

WPA 12879 of 2021

Md. Sahidur Rahaman Shaikh & Ors.

-Vs-

The State of West Bengal & ors.

(Via Video Conference)

Mr. L. N. Bhattacharyya
Mr. Sudarshan Ghosh

... for the petitioners

Mr. Raja Saha
Mr. Arunava Maiti

... for the State of W.B.

None appears on behalf of the Pradhan.

Affidavit-of-service as filed is taken on record.

This writ petition is taken in the absence of the Pradhan as no mandatory orders are being passed affecting the right of the Pradhan.

The petitioners are some of the elected members of Sahajadapur Gram Panchayat. The petitioners are aggrieved because the Prescribed Authority in spite of receiving the requisition under Section 12(2) of the West Bengal Panchayat Act, 1973 on August 2, 2021 did not take any steps as required by law.

It is submitted that the Prescribed Authority was duty bound to act in terms of provisions of Section 12(3) and 12(4) of the said Act and reach the requisition to its logical conclusion.

The petitioners have prayed for a direction upon the Prescribed Authority to call a meeting in terms of provision of Section 12(4) of the said Act.

Mr. Raja Saha, Learned Advocate, appearing on behalf of the State Respondents submits that no direction can be passed in the writ petition in view of the fact that the time period prescribed in the statute for issuance of a notice under Section 12(3) and 12(4) has not been complied with.

I have heard the parties. In this case, the Prescribed Authority ought to have satisfied himself about the compliance of Section 12(2) of the said Act. Thereafter, upon being so satisfied, a notice should have been issued within five working days from the receipt of the motion. The meeting should have been called with seven clear days notice and the meeting should have been held within 15 working days from the receipt of motion.

In this case, the Prescribed Authority has not satisfied himself about the compliance of Section 12(2) and has not proceeded further in terms of Section 12(3) and 12(4) of the said Act.

Under such circumstances, even if the statutory period of 30 days has not expired, the other provisions of the statute have not been complied with and in my opinion the requisition does not survive. The requisition dated August 2, 2021 is set aside and cancelled. However, the right of the requisitionist cannot be frustrated by inaction of the prescribed authority. No reasons are forthcoming as to why the

prescribed authority sat tight over the motion.

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. The sheer inaction of the Prescribed Authority has led the Court to believe that the Prescribed Authority has not been diligent and serious about his duties under the statute.

Reliance is placed on the *decision of **Ujjwal Kumar Singha versus State of West Bengal & Ors.** reported in (2017) 2 CHN 258* 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 Madamus Appeal. It appears that the appellant/writ petitioners 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 the 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 utilization 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. The bar under Section 12(11) shall not be applicable.

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. In addition to the modes of service required by the statute, the requisitionist shall be at liberty to paste the requisition at a conspicuous place in the office of the Pradhan and also at a residence of the Pradhan.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the learned advocates' communication.

(Shampa Sarkar, J.)