

WPA 12968 of 2021

Prasenjit Rishi & Ors

-Vs-

The State of West Bengal & ors.

(Via Video Conference)

Mr. Shamim-ul-Bari
Miss Molly Saha

... for the petitioners

Md. Sarwar Jahan
Md. Ashraful Haq
Mr. Binay Shaw

... for the Respondent Nos. 7 & 8

Mr. Raja Saha
Ms. Rupsa Chakraborty

... for the State of West Bengal

The writ petitioners are the requisitionists who had brought a requisition on July 8, 2021, requesting the prescribed authority to convene a meeting for removal of the Pradhan of RathbariGram Panchayat, District-Malda. The Prescribed Authority issued a notice on July 15, 2021, *inter alia*, stating that the date of the meeting will be notified later in view of the covid restriction. Aggrieved by the petitioners seek directions upon the prescribed authority.

Mr. Saha, learned Government Advocate appearing for the State-respondents, submits that the requisition of July 8, 2021 has lost its force and the same cannot be revived by the order of the Court as the statutory period prescribed under Section 12(10) of the West Bengal Panchayat Act, 1973 has expired. Mr. Saha further submits that the prescribed authority is bound to act in terms of the provisions of the statute and there is no reason why the prescribed authority

did not take any steps in accordance with law.

Having heard the rival contentions of the parties, as the period prescribed under Section 12(10) of the statute, has expired, the requisition dated July 8, 2021 has become infructuous and is liable to be set aside.

The requisition notice and all subsequent notices 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. The prescribed authority failed to take steps in accordance with law and allowed the time to expire. At the time the requisition was brought, government offices had resumed functioning. Statutory meetings for normal functioning of the offices and for carrying out the provision of the Act had not been prohibited.

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.)