

S/L 14
23.08.2021
Court. No. 19
GB

WPA 13047 of 2021

Puspa Oraon
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

*Mr. Gouranga Kumar Das,
Mr. Sabir Ahmed,
Mr. Sandip Kumar Mondal,
Mr. Apan Saha.*

...for the Petitioners.

Mr. Sufi Kamal.

...for the Respondent Nos.6 to 15.

*Mr. Raja Saha,
Mr. Samim Ul Bari.*

...for the State .

The writ petition has been filed challenging a notice dated August 12, 2021 by which the prescribed authority has fixed August 25, 2021 as the date for holding the meeting for removal of the Pradhan of Gourhond Gram Panchayat, Chanchal II Development Block, Malda. The petitioner is the Pradhan of the said Gram Panchayat. It is contended that the prescribed authority has violated the statutory provisions.

The requisition was brought on July 13, 2021 by the respondent nos.6 to 15, expressing their intention to remove the Pradhan, as the requisitionists had lost confidence in the Pradhan.

Mr. Saha, learned advocate appearing on behalf of the State submits that the provisions of Sections 12(3), 12(4) and

12(10) have not been complied with and the statutory periods have already expired.

It appears that the prescribed authority issued the notice calling for a meeting on August 12, 2021, that is, beyond the statutory period of five working days. The meeting is scheduled on August 25, 2021, that is, beyond 30 days. The provisions of Sections 12(3), 12(4) and 12(10) of the said Act have not been complied with by the prescribed authority. The outer limit of 30 days for completion of the entire process for removal of the Pradhan has expired. The meeting cannot be held beyond 30 days from receipt of motion. The notice dated August 12, 2021 and the requisition are set aside.

However, the requisitionists cannot suffer due to either the inaction and/or erroneous action of the prescribed authority.

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.

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.”

Under such circumstances, the requisition has already expired because of lapse of time and the notice dated August 12, 2021 is also belated. The bar under Sections 12(3), 12(4) and 12(10) of the said Act, comes in the way. Thus the requisition and the notice of the meeting dated August 12,

2021 are set aside and cancelled. No meeting shall be held on August 25, 2021.

The writ petition is disposed of upon granting liberty to the requisitionists/members 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) onwards of the said Act and reach the requisition to its logical conclusion. The bar under Section 12(11) of the said Act shall not be applicable. The time frame prescribed by the statute shall be adhered to by the prescribed authority.

It is further made clear that the prescribed authority shall be entitled to seek police protection and if such request is made, the police authority shall render all support to the requisitionists as also to the prescribed authority without any delay and laches. It is also made clear that if the Pradhan tries to evade service of requisition, then the requisitionists shall be entitled to serve the same in his office through his secretary or assistant and if, such service is not accepted, then the requisitionists will be entitled to paste the same at the office of the Pradhan in addition to the modes of service provided under Section 12(2) of the said Act.

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 learned advocate's communication.

(Shampa Sarkar, J.)