

WPA 12970 of 2021

Shanicharan Singmura

-Vs-

The State of West Bengal & ors.

(Via Video Conference)

Mr. Biswaroop Bhattacharya

Mr. S. P. Lahiri

... for the petitioner

Mr. Raja Saha

Ms. Rupsa Chakraborty

... for the State of W.B.

Mr. Saibal Acharya

Mr. S. B. Mukherjee

... for the respondent nos. 6,8,9,10

Mr. J. C. Halder

.. for the respondent nos. 11 and 12

This writ petition has been filed by the Pradhan of Begunkodar Gram Panchayat. The petitioner has challenged the requisition dated August 10, 2021 as also the notice issued by the Prescribed Authority dated August 10, 2021 under Form-1E of Sub-Rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975.

It is the contention of the petitioner that the first requisition was brought on May 7, 2021 which was accepted by the Prescribed Authority and the meeting for removal of the Pradhan was fixed on May 21, 2021. On May 18, 2021, the Prescribed Authority cancelled the meeting on the ground of restriction imposed by the State of West Bengal in view of the rising pandemic

situation.

Mr. Bhattacharya submits that on August 3, 2021 another requisition was brought and within seven days thereof a fresh requisition was brought on August 10, 2021, which was acted upon by the Prescribed Authority and August 24, 2021, 12.00 noon, was fixed for holding a meeting for removal of the Pradhan.

According to Mr. Bhattacharya, two consecutive notices cannot be brought within a span of seven days, unless the Prescribed Authority cancel or postpone the earlier requisition.

In this case, Mr. Bhattacharya submits that there is nothing on record which would reveal the fate of the requisition dated August 3, 2021. The requisition dated August 3, 2021 was sent to the Pradhan. Thus, according to Mr. Bhattacharya, unless the Prescribed Authority had cancelled the requisition or had decided not to continue with the same, a fresh requisition on August 10, 2021 could not have been brought and the Prescribed Authority could not have acted upon such requisition without having first dealt with the earlier requisition dated August 3, 2021.

Mr. Saha, Learned Advocate for the State Respondents submits that there is nothing on

record to show why the requisition dated August 3, 2021 had not been acted upon by the Prescribed Authority.

Mr. Saibal Acharya, Learned Counsel for the requisitionists submits that the requisition dated August 3, 2021 had some over writing and the same was not acted upon. He further submits that the requisition was not received by the Prescribed Authority. However Mr. Acharya has failed to substantiate such contentions with evidence

There are disputes with regard to the procedure followed by the requisitionists while exercising their right under Section 12(2) of the said Act of 1973. The first requisition died a natural death.

A second requisition was brought on August 3, 2021, but the fate of the said requisition is not known. Within seven days thereof, another requisition was brought. There is nothing on record to show that the second requisition had not been acted upon. On the contrary, it appears that the second requisition was served upon the Pradhan. There are several procedural irregularities, which do not justify the action of the Prescribed Authority.

The requisitions dated May 7, 2021, August

3, 2021 and August 10, 2021 are set aside and cancelled. The subsequent notice dated August 10, 2021 issued by the Prescribed Authority is also set aside and cancelled. No meeting will be held on August 24, 2021.

However, as the pandemic did not permit the meeting to be held at the first instance, this Court is of the view that the democratic rights of the requisitionists to move the motion for removal of the Pradhan on the ground of lack of confidence cannot be denied. The Prescribed Authority is bound under law to perform his duties by calling a meeting in accordance with law.

Reliance is placed on the *decision of **Ujjwal Kumar Singha versus State of West Bengal & Ors.** reported in (2017) 2 CHN 258* 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 Madamus Appeal. It appears that the appellant/writ petitioners 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 the 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 utilization 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 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. In addition to the

modes of service required by the statute, the requisitionists shall be at liberty to paste the requisition at a conspicuous place in the office of the Pradhan and also at a residence of the Pradhan.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the learned advocates' communication.

(Shampa Sarkar, J.)