

WPA 12885 of 2021

Kalpana Rakshit

-Vs-

The State of West Bengal & ors.

(Via Video Conference)

*Mr. Partha Sarathi Deb Barman,
Mr. Sougata Mitra,
Ms. Salma Sultana Shah
Ms. Ankita Dey.
Mr. R. Sinha*

...for the Petitioner.

*Mr. Lalit Mohan Mahato,
Mr. Samirul Bari.*

...for the State.

*Mr. Supratim Dhar
Mr. Dhananjay Nayak*

...for the respondent nos. 7 to 12

The writ petition has been filed by the Pradhan of Durku Gram Panchayat, challenging the notice of the prescribed authority issued under Form-1E of Sub-Rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975. By the notice dated August 13, 2021, the prescribed authority called for a meeting for removal of the Pradhan on August 24, 2021 at 12.30 p.m.

The first allegation of the petitioner is that the prescribed authority had wrongly issued a notice under Form-1E of Sub-Rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975, as the requisition brought by the requisitionists contained allegations against the Pradhan and was not in effect a notice under Section 12(2) of the West Bengal Panchayat Act, 1973.

According to Mr. Deb Barman, such a requisition for removal of the Pradhan should be carried out in terms of the provisions of Section 213 of the West Bengal Panchayat Act, 1973. It has been specifically pleaded that the notice for removal in such a situation should not be issued under Form-1E.

Mr. Dhar, learned advocate appearing on behalf of the requisitionists submits that the requisition does not disclose any serious allegations of misconduct or acts of moral turpitude and as such there is no stigma attached to the requisition.

Mr. Mahato, learned advocate appearing on behalf of the State submits that the prescribed authority has acted as per law under Section 12(3) and 12(4) of the said Act and has issued the notice. He submits that the requisition does not contain any stigma.

Having perused the requisition, I find that there are direct allegations against the Pradhan to the effect that the Pradhan had not done any work relating to development of the locality and all developmental work had been stalled and further that the Pradhan resisted the members from developing the area. The foundation of the requisition are the allegations stated hereinabove. The Pradhan has a career and future prospects and if he is removed from office on these allegations without an opportunity to controvert the

same, that would be in violation of the principles of natural justice.

Thus, the law is settled by this Court that there cannot be any requisition under Section 12(2) of the said Act containing allegations which may be stigmatic to the persons sought to be removed. Reliance is placed on the decision of *Ujjal Mondal vs. State of West Bengal* reported in 2013 (1) CHN (CAL) and *Sourendra Nath Das vs. The State of West Bengal & Ors.* passed in WPA 11903 of 2021.

In my opinion, as the prescribed authority has proceeded by treating the requisition to be one under Section 12(2) of the said Act, the notice of meeting dated August 13, 2021 issued pursuant to the said requisition, cannot be sustained in law. The requisition contains a stigma.

In the matter of *Ujjal Mondal* (supra) the Hon'ble Division Bench of this Court held that the requisition notice/no confidence motion was entertainable only when there was no foundation for bringing the motion. The relevant portion is quoted below:

“24. Having regard to section 101 of the said Act, we are of the view that a ‘no confidence motion’ is entertainable for removal of Prodhan where there should not be any ground or foundation of bringing ‘no confidence motion’ and if ‘no confidence motion’ is carried on that ground, it will invite civil consequence or evil consequence to the Office Bearers relating to his political career naturally and as such, natural justice principle will have play in the matter, thereby a breach of Article 14 of the Constitution of India.”

This court in the matter Sourendra Nath Das v. The State of West Bengal & ors. in WPA 11903 of 2021 held as follows:

“Having considered the submissions made by the petitioner and the learned advocates for the prescribed authority, this court is of the opinion that a reading of the requisition notice (which is in bengali), as a whole, would indicate that in the opinion of the members, the pradhan has proved to be incompetent as he did not perform his duties and developmental works, causing deprivation to the people of the locality from the benefits all governmental projects, and thus the members had lost confidence in their leader and wanted his removal.

The effect of such a requisition is that the pradhan being incompetent to perform his duties had caused suffering to the people and would be consequently removed as the members lost confidence on account of such non-performance. The pradhan has a career. If the requisition is allowed to stand, it would be a reflection of his inability and incompetence in performing his duties as a leader of the gram panchayat. This is the foundation of the requisition. The ‘no confidence’ is based on the allegation of incompetence and inability of the pradhan and the suffering caused to the people in the locality due to such incompetence. This is not a simple requisition for removal of the pradhan. The removal if carried through in the meeting will carry a stigma that the pradhan was removed as he failed to perform his duties and developmental works.

In my opinion, the decision of Ujjal Mondal (supra) applies. Even if the allegations are not as serious as misappropriation or misconduct, incapacity or incompetence of a political leader to perform works in the locality which has cause disillusionment, unhappiness and suffering to the people in the locality are allegations which can be viewed with seriousness. The future prospects of the pradhan might be jeopardized. He will also not get a chance to explain his conduct. Thus, the requisition notice and subsequent notice are set aside for the reasons stated hereinabove.”

Had it been a case that the prescribed authority had treated it as a motion for removal of the Pradhan in terms of Section 213 of the said Act, then the

prescribed authority ought to have heard the Pradhan and proceeded in accordance with law. However, the right of the requisitionists cannot be curtailed.

It is also clear that the Pradhan cannot stall the meeting in any way because it is the right of the requisitionists to remove the Pradhan for lack of confidence, by bringing a simple requisition with their intention under the provisions of Section 12(2) of the said Act.

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.

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."

With the above observations, the writ petition is disposed of by setting aside the requisition dated August 10, 2021 as also the notice dated August 13, 2021 calling for a meeting for removal of the Pradhan. No meeting will be held on August 24, 2021.

The requisitionists are granted liberty to bring a fresh requisition under Section 12(2) of the said Act. If such requisition is brought, the prescribed authority shall act and proceed in terms of the provisions of

Sections 12(3) and 12(4) onward of the said Act. The bar under Section 12(11) of the said Act shall not be applicable. The time limit prescribed by the statute shall be adhered to. In addition to the modes of service of the requisition upon the Pradhan as prescribed under the statute, a copy shall be pasted at the office of the Pradhan and also in the residence of the Pradhan, if either the Pradhan or his staff does not accept the requisition.

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 basis of the server copy of this order.

(Shampa Sarkar, J.)