

S/L 3
11.08.2021
Court. No. 19
GB

W.P.A. 12561 of 2021

Bindumati Mahato
VS
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Partha Sarathi Deb Barman,
Mr. Sougata Mitra,
Ms. Salma Sultana Shah
Ms. Ankita Dey.

...for the Petitioner.

Mr. Dipankar Pal.

...for Respondent Nos.6 to 11.

Mr. Raja Saha,
Ms. Rupsha Chakraborty.

...for the State.

The writ petition has been filed by the Pradhan of Dhelatbamu Gram Panchayat, challenging the notice of the prescribed authority issued under Form-1E of Sub-Rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975. By the notice dated August 4, 2021, the prescribed authority called for a meeting for removal of the Pradhan on August 12, 2021 at 12.00 noon.

The first allegation of the petitioner is that the prescribed authority had wrongly issued a notice under Form-1E of Sub-Rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975, as the requisition brought by the requisitionists contained allegations against the Pradhan and was not in effect a notice under Section 12(2) of the West Bengal Panchayat Act, 1973.

The other contention of the petitioner is that the meeting cannot be held due to the COVID situation.

According to Mr. Deb Barman, such a requisition for removal of the Pradhan should be carried out in terms of the provisions of Section 213 of the West Bengal Panchayat Act, 1973. It has been specifically pleaded that the notice for removal in such a situation should not be issued under Form-1E.

Mr. Pal, learned advocate appearing on behalf of the requisitionists submits that the petitioner has not raised any question as to the stigmatic effect of the said requisition. It is further contended that the pleadings not having been made in the writ petition, the notice should not be interfered with.

Mr. Saha, learned advocate appearing on behalf of the State submits that the prescribed authority has acted under Section 12(3) and 12(4) of the said Act and has issued the notice.

Having perused the requisition, I find that there are direct allegations against the Pradhan to the effect that the Pradhan had not done any work relating to development of the locality and all developmental work had been stalled.

Thus, the law is settled by this Court that there cannot be any requisition under Section 12(2) of the said Act containing allegations which may be stigmatic to the persons sought to be removed. Reliance is placed on the decision of *Ujjal Mondal vs. State of West Bengal* reported in 2013 (1)

CHN (CAL) and Sourendra Nath Das vs. The State of West Bengal & Ors. passed in WPA 11903 of 2021.

In my opinion, if the prescribed authority has proceeded by treating the requisition to be one under Section 12(2) of the said Act, then the notice of motion issued pursuant to the requisition treating the same to be a requisition under Section 12(2) of the said Act cannot be sustained in law. The requisition contains a stigma.

In the matter of Ujjal Mondal (supra) the Hon'ble Division Bench of this Court held that the requisition notice/no confidence motion was entertainable only when there was no foundation for bringing the motion. The relevant portion is quoted below:

“24. Having regard to section 101 of the said Act, we are of the view that a ‘no confidence motion’ is entertainable for removal of Pradhan where there should not be any ground or foundation of bringing ‘no confidence motion’ and if ‘no confidence motion’ is carried on that ground, it will invite civil consequence or evil consequence to the Office Bearers relating to his political career naturally and as such, natural justice principle will have play in the matter, thereby a breach of Article 14 of the Constitution of India.”

Having perused the judgment of the Division Bench in Ujjwal Kumar Singha (supra), I do not find that the Division Bench decided the point as to whether the requisition which carries some allegation against the Pradhan could be entertained. It appears that there was a challenge to the no

confidence motion on the ground that the same was carrying allegations, but the Hon'ble Division Bench held that the learned Single Judge had dealt with the issues and had dismissed the writ petition with reasons. However, there is no observations as to whether the requisition, even if, it contains any allegation or stigma could be entertained contrary to what was decided in Ujjal Mondal (supra).

This court in the matter Sourendra Nath Das v. The State of West Bengal & ors. in WPA 11903 of 2021 held as follows:

“Having considered the submissions made by the petitioner and the learned advocates for the prescribed authority, this court is of the opinion that a reading of the requisition notice (which is in bengali), as a whole, would indicate that in the opinion of the members, the pradhan has proved to be incompetent as he did not perform his duties and developmental works, causing deprivation to the people of the locality from the benefits all governmental projects, and thus the members had lost confidence in their leader and wanted his removal.

The effect of such a requisition is that the pradhan being incompetent to perform his duties had caused suffering to the people and would be consequently removed as the members lost confidence on account of such non-performance. The pradhan has a career. If the requisition is allowed to stand, it would be a reflection of his inability and incompetence in performing his duties as a leader of the gram panchayat. This is the foundation of the requisition. The ‘no confidence’ is based on the allegation of incompetence and inability of the pradhan and the suffering caused to the people in the locality due to such incompetence. This is not a simple requisition for removal of the pradhan. The removal if carried through in the meeting will carry a stigma that the pradhan was removed as he failed to perform his duties and developmental works.

In my opinion, the decision of Ujjal Mondal (supra) applies. Even if the allegations are not as serious as misappropriation or misconduct, incapacity or incompetence of a political leader to perform works in the locality which has cause

disillusionment, unhappiness and suffering to the people in the locality are allegations which can be viewed with seriousness. The future prospects of the pradhan might be jeopardized. He will also not get a chance to explain his conduct. Thus, the requisition notice and subsequent notice are set aside for the reasons stated hereinabove.”

Had it been a case that the prescribed authority had treated it as a motion for removal of the Pradhan in terms of Section 213 of the said Act, then the prescribed authority ought to have heard the Pradhan and proceeded in accordance with law.

It is also clear that the Pradhan cannot stall the meeting in any way because it is the right of the requisitionists to remove the Pradhan on account of lack of confidence by bringing a simple requisition with such intention under the provisions of Section 12(2) of the said Act.

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.

With the above observations, the writ petition is disposed of by setting aside the requisition as also the notice of removal dated August 4, 2021.

The requisitionists are granted liberty 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) onward of the said Act. The bar under Section 12(11) of the said Act shall not be applicable. The time limit prescribed by the statute shall be adhered to.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)