

S/L 4
11.08.2021
Court. No. 19
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W.P.A. 12564 of 2021

Sri Birbal Machhuar
VS
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Partha Sarathi Bhattacharyya
Mr. Raju Bhattacharyya
Ms. Salma Sultana Shah
Ms. Ankita Dey

...for the Petitioner.

Mr. Partha Sarathi Deb Barman,
Mr. Monoranjan Mehata
...for Respondent Nos.6-15

Mr. Ansar Mondal *...for the State.*

The writ petition has been filed by the Pradhan of Baghmundi Gram Panchayat. The contention of the petitioner is that the requisition was brought on July 28, 2021 by the respondent nos.6 to 15 expressing their intention to remove the Pradhan. The requisitionists had lost confidence in the Pradhan. The allegations in the motion are misconduct, corruption, mal-practice and incompetence to be a political leader.

According to Mr. Bhattacharyya, learned advocate appearing on behalf of the petitioner, the said requisition contains a stigma.

Reliance has been placed on a decision of this Court in the matter 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.

Mr. Deb Barman, learned advocate, who appears on behalf of the requisitionists submits that the intention to remove would suffice the requirement of law and the allegations against the Pradhan of misconduct, corruption, mal-practice and incompetence to be a political leader could easily be ignored. Thus, it is submitted on behalf of the requisitionists that the provisions of Section 12(2) of the West Bengal Panchayat Act, 1973 allows such kind of requisition when the only requirement was an intention to remove the Pradhan on account of loss of confidence. It is submitted that the other portions of the requisition are redundant and neither the prescribed authority nor the Court can take cognizance of such statements. The said statements do not have any impact on the requisition.

Mr. Mondal, learned advocate for the state respondents submits that the notice was not stigmatic as such. He distinguished the decision of Ujjal Mondal (supra) on the ground that in Ujjal Mondal (supra), the allegations were more serious. According to him, in this case, the allegations were not stigmatic. Mr. Mondal refers to a decision of a Division Bench of this court in the matter of Ujjwal Kumar Singha Vs. State of West Bengal, reported in (2017) 2 CHN 258 (DB). In the said decision, the court observed that 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. According to Mr. Mondal, one of the challenges before the Division Bench was that the requisition notice carried a stigma, but the Division Bench did not set aside the requisition.

I have heard the learned Advocate for the respective parties.

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.”

Another interim decision of a Division Bench has been placed by the respondents, in the matter of Prasanta Mitra Vs. The State of West Bengal passed in MAT 1086 of 2019. Having perused the interim order, this court is of the opinion that the consideration before the Hon’ble Division Bench was not with regard to any stigma or allegation in the requisition notice.

Having considered the rival submissions of the learned advocates for the respective parties, this Court is of the opinion that the issue before the Hon’ble Division Bench in Ujjal Mondal (supra), with regard to the removal of the Pradhan was similar to the one raised by the petitioner in the writ petition. The foundation of the no confidence and the intention to remove the Pradhan were misconduct, corruption, mal-practice and incompetence to be a political leader.

The Pradhan can be removed by the requisitionists if they have lost confidence in him by bringing a requisition with the intention to remove. As soon as there are allegations of misconduct, corruption, mal-practice, incompetence to be a leader and incompetence to be a political figure, the same becomes stigmatic. The Pradhan is a politically appointed representative of the people and any allegations of such

nature may have a negative effect on his future prospects and his credibility as a member of the Panchayat may be affected.

Thus, having considered the requisition notice as a whole, I of the view that it indicates that the lack of confidence on the Pradhan was due to misconduct, corruption, mal-practice and his incompetence to be a political leader. Such allegations can also enrage and turn the people in the locality against the Pradhan.

Thus, in my view, with due respect to the submissions made by the learned advocate for the requisitionist, the requisition cannot be sustained in law only on the ground that there are allegations against the Pradhan, which form the foundation of the no-confidence.

Under such circumstances, the requisition dated July 28, 2021 as also the notice dated August 3, 2021 are set aside and quashed. This matter is entertained solely for the reasons indicated hereinabove.

However, the court is conscious of the rights of the requisitionists.

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.

I do not find that the petitioner has any statutory or legal right to stall any meeting except in accordance with law. Such meetings have not been barred by the Government. The Government offices have resumed functioning.

The requisitionists are granted liberty to bring a fresh requisition as per Section 12(2) of the West Bengal Panchayat Act, 1973. 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 within the time limit prescribed by the statute. The bar under Section 12(11) of the said Act shall not be applicable.

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.

Parties are directed to act on the communication of the learned advocates.

(Shampa Sarkar, J.)