

S/L 6
31.08.2021
Court. No. 19
GB

WPA 13261 of 2021

Md. Aliul Sk.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Anjan Bhattacharya,
...for the Petitioner.

Mr. Lalit Mohan Mahata,
Mr. Kapil Guha.
...for the State.

Despite service none appears on behalf of the Pradhan.

Mr. Bhattacharya, learned advocate for the petitioner hands over the affidavit-of-service along with the postal article sent to the Pradhan which bears the endorsement “refused”. The Pradhan has refused service. Let the affidavit-of-service and the postal article in a sealed cover be kept with the record.

The matter is taken up as no orders are being passed in the writ petition affecting the right of the Pradhan. In the opinion of the Court, the requisition on the basis of which Mr. Bhattacharya’s client wants a meeting to be held by the prescribed authority, cannot be allowed due to the expiry of the time prescribed by the statute.

The petitioner is one of the requisitionists, who along with other members brought a motion before the prescribed authority on August 10, 2021 expressing their intention to

remove the Pradhan. The requisitionists had lost confidence in the Pradhan, who is allegedly absent from office and was charged with offences under the Indian Penal Code. However, this is a notice for removal simpliciter for lack of confidence. The same was not acted upon by the prescribed authority. It appears that for some time Upa-Pradhan was in charge. However, this court has not gone into the allegations of criminal offence, enquiry and alleged activities of either the Pradhan. There is also an order of the court granting liberty to the requisitionists to proceed for removal of the Upa-Pradhan in accordance with law.

Mr. Mahata, learned advocate appearing on behalf of the State submits that the provisions of Sections 12(3) and 12(4) have not been complied with and the respective statutory periods for discharge of certain functions by the prescribed authority had expired.

It appears that the time limit for calling the meeting and holding the meeting have expired. The meeting cannot be held beyond 15 working days from receipt of motion unless prevented by reasons beyond the control of the prescribed authority. The requisition notice dated August 10, 2021 is 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. Admittedly the Pradhan has not yet been removed.

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, as the requisition has already expired because of lapse of time and the notice dated August 10, 2021 has not been acted upon, the bar under Sections 12(3) and 12(4) of the said Act has come in the way. Thus the requisition notice August 10, 2021 is set aside and cancelled.

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 under Section 12(10) 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 in 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.)