

18.08.2021
Sl. No.11
sn

W.P.A. No. 12693 of 2021
Mst. Fatema Bibi & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Joy Chakraborty

...for the Petitioners.

Mr. Lalit Mohan Mahata,
Mr. P.B. Mahata

...for the State.

Despite service, none appears on behalf of the respondent no.7. Affidavit of service is taken on record.

This matter is disposed of in the absence of respondent no.7. No mandatory directions are being passed against the rights of the respondent no.7.

The petitioners are the requisitionists who brought a requisition in terms of the provisions of Section 12(2) of the West Bengal Panchayat Act, 1973 for removal of the respondent No.7, who is the Pradhan of Rajnagar Gram Panchayat, District-Malda. The said requisition was brought on May 4, 2021. Thereafter, the prescribed authority by a notice dated May 11, 2021 postponed the decision to hold the meeting for removal of the Pradhan, on account of certain restrictions in terms of the provisions under the Disaster Management Act, 2005 read with West Bengal Epidemic Disease, Covid-19 Regulations-2020.

The petitioners submit that their democratic rights have been curtailed by postponement of the meeting.

Having considered the entire records of this case and the facts as narrated hereinabove, this Court finds that on account of provisions of Disaster Management Act, 2005 the meeting was postponed. It is the democratic right of the requisitionists, to seek the removal of their leader who has lost their confidence, in accordance with law. They are entitled to enforce such right and any delay by the authority will actually frustrate such right and destroy the democratic set up of the institution. These institutions must run on democratic principles. In democracy all persons heading public bodies could continue provided they enjoy the confidence of the persons who comprise such bodies. This explains why the provision of bringing a motion of no-confidence has been provided under the law.

More than three months have passed from the date of the requisition, but no meeting has been fixed. The entire process is set aside including the requisition dated May 4, 2021 as the statutory time limits have expired including the outer limit of 30 days as per Section 12(10) of the said Act. The requisitionists/petitioners are granted liberty to bring a fresh requisition in accordance with law. If the said requisition is brought, the prescribed authority shall reach the requisition to

its logical conclusion upon complying with the provisions of Sections 12(3) and 12(4) onwards of the West Bengal Panchayat Act, 1973 by strictly adhering to the time limit fixed by this court. The bar under Section 12(11) shall not apply.

It is made clear that the law imposes a duty upon the prescribed authority to act in terms of the provisions of Section 12 of the said Act. No further delay will be permitted. The prescribed authority shall be at liberty to requisition for police support in case he apprehends breach of law and order. The respondent Nos.4 and 5 shall mandatorily render support to the prescribed authority. Failure of the police authorities in this case, will be viewed with seriousness. If the Pradhan avoids service, apart from the modes prescribed under the statute, substituted service by hanging the requisition at a conspicuous place at the Pradhan's office and residence shall be accepted.

The writ petition is, thus, disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)