

S/L 15
23.08.2021
Court. No. 19
GB

WPA 13050 of 2021

Shrikanta Mandal & Ors.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Gangadhar Das,
Mr. Swarvanu Saha.

...for the Petitioners.

Affidavits of service is taken on record. Despite service none appears on behalf of the respondents.

The writ petitioners are the requisitionists, who brought a motion for the first time on May 5, 2021 under Section 12(2) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act), for removal of the Pradhan of Kahala Gram Panchayat.

The prescribed authority upon satisfying himself about the compliance of the provisions of Section 12(2) of the said Act, issued a notice dated July 14, 2021 under Form 1E, Sub-Rule (2) or Rule 5 of the West Bengal Panchayat (Constitution) Rules, 1975. The date of the meeting was fixed on July 27, 2021. One day before the date of the meeting, the prescribed authority postponed the meeting, but thereafter did not notify a subsequent date. The ground for postponement was non-availability of police force. Thereafter, some of the members once again brought a requisition on August 3, 2021. The prescribed authority

called the requisitionists for verification on August 13, 2021 but did not take any steps thereafter.

Mr. Das, learned advocate appearing on behalf of the requisitionists submits that the prescribed authority should be directed to hold the meeting. In this case, the first requisition was cancelled for non-availability of police force. Thereafter, the prescribed authority did not inform the requisitionists about the date when the meeting would be held. On August 3, 2021 the prescribed authority received the second requisition. Despite having received the said notice on August 3, 2021, the prescribed authority issued a notice for recording satisfaction about the compliances of Section 12(2) of the said Act on August 9, 2021 asking the requisitionists to meet the prescribed authority for a hearing on August 13, 2021 at 11.00 a.m. During such time the five working days period to issue the notice expired.

Mr. Das further submits that the intention of the prescribed authority was to allow the period of five working days from the date of receipt of the motion to expiry without issuance of the notice, so that the second requisition also gets frustrated. The next contention of Mr. Das is that the law does not prescribe that an elaborate hearing has to be held by the prescribed authority before taking any decision. As per the decision of the Hon'ble Division Bench in the matter of ***Gopal Kumar versus State of West Bengal, reported in 2015 (1) CHN Cal 445***, has to perform a ministerial act to ensure that the check list as provided under Section 12(2)

of the said Act had been complied with or not. The relevant portion of the said judgment is quoted below:

“(22) In our view satisfying himself as regards the sufficiency of the motion really means that the Prescribed Authority has to ascertain with reference to sub-Section 2 whether the requirements mentioned therein are satisfied by the motion. No subjective exercise is involved therein. No executive or administrative order is to be issued by the Prescribed Authority by convening the meeting. It is more of a ministerial task.

(27) In view of the discussion above we are of the opinion that it was not the intention of the legislation to impose any obligation on the Prescribed Authority to record satisfaction regarding legal acceptability of a motion submitted under section 12(2) of the said Act before issuance of a notice of meeting under section 12(3) of the said Act. We are of the view that it is not necessary for the Prescribed Authority to record any such satisfaction and we agree with the view of the Ld. Judge in the case of Firoza Begam (Supra) that issuance of notice of meeting itself indicates such satisfaction. We answer the question of law referred to us accordingly.”

It is urged that at the hearing held on August 13, 2021, the petitioners satisfied the prescribed authority about the compliance of Section 12(2) of the said Act, yet the prescribed authority did not issue any notice of the meeting and failed to hold the meeting within fifteen working days as prescribed by the law.

In this case, I find that the prescribed authority has acted contrary to the statute and failed to exercise the jurisdiction under the provisions of Sections 12(3) and 12(4) of the said Act. The action of the prescribed authority appears to be an attempt to frustrate the rights of the requisitionists under the law. Although the statutory period prescribed under Section 12(10) of the said Act has not expired, yet there are procedural irregularities and non-

compliances of Section 12(3) and 12(4) of the said Act. Thus the requisition dated August 3, 2021 is set aside and cancelled. The notice dated August 9, 2020 and all actions are set aside and cancelled.

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.

The writ petition is disposed of, granting liberty to the requisitionists to bring a fresh requisition in accordance with the provisions of Section 12(2) of the West Bengal Panchayat Act, 1973. If the same is brought, the prescribed authority shall proceed in terms of Section 12(3), 12(4) and so on and reach the meeting to its logical conclusion. The time period prescribed by the statute should be mandatorily adhered to. The bar under Section 12(11) of the said Act shall not be applicable in this case.

It is further made clear that the prescribed authority shall be entitled to seek police protection and if such request

is made, the police authority shall render all support to the requisitionists as also to the prescribed authority without any delay and laches. It is also made clear that if the Pradhan tries to evade service of requisition then the requisitionists shall be entitled to serve the same in his office through his secretary or assistant and if, such service is not accepted, then the requisitionists will be entitled to paste the same at the office of the Pradhan in addition to sending the same by registered post to the residence of the Pradhan.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the learned advocate's communication.

(Shampa Sarkar, J.)