

18.08.2021
Sl. No.12
srm

W.P.A. No. 12832 of 2021
Naba Kumar Mondal
Vs.
The State of West Bengal & Ors.

Mr. Srijib Chakraborty,
Mr. Sabyasachi Chatterjee,
Mr. Aditya Mondal

...for the Petitioner.

Mr. Raja Saha,
Mr. Shamim-ul-Bari

...for the State.

Mr. Gangadhar Das,
Mr. Swarvanu Saha

...for the respondent No.7.

Affidavit of service is taken on record.

The Pradhan/respondent No.7 is represented. None appears on behalf of the Upa-Pradhan, respondent No.8 although records reveal that the copy of the writ petition has been sent to the Upa-Pradhan by speed post and served by e-mail. A copy of the screenshot of email is annexed to the affidavit of service. It is submitted that the mail has not bounced back.

The writ petition has been filed by one of the requisitionists, who brought two requisitions both on July 29, 2021 for removal of the Pradhan and Upa-Pradhan of Samsi Gram Panchayat, District-Malda. The prescribed authority issued two separate notices upon satisfaction of the

compliance of Section 12(2) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act) on July 30, 2021 fixing August 12, 2021 as the date for holding the respective meetings for removal of the Pradhan and Upa-Pradhan.

By a notice dated August 11, 2021, the prescribed authority postponed the meetings until further notice on the ground that an appeal had been filed by the respondent No.7 before the Hon'ble Division Bench of this Court being MAT No.750 of 2021. It is submitted by the petitioner that the appeal had been filed and communicated to the prescribed authority by the respondent No.7 and although there was no order of the Hon'ble Division Bench staying either the order of this Court or the requisition brought by the petitioner, the prescribed authority on a misunderstanding of the communication was misled into believing that the filing of the appeal would mean a restraint on the prescribed authority to hold the scheduled meetings.

I am of the opinion that the prescribed authority issued the notices on a misconception of law and fact. The prescribed authority ought not to have issued the notices postponing the meetings especially because he had been specifically directed to conclude the entire process of the proposed removal of the Pradhan and Upa-Pradhan of the concerned Gram Panchayat within the stipulated time period. The statute also prescribes a

time limit. Although the meetings could not be completed within 15 working days, yet in terms of Section 12(4) of the said Act, these meetings may not be held within 15 days either for situation beyond the control of the prescribed authority or if there is an order of a competent Court. In this case, the prescribed authority presuming that there is an order of the competent Court, that is, the Hon'ble Division Bench, where the appeal has been filed, postponed the meetings. It is also an instance when the prescribed authority was faced with a situation beyond his control to hold the meetings as an appeal had been preferred against the order of this Court granting liberty to the petitioners to bring the requisition.

Mr. Das, learned Advocate appearing on behalf of the respondent No.7, submits that the petitioner has not come with clean hands and the applications filed by the respondent No.7 before the Sub-Divisional Officer for cancellation of the membership of some of the requisitionists/members has not yet been disposed of. However, this issue is not a part of the writ petition.

In the decision of *Ujjwal Kumar Singha v. State of W.B.* reported in 2017 SCC Online Cal 4636, it was held that:

“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 Mandamus Appeal. It appears that the appellant/writ petitioner 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 this 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).

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 utilisation by the Mediation and Conciliation Committee of the High Court."

These institutions 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 provisions for removing an elected representative such as the Pradhan or the Upa-Pradhan are 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.

Even if no liberty was granted to the petitioners by this Court, the right of the requisitionists to bring a fresh requisition could not be curtailed in a manner which is not provided under the statute. Once before such statutory right as also the democratic right of the requisitionists was frustrated due to expiry of the statutory period and inability of the prescribed authority to hold the meeting within the prescribed statutory period. The petitioner along with other requisitionists moved this Court. The Court having found that the statutory period for holding the meeting had expired, set aside the previous requisition and granted liberty to the petitioner to move afresh. Unless the meeting is barred under Section 12(11) of the said Act, nothing can prevent the members to bring a fresh requisition of such nature. Repeated attempts have been made to frustrate the attempts of the requisitionists to move the motion of no-confidence.

This is not a case where the motion could not be carried by the requisitionists or the meeting failed for lack of quorum. The requisition was rendered invalid only because of delay on the part of the statutory authority to complete the process within the period mentioned in the statute.

Under such circumstances, as the 30 days period is not over and having held that in this case, the prescribed authority was misled into not holding the meeting within 15 working days for such reasons which can be treated as situation beyond his control, he having misunderstood that filing of an appeal would mean an order of stay of the competent Court, this Court fixes August 26, 2021 as the date for holding the respective meetings for removal of the Pradhan and Upa-Pradhan. The meeting for removal of the Pradhan will be held at 12.00 noon and the meeting for removal of the Upa-Pradhan will be held at 2.00 p.m.

This order shall be treated as a seven-clear-days' notice upon all the members as also the Pradhan and the Upa-Pradhan. A separate notice shall also be issued by the prescribed authority by the end of the day fixing the meetings, as indicated hereinabove.

The Superintendent of Police, Malda is requested to deploy adequate police force at the time of the meetings on August 26, 2021. The district authority shall be at liberty to issue orders under Section 144(1) of the Code of Criminal Procedure if required. Apart from the members of the gram panchayat, police authorities, officials assisting the prescribed authority and the observer, no other person not involved in the process shall be allowed in the vicinity.

This writ petition is, thus, disposed of.

There will be no order as to costs.

Parties are to act on the basis of the learned Advocates communication.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)