

18.08.2021
Sl. No.10
sn

W.P.A. No. 12696 of 2021

Sarika Bibi & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Joy Chakraborty

...for the Petitioners.

Mr. J.L. De

Ms. Sushnita Saha

...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 the respondent no.7 as no mandatory directions are being passed affecting the rights of the respondent no.7.

The petitioners are the elected members of Alipur-1 Gram Panchayat. 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 Alipur-1 Gram Panchayat, District-Malda. The said requisition was brought on July 19, 2021. The prescribed authority issued a notice upon the requisitionists to attend a meeting to prove compliance of Section 12(2) of the West Bengal Panchayat Act, 1973, yet, the prescribed authority did not take any further steps in the

matter as required under Section 12(3) and 12(4) of the West Bengal Panchayat Act, 1973.

It is further submitted that the notice calling a meeting for removal of the Pradhan should have been issued within five working days. The said period had expired without any notice having been issued. The prescribed authority has not indicated whether at all such meeting would be held or not. Moreover, 30 days period expires on August 18, 2021, which is today, and till date no steps have been taken. Thus, the provisions of Section 12(3) of the said Act has not been complied with and the period mentioned under Section 12(10) of the said Act expires today. Such requisition has lost its force. The requisition has become infructuous. The same is set aside, granting liberty to the requisitionists to bring 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 the statute. The bar under Section 12(11) shall not apply.

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.

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.)