors.
VS
The State of West Bengal & Ors.

Mr. Gangadhar Das,
Mr. Swarvau Saha

...for the Petitioners.

Mr. Lalit Mohan Mahata
Mr. Aniruddha Mahanta

...for the State.

Affidavit of service is taken on record.

Service upon the Sabhapati of Ratua-I Panchayat Samity, District-Malda, the respondent No.9, has come back with the endorsement “left without intimation return to the sender”. A copy was also sent to the office of the Sabhapati.

This is another one of those cases where the prescribed authority under the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act) has kept on postponing the meeting to be held for removal of the Sabhapati of Ratua-I Panchayat Samity, District-Malda on the basis of the requisition of some of the members. The petitioners are the requisitionists. The requisition was brought on March 9, 2021. A meeting was fixed on May 6, 2021. The prescribed authority cancelled such meeting. The petitioners approached this Court. This Court directed that the meeting should be held. Despite there being an order of

this Court, such meeting was postponed on two occasions and lastly, on July 22, 2021. The date of the meeting was scheduled to be held on July 23, 2021.

Aggrieved and finding no other alternative, the requisitionists have moved this Court under Article 226 of the Constitution of India alleging curtailment of their democratic right and also their statutory right at the instance of the prescribed authority.

It is the contention of the petitioners that actions of the prescribed authority is undemocratic and a way to throttle the voice of the majority of the members.

Mr. Mahata, learned Senior Government Advocate appearing for the State-respondents, submits that the requisition of March 9, 2021 has lost its force and the same cannot be revived by the order of the Court as the statutory period prescribed under Section 101(2) of the said Act expired long ago.

Having considered the rival contentions of the respective parties, this Court is of the opinion that the provision for removing an elected representative such as the Sabhapati 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 Sabhapati has lost support of the majority of the members, he cannot remain in office for a single day. Such meetings have not been barred by the Government. The Government offices have resumed functioning.

The petitioners/requisitionists are granted liberty to bring a fresh requisition as per Section 101(2) of the said Act. If such requisition is brought, the prescribed authority shall act and proceed in terms of the provisions of Sections 101(3) and 101(4) onwards of the said Act and reach the requisition to its logical conclusion within the time limit prescribed by the statute. The bar under Section 101(11) of the said Act shall not be applicable.

This Court is not making any observation on the right of the Sabhapati to continue in his office as the said issue will be decided in the meeting itself. If necessary, the prescribed authority may seek police protection before the Superintendent of Police, Malda, which shall be rendered without any delay or laches on the part of the police authorities. If the sabhapati avoids service then in addition to the modes of service of the requisition as per law, a copy of the requisition shall be displayed at a conspicuous place in the residence as also the office of the sabhapati.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)