

S/L 13
01.09.2021
Court. No. 19
sn

WPA 12652 of 2021

Swapan Banerjee & Ors.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

*Mr. Samiran Mandal,
Mr. Abhinaba Dan,
Mr. Nitish Samanta.*

...for the Petitioners.

Mr. Rudranil De.

...for the Respondents.

*Mr. Anirban Ray, Lr. G.P.
Mr. Raja Saha,
Mrs. Tanusri Pal Chowdhuri.*

...for the State.

The requisitionists who are the members of Somra II Gram Panchayat had brought a second requisition before the prescribed authority under Section 12(2) of the West Bengal Panchayat Act, 1973. The said requisition was brought on July 8, 2021. It is alleged that despite having received such requisition, the prescribed authority failed to convene a meeting under political pressure. It is alleged that the meeting was not called by citing the Covid-19 restrictions imposed by the State of West Bengal under the Disaster Management Act read with West Bengal Epidemic Disease, Covid-19 Regulations, 2020. Allegations of mala fide, collusion with the Pradhan have also been made.

Mr. Saha, learned advocate for the State respondents submits that as Covid restrictions have been relaxed the

meeting should have been called by the prescribed authority in accordance with law. If the prescribed authority was satisfied about compliance of Section 12(2) of the said Act the meeting should have been convened, but as the period of 30 days has expired, the said requisition has lost its force.

Mr. De, learned advocate appearing on behalf of the Pradhan submits that requisition notice is stigmatic. In any event, the requisition has already lost its force and liable to be set aside by this Court. The allegations against the Pradhan does not survive.

The Covid restrictions had been relaxed over a period of time by the Government of West Bengal. Inability to call a meeting due to the rise of the Covid 19 situation is not a valid reason. It appears that the prescribed authority has repeatedly tried to frustrate the attempts of the requisitionists to discharge their democratic rights. This is the second occasion when the requisition has been brought. The statute provides a specific method and procedure for calling such a meeting under Section 12(2) of the said Act. None of the procedure prescribed under Sections 12(3), 12(4) onwards has been observed by the prescribed authority. The prescribed authority has sat tight over the matter and allowed the requisition to lose its force.

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.”

Under such circumstances, as the requisition has already expired because of lapse of time and the requisition has not been acted upon, the bar under Sections 12(3), 12(4) and 12(10) of the said Act has come in the way. Thus the requisition notice dated July 8, 2021 is 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 avoid service of the 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 Court desires that the District Magistrate of Hooghly ensures compliance of the order in accordance with law.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)