

19.08.2021
Sl. No.19
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W.P.A. No. 12707 of 2021
Ujjala Biswas & Ors.
Vs.
The State of West Bengal & Ors.

Mr. S. Basu..Sr.Advocate
Mr. Debanik Banerjee
Mr. Rajesh Kshetry
Mr. Steven Sourodip Biswas
...for the Petitioners.

Mr. Ansar Mandal
Ms. Sipra Mazumder ...for the State.

Despite service, none appears on behalf of the Pradhan. Let the Affidavit of service be taken on record. It appears from the affidavit of service that all the respondents have been served by e-mail. The screen shot of the e-mail showing that the same has been sent to the respondents is annexed to the writ petition.

The writ petitioners are the requisitionists who had brought a requisition on July 16, 2021, requesting the prescribed authority to convene a meeting for removal of the Pradhan of Belgoria-II Gram Panchayat, District-Nadia on the ground of loss of confidence.

The prescribed authority issued a notice on July 16, 2021 fixing July 19, 2021 for recording satisfaction with regard to the identity of the requisitionists. Thereafter, no steps have been taken by the prescribed authority to convene the meeting as per section 12(3) of the said Act.

Mr. Mandal, learned Senior Government Advocate appearing for the State-respondents, submits that the requisition dated July 16, 2021 has lost its force and the same cannot be revived by the order of the Court as the statutory period prescribed under Section 12(10) of the West Bengal Panchayat Act, 1973 has expired.

Having heard the rival contentions of the parties, as the period prescribed under Section 12(10) of the statute, has expired, the requisition dated July 16, 2021 has become infructuous and is liable to be set aside.

The requisition notice and any subsequent notice with regard to the removal of the Pradhan is set aside and cancelled. The prescribed authority did not disclose any reasons for not issuing the notices as per law.

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.

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.”

This writ petition is disposed of with liberty to the requisitionists to bring a fresh requisition in terms of Section 12(2) of the said Act. If such requisition is 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. In addition to the modes of service of the requisition upon the Pradhan as prescribed under the statute, a copy shall be pasted at the office of the Pradhan and also in the residence of the Pradhan, if either the Pradhan or his staff do not accept the requisition. The bar under Section 12(11) shall not be applicable. The prescribed authority cannot neglect to discharge his duties under the statute. This deliberate neglect and disregard to law is viewed with seriousness.

This Court is not making any observation on the right of the Pradhan to continue in his 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.)