

24.08.2021
Court No. 19
Item no.8
srm

WPA 13103 of 2021

Biswajit Sarkar & Ors.
vs.
The State of West Bengal & ors.

Mr. Sarwar Jahan
Mr. Shahan Shah

....for the petitioners.

Mr. Lalit Mohan Mahata
Ms. Sangeeta Roy

.....for the State.

Despite service, none appears on behalf of the respondent No.8. Affidavit of service is taken on record. The matter is taken up as no mandatory order is being passed affecting the rights of the said respondent.

Again another unfortunate case of dereliction of duty by the prescribed authority, i.e., the Block Development Officer, Tehatta-I Development Block. The court cannot help, but observe how the callous approach and inaction of the prescribed authority has frustrated the democratic rights of the members of Kanainagar Gram Panchayat, District-Nadia, who brought a requisition seeking removal of the Pradhan on the ground of lack of confidence. More than 20 days have passed, but the prescribed authority has remained silent on the issue. The prescribed authority did not exercise his jurisdiction vested under the law for satisfying himself about compliances of Section 12(2) of the West Bengal

Panchayat Act, 1973 (hereafter referred to as the 'said Act') on receipt of such requisition. It appears that the sole intention was to frustrate the democratic process and disregard the decision of the majority of the members of the Gram Panchayat. The court cannot help but come to this finding because Mr. Mahata, learned Senior Government Advocate, also could not produce any document in support of the reason as to why the prescribed authority failed to act in terms of the statute. Such lapse and negligence cannot be allowed by the court. The requisition which was brought on August 2, 2021, has not been acted upon by the prescribed authority. It has now lost its force as no notice was given within five working days from receipt of motion and the meeting was not held within fifteen working days.

Although, Mr. Jahan, learned advocate appearing for the petitioners, submits that the statutory period under Section 12(10) has not expired from the date of receipt of the requisition, yet compliances of Section 12(3) and 12(4) of the said Act have not been done.

Under such circumstances, no order is passed in this writ petition on the requisition dated August 2, 2021, as the same has now become infructuous. The requisition is set aside and cancelled.

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. 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 law in terms of Section 12(2) of the said Act. If such requisition is brought, the prescribed authority shall act and proceed under Sections 12(3) and 12(4) onwards, in order to reach the requisition to its logical conclusion. The bar under Section 12(11) of the said Act shall not be applicable. The time limit prescribed by the statute must be strictly adhered to.

The prescribed authority shall be at liberty to seek police assistance. If such request is made, the police authorities shall render all support to the

requisitionists as also the prescribed authority without any delay and laches.

It is also made clear that if the Pradhan tries to evade the service of requisition, then the requisitionists shall be entitled to serve the same in the office of the Pradhan through his secretary or assistant and if such service is not accepted they would be entitled to paste or hang the same at a conspicuous place in office of the Pradhan in addition to sending the same by registered post to the residential address of the Pradhan.

The prescribed authority shall comply with this order and take steps in accordance with law, failing which the court shall be constrained to call for explanations at the appropriate stage. It is also made clear that the requisition has to be received in the office of the prescribed authority and in his absence by his secretary or any other official working under him.

This writ petition is thus disposed of.

There will be however no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)