

6.8.2021
Court No. 19
Item no.21
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WPA No. 12392 of 2021

UTTAM BISWAS & ORS. VS. STATE OF WEST
BENGAL & ORS.
(via video conference)

Mr. T.J. Tewari
Mr. B. Dutta

...for the petitioners

Mr. Debabrata Chatterjee
Mr. Kapil Guha

.. for the panchayat

Mr. Raja Saha
Mr. Amit Kr. Ghosh

..for the State

Let the affidavit of service be taken on record.

This writ petition has been filed by the requisitionists alleging that the prescribed authority, that is the Block Development Officer, Krishnagar-1 deliberately adjourned the meeting to be held on August 5, 2021, for removal of the Pradhan on the basis of the requisition brought by the petitioners. The reasons given in the order of cancellation dated August 4, 2021, is that there had been some clashes between the political parties and complaints had been lodged by the Bharatiya Janata Party before the National Human Rights Commission that the supporters of the said party had been killed. Another reason which has been provided is that during the Covid situation, the any gathering would not only create unnecessary disturbance and health hazard,

but there was a serious possibility of breach of peace and loss of life.

This Court had directed in an earlier writ petition that the petitioners would be at liberty to bring a fresh requisition, as the earlier requisition brought by the petitioners for removal of the Pradhan, had lost its force due to the expiry of time of thirty days, on account of the inability of the prescribed authority to hold the meeting. On the basis of the liberty granted by this Court in WPA 11169 of 2021, the present requisition was brought on July 15, 2021. The prescribed authority received the same on July 16, 2021 and satisfied himself with regard to compliance of Section 12(2) of the West Bengal Panchayat Act, 1973. He fixed August 5, 2021 as the date for holding the meeting for removal of the Pradhan.

By an order dated August 4, 2021, the prescribed authority adjourned the meeting to be held on August 5, 2021 without fixing a further date. Apprehending that the fate of the requisition brought on July 15, 2021, shall be the same as that brought some time in May, 2021, the petitioners have approached this Court. The contention of the petitioners is that the prescribed authority had deliberately tried to stop the meeting for ulterior reasons. That the prescribed authority was not

discharging his duties under the statute and was curtailing the democratic and statutory rights of the requisitionists.

There was a mandatory direction of this Court upon the prescribed authority to act as per the statute. The prescribed authority has given a complete go-by to the said order. Such inaction on the part of the prescribed authority in holding the meeting is a matter of concern to the Court. If the law provides that the requisitionists have a right to move a motion for removal of the Pradhan upon compliance of statutory formalities and requirements, the prescribed authority is bound by the statute to perform his ministerial act of holding the meeting upon being satisfied with the identity of the requisitionists and compliance of Section 12(2) of the said Act. The order of this Court was passed in the presence of the learned Advocate for the Pradhan and the same was never appealed against. In order to by-pass such order a suit has been filed.

In this case, as the prescribed authority had called for a meeting, it is obvious that the prescribed authority had been satisfied that the requisitionists had complied with the provisions of Section 12(2) of the said Act. It appears that the circular with regard to Covid protocol dated July 29, 2021 does not prohibit such meetings.

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.

Mr. Pantu Deb Roy, learned advocate appears on behalf of the prescribed authorities and also the police authorities. He assures the Court that there was no intention on the part of the prescribed authority to violate any order of the Court or to frustrate the requisition brought by the petitioners.

Mr. Deb Roy, has expressed his anguish and anxiety at the law and order situation in the district. He submits that the authority anticipated violence.

According to Mr. Guha, learned advocate for the Pradhan and Gram Panchayat, in apprehension of serious law and order problems, the meeting was adjourned. He apprehends that his client could be assaulted during such meeting.

This writ petition is disposed of with the following directions:

1) The prescribed authority shall hold the meeting for removal of the Pradhan mandatorily on August 13, 2021 at 11.00 a.m.

2) This order shall act as a notice of the meeting to all. Seven days clear notice had already been given earlier.

3) The prescribed authority shall also issue a notice under Form 1E Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975 within August 7, 2021, 4.00 p.m., indicating that the meeting shall be held on August 13, 2021 at 11.00 a.m. for removal of the Pradhan in terms of this order.

4) The superintendent of police, Nadia, the respondent no.6 herein, shall ensure police protection to all the members, the prescribed authority as also the Pradhan.

5) The district administration shall be entitled to impose the provisions of Section 144(1) of the Code of Criminal Procedure in and around the office of the Gram Panchayat as also office of the prescribed authority or take such measures as required under the law to ensure safety, security and to prevent public nuisance.

6) No persons other than the requisitionists, the members of the Gram Panchayat including the

Pradhan, Upa-pradhan, the prescribed authority, his officials and police authorities, shall be allowed during the meeting and within the vicinity.

This Court reposes faith in the law-enforcing agency of the State and is confident that the order of this Court will not be flouted in future and the safety of the people shall also be taken care of by the appropriate authorities.

With the above observations, this writ petition is disposed of.

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

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

(Shampa Sarkar, J.)