

19.08.2021
Sl. No.19
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W.P.A. No. 12852 of 2021
Mina Mondal
Vs.
The State of West Bengal & Ors.

Mr. Robiul Islam
Mr. Shamil Ul Bari
Mr. Raju Mondal
...for the petitioner
Mr. Raja Saha
Mr. Amit Kr. Ghosh ...for the State.

Mr. Ayan Bhattacharya
Mr. Joy Chakraborty
..for the requisitionists

The petitioner is the Upapradhan of Gangaprasad Gram Panchayat under Kaliachak-II Development Block, District Malda.

This writ petition has been filed praying for a direction for setting aside the requisition brought by requisitionists on March 3, 2021. It is submitted as the statutory period prescribed under Section 12(10) of the West Bengal Panchayat Act, 1973 has expired, no further meeting can be convened on the basis of the said requisition.

I have heard the rival contentions of the parties. As the period prescribed under Section 12(10) of the statute, has expired, the requisition dated March 3, 2021 and the notice of motion dated August 11, 2021 have become infructuous and are liable to be set aside.

The requisition dated March 3, 2021 as also the notice dated August 11, 2021 for removal of the Upa pradhan 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 Upa-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.

In the decision of *Ujjwal Kumar Singha v. State of W.B.* reported in 2017 SCC OnLine Cal 4636, 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 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).

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 utilisation 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 Upa-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.

This writ petition is, thus, disposed of.

There will be no order as to costs.

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

(Shampa Sarkar, J.)