

11.08.2021
Sl. No.19
srm

W.P.A. No. 12507 of 2021
Hafizur Rahaman Mallick
Vs.
The State of West Bengal & Ors.

Mr. Kallol Bose,
Mr. Supratick Syamal,
Mr. Alokash Dalai

...for the Petitioner.

Mr. Raja Saha,
Mr. Biwabrata Basu Mullick

...for the State.

Affidavit of service is taken on record.

The writ petitioner is the one of the requisitionists who had brought two requisitions on February 26, 2021, requesting the prescribed authority to convene a meeting for removal of the Pradhan and Upa-Pradhan of the Dhananjoypur Gram Panchayat, District-Nadia on the ground of loss of confidence.

The Pradhan and Upa-Pradhan filed writ petitions alleging that meetings of such nature cannot be held due to the publication of the Model Code of Conduct by the Election Commission of India. The writ petition was dismissed and the learned Single Judge held that the meeting ought to be held within the time limit prescribed by law. The matter went up to a Division Bench and the Hon'ble Division Bench held that the order of the learned Single Judge should be followed. The co-ordinate Bench held that the meeting should be held as the

time limit prescribed by law was vital. Such observation was upheld by the Hon'ble Division Bench. In the meantime, the prescribed authority again issued two notices on July 23, 2021 fixing August 5, 2021 as the date for holding the meeting for removal of the Pradhan and the Upa-Pradhan. On August 4, 2021, the prescribed authority once issued an order deferring the meetings once again. Hence, the petitioner has come up before this Court.

The State-respondents is represented by Mr. Raja Saha, learned Advocate. Mr. Saha submits on instruction that the situation was volatile and hands over a report which shows that there was a serious law and order problem in the locality and there were two incidents of murder on June 6, 2021 and criminal cases are pending. Due to tension in the locality the meetings could not be held.

The petitioner submits that the murders had taken place in a different locality and the atmosphere in the present locality is peaceful.

Having heard the rival contentions of the parties, as the entire period, as prescribed under the statute, has expired, the requisition as also the notice of motion dated July 23, 2021 have all become infructuous and are liable to be set aside.

The requisition notices as also the notices of meeting for removal of the Pradhan and Upa-Pradhan and all subsequent actions are set aside and cancelled.

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. In my opinion, the provision for removing an elected representative such as the Pradhan or the Upa-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.

This writ petition is disposed of with liberty to the requisitionists to bring a fresh requisitions in terms of Section 12(2) of the said Act. If such requisitions are brought, the prescribed authority shall satisfy himself about compliance of Section 12(2) of the said Act and then act and proceed in terms of Sections 12(3) and 12(4) onwards to reach the requisitions to its logical conclusion within the period mentioned in the statute.

This Court is not making any observation on the right of the Pradhan and Upa-Pradhan to continue in their office as the said issue will be decided in the meeting itself. If

necessary, the prescribed authority may seek police protection, which shall be rendered without any delay or laches on the part of the police authorities.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)