

19.08.2021
Sl. No.11
srm

W.P.A. No. 12854 of 2021

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

Mr. Rabiul Islam,
Mr. Shamim-ul-Bari,
Mr. Raju Mondal

...for the Petitioner.

Mr. Ayan Banerjee,
Mr. J. Chakraborty

...for the Private Respondents.

Mr. Anirban Ray, Id. G.P.,
Mr. Raja Saha,
Mr. Bibekananda Tripathi

...for the State.

The writ petition has been filed by the Upa-Pradhan of Gangaprasad Gram Panchayat, District-Malda. It is the contention of the petitioner that the Pradhan had been suspended for alleged acts of misconduct for a period of three months. As the suspension period was over and a one page report was received from the District Level Enquiry Team, the Sub-Divisional Officer, Malda Sadar, Malda upon noting the opinion of the team that there was no chance of the petitioner tampering with the evidence directed reinstatement of Aminul Islam, as the Pradhan of the said Gram Panchayat.

Mr. Rabiul Islam, learned Advocate appearing for the petitioner, submits that although the Upa-Pradhan was directed to handover charge to the Pradhan within three

working days from the receipt of the letter, the charge could not be handed over as the Pradhan has been staying away from the office despite his reinstatement. According to Mr. Islam, unless the Pradhan comes to office and takes over charge from the petitioner, proceedings for removal of the Pradhan under Section 12 of the West Bengal Panchayat Act, 1973 should not be allowed. Mr. Islam submits that the petitioner is being unnecessarily burdened due to the absence of the Pradhan from office and he further submits that if the Pradhan is not in office and has not joined after his reinstatement, the meeting for removal cannot be held in his absence.

Mr. Ayan Banerjee, learned Advocate appearing for the requisitionists, submits that the Pradhan was served with the requisition. The requisition expressing the desire to remove the Pradhan on the ground of loss of confidence was brought after the order of reinstatement. If the Pradhan chooses to stay away from office, it is not for the requisitionists to stay their hands and restrain themselves from exercising their democratic right as also their statutory right. It is further contended that the Upa-Pradhan does not have any locus to file this writ petition.

Mr. Banerjee relies on a decision of this Court in the matter of Lutfa Begum vs. State of West Bengal & Ors.

reported in (2007) 2 CHN 57. The relevant portion of the judgement is quoted below:

“(36) SINCE none of the petitioners is the Pradhan of the said Gram panchayat, they cannot be affected by the majority decision which was taken for removal of the Pradhan. The petitioners being the members of the said gram Panchayat can neither be affected by the removal of the Pradhan nor can they be aggrieved by the removal of the Pradhan and as such, the petitioners do not have any locus to challenge the majority decision taken regarding removal of the Pradhan.”

Mr. Raja Saha, learned Advocate for the State-respondents, also raises the question of *locus standi*.

He submits that the requisition for lack of confidence has been brought against the Pradhan and the Pradhan has not challenged the said requisition. The notice for holding the meeting for removal of the Pradhan cannot be challenged by the Upa-Pradhan. The Upa-Pradhan cannot step into the shoes of the Pradhan and challenge the requisition. The Pradhan has been re-instated. He has not challenged the requisition and the subsequent notice.

Having heard the contentions of the learned Advocates for the respective parties, this Court is of the opinion that the Pradhan has been reinstated on July 30, 2021. He is supposed to be in office since that day. The office of the Pradhan of the Gram Panchayat is not vacant. If he physically does not attend the office, the requisition cannot fail. The meeting shall be held

as scheduled by the prescribed authority. The Upa-Pradhan was holding the charge of the Pradhan during the period of suspension. He failed to handover charge within three days from the reinstatement of the Pradhan. The Pradhan will be treated to be in office as the leader of the gram panchayat and shall remain so until he is removed in accordance with law. Moreover, the Pradhan is not aggrieved by the notice of motion. The Upa-Pradhan, who is now discharging the function of the Pradhan, shall handover charge either to the existing Pradhan immediately if the Pradhan is available and if the motion is carried out and the existing Pradhan is removed, then the Upa-Pradhan will handover charge to the newly elected Pradhan. If the Upa-Pradhan is removed from office in the interregnum period, in that case the prescribed authority shall supervise and decide the handing over of such charge in accordance with law. The requisition notice and the subsequent actions of the prescribed authority are in accordance with law.

The meeting, as scheduled, will be held in accordance with law and shall be reached to its logical conclusion. The matter of handing over charge by the Upa-Pradhan has nothing to do with the requisition.

This writ petition is, thus, disposed of without any interference with the requisition and the notice of the meeting.

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.)