

S/L 16
11.8.2021
Court No.19
SD

WPA 12415 of 2021
(Via Video Conference)

Budhinath Besra & Ors.
Vs.
The State of West Bengal & Ors.

Md. Sarwar Jahan
Ms. Mousumi Mitra

...for the Petitioner.

Mr. Lalit Mohan Mahata
Ms. Jhuma Chakraborty

...for the State.

Affidavit of service filed in Court today be taken on record.

Despite service none appears on behalf of the respondent nos.8 to 15.

The petitioners are the requisitionists who brought a requisition dated July 28, 2021 before the prescribed authority seeking removal of the Pradhan of Mangalbari Gram Panchayat on the ground of lack of confidence.

The law prescribes that the meeting should be called within five working days from the receipt of the motion, by the prescribed authority, upon satisfaction of compliance of Section 12(2) of the said Act.

Mr. Sarwar Jahan, learned advocate appearing on behalf of the petitioners, submits that after receiving the requisition, the prescribed authority did not take any steps for satisfaction of the compliance of Section 12(2), but instead, issued a notice on July 30, 2021, to the effect that due to the pandemic situation the meeting could not be convened.

It is submitted that Government of West Bengal has issued a Circular on July 29, 2021 indicating that all

Government offices shall function with safety measures and meetings of such kind shall be held with 50% of the total seating capacity. According to Mr. Jahan, this order clearly allows official meetings to be held and there cannot be any embargo on the prescribed authority to follow the law and bring the requisition to its logical conclusion. He further submits that the time period prescribed under Section 12(10) has not expired and directions be passed upon the prescribed authority to hold the meeting.

Mr. Lalit Mohan Mahata, learned Additional Government Pleader appearing on behalf of the State, submits that time period prescribed under Section 12(3) has expired, inasmuch as, the notice calling for the meeting for removal has to be issued within five working days from receipt of the motion by the prescribed authority.

Having considered the rival contentions of the parties, this matter is disposed of, even in the absence of the respondents who are not appearing despite service, as no mandatory directions are being passed against any party.

In my opinion, the provision for removing an elected representative such as 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.

Under such circumstances, the writ petition is disposed of by setting aside the requisition as also the subsequent actions taken by the prescribed authority with liberty to the petitioners/requisitionists to bring fresh

requisition in terms of the Section 12(2) of the West Bengal Panchayat Act, 1973. If such requisition is made, the prescribed authority shall proceed in terms of the Sections 12(3) and 12(4) onwards of the said Act, by adhering to the time limit prescribed by the statute and reach the requisition to its logical conclusion. The bar under Section 12(11) shall not be applicable. This Court has not expressed any opinion on the competence of the Pradhan to remain in his office and the same shall be decided in the meeting itself.

The prescribed authority shall render police help and the prescribed authority shall be given police protection. It is informed by the learned Advocate for the state that there may be violence and breach of peace.

The Superintendent of Police, Malda shall take prompt steps to ensure that such meetings are held with full security. Any laches on the part of the police authorities shall be viewed with the seriousness it deserves.

WPA 12415 of 2021 is disposed of.

There shall be no order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties, upon compliance of requisite formalities.

(Shampa Sarkar, J.)