

23.08.2021
Sl. No.7
nb

W.P.A. No. 12786 of 2021
(via video conference)
Mr. Kabatulla Momin & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Apurba Ghosh,
Mr. Anindya Ghosh.

...for the Petitioner nos 1 to 11.

Mr. Raja saha,
Mr. Bibekananda Tripathi

...for the State.

Mr. Amarendra Chakraborty,
Ms. Mumun Tewari

...for the Respondent No. 8 & 10

Mr. Souma Subhra Ray

... for the petitioner No.12.

The writ petition has been filed by some of the members of the Kaliachak-II Gram Panchayat within Kaliachak-I Development Block, District - Malda.

It is the contention of the petitioners that the requisition was brought on July 23, 2021. 13 out of 18 members of Kaliachak-II Gram Panchayat brought the requisition expressing their 'no confidence' in the Pradhan. The prescribed authority called for a meeting on July 30, 2021 for scrutiny, in order to record his satisfaction regarding compliance of Section 12 of sub-section (2) of the West Bengal Panchayat Act, 1973. It is alleged by the petitioner that thereafter the prescribed authority did not issue any notice

under Section 12(3) of the said Act. Aggrieved the petitioners are before this court. Ms. Tewari learned Advocate appearing on behalf of the Pradhan submits that the members had agreed to support the Pradhan and Upa-pradhan and such agreement has been recorded in the form of a notarised affidavit. Thus, Ms. Tewari questions the signatures of the petitioners in the Vakalatnama and the power of attorney granted to the petitioner no.2 to sign this application.

Mr. Souma Subhra Ray learned advocate appearing on behalf of the petitioner No.12 submits that the petitioner was not aware that the writ petition would be filed and he was forced to sign the papers.

Having considered the rival contention of the parties, this court finds that apart from the allegations of forceful procurement of the signatures of some of the petitioners, there is also a procedural lapse in the matter. The prescribed authority did not take any steps within the statutory period.

Under such circumstances, nothing remains in the writ petition. The requisition was brought on July 23, 2021. The period of 30 days has lapsed. The prescribed authority did not take any steps with regard to the requisition in terms of Section 12(2) and 12(3) of the said Act. This is not a situation where the prescribed authority was not satisfied regarding the compliance of Section 12(2) of the West Bengal Panchayat Act,

1973. The fact that the prescribed authority was not satisfied about the compliance of Section 12(2) of the said Act, is not available. Why the prescribed authority did not act in accordance with law is unanswered. The rights of requisitionists to bring a requisition under Section 12(2) of the West Bengal Panchayat Act, 1973 is a democratic right. Such right has been recognised by courts of law. However, it has to be the free will of the requisitionists and force and coercion cannot be used to obtain signatures of the members. Only if the members agree on the issue, they can bring a requisition before the prescribed authority, who has the jurisdiction to satisfy himself about the compliance under Section 12(2) of the said act.

Under such circumstances no order can be passed in the writ petition.

This writ petition is, thus, disposed of upon setting aside the requisition dated July 23, 2021. If the members of the Gram Panchayat bring a fresh requisition under Section 12(2) of the said Act, the prescribed authority shall act and proceed in accordance with a law. Upon satisfying himself about the compliance under Section 12(2) of the said Act, the requisition shall be reached to its logical conclusion, by adhering to the time frame prescribed by the statute. This court is not making any comment on the Pradhan's right to continue in his office.

That issue shall be decided in an appropriate meeting. The prescribed authority shall also be entitled to requisition police help and if such requisition is made, the prescribed authority shall be given support by the local police station.

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.)