

19.08.2021
Sl. No.7
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W.P.A. No. 12840 of 2021
Mantu Sarkar & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Gangadhar Das
Mr. Swarvanu Saha

...for the Petitioners

Mr. Raja Saha
Mr. Tapan Pramanick

...for the State.

Mr. P.S. Bhattacharya, Sr. Adv.
Mr. Tanweer J. Mondal
Ms. Somashree Dey
Mr. Raju Bhattacharya

...for the Respondent Nos.9&10

Affidavit of service is taken on record.

The writ petitioners who are the requisitionists, had brought a requisition on July 28, 2021, requesting the prescribed authority to convene a meeting for removal of the Pradhan of Mahisbathini Gram Panchayat, District Malda on the ground of loss of confidence.

The prescribed authority by a notice dated July 30, 2021 postponed the meeting due to Covid-19 pandemic situation until further orders. This Court is of the opinion that the prescribed authority has failed to exercise his jurisdiction under the law as per sections 12(3) and 12(4) of the West Bengal Panchayat Act, 1973.

The Government of West Bengal issued an order being Memo No.753/IV-ISS/2M-33/2020 dated July 29, 2021, from which it will appear that all government programmes may be allowed in indoor places with not more than 50% of the total seating capacity. When the order of the government is clear that even meetings, functions and gatherings can be allowed by maintaining COVID protocol with 50% seating capacity in indoor halls and outdoor activities have also been permitted with restrictions, this Court does not find any order in favour of the petitioner which says that official meetings or statutory obligations and duties to be undertaken for proper functioning of government office or offices like the gram panchayat can be stalled because of the pandemic situation. All government offices are functioning, the employees are attending their offices. Such offices have resumed functioning since June 15, 2021 with full strength. As such, this Court does not find any reason to stall the meeting to be held in the interest of democracy and as per the provisions of the statute.

Having heard the rival contentions of the parties, as the period, as prescribed under Section 12(3) and 12(4) of the statute has expired and no notice has been issued by the prescribed authority, the requisition notice and all subsequent actions of the prescribed authority, are set aside and cancelled.

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 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 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.

This Court is not making any observation on the right of the Pradhan to continue in the 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. If the Pradhan avoids service, a copy of the requisition will be posted at a conspicuous place in the office of the gram panchayat as also at the residence of the Pradhan in addition to the modes of service prescribed by the statute.

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.)