

26.08.2021
Sl. No.3
srm

W.P.A. No. 13145 of 2021
Md. Rabiul Islam & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Joy Chakraborty,
Mr. Dip Jyoti Chakraborty
...for the Petitioners.

Md. Julfikar ... Respondent No.7 (In-person).

Mr. Lalit Mohan Mahata,
Mr. Shamim ul Bari
...for the State-Respondents.

Affidavit of service is taken on record.

The petitioners are the requisitionists who brought a requisition in terms of the provisions of Section 12(2) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act) for removal of the respondent No.7, who is the Pradhan of Jalalpur Gram Panchayat, District-Malda. The said requisition was brought on August 12, 2021. Thereafter, the prescribed authority did not take steps on the ground of restrictions in terms of the provision of the Disaster Management Act, 2005 read with West Bengal Epidemic Disease, Covid-19 Regulations-2020.

The petitioners submit that their democratic rights are being curtailed by the non-action of the prescribed authority.

Md. Julfikar, the Pradhan appears in-person and submits that the prescribed authority did not call the meeting in view of the rise in the cases of Covid-19.

Mr. Mahata, learned Senior Government Advocate appearing on behalf of the prescribed authority, submits that in any event, the requisition cannot be acted upon as the same is defective. The party affiliation of some of the requisitionists have not been mentioned in the requisition.

This Court accepts the contention of Mr. Mahata and finds that the party affiliation of all the requisitionists have not been mentioned in the requisition. There is non-compliance of Section 12(2) of the said Act. As the time limit prescribed under Section 12(3) to issue the notice has expired and as the requisition itself is not in accordance with law, the requisition dated August 12, 2021 is set aside and cancelled.

It is the democratic right of the requisitionists, to seek the removal of their leader who has lost their confidence, in accordance with law. They are entitled to enforce such right and any delay by the authorities will actually frustrate such right and destroy the democratic set up of the body. 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 explains why this provision of no-confidence motion has been provided under the law.

In the matter of Ujjwal Kumar Singha Vs. State of West Bengal, reported in (2017) 2 CHN 258 (DB), this Court held that:

“ 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).

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.”

The requisitionists are granted liberty to bring a fresh requisition in accordance with law. If the said requisition is brought, the prescribed authority shall reach the requisition to

its logical conclusion upon complying with the provisions of Sections 12(3) and 12(4) onwards of the West Bengal Panchayat Act, 1973, by strictly adhering to the time limit fixed by the statute. The bar under Section 12(11) shall not apply as this is not a case that the requisition failed for want of quorum or could not be carried through.

It is made clear that the law imposes a duty upon the prescribed authority to act in terms of the provisions of Section 12 of the said Act. No further delay will be permitted. The prescribed authority shall be at liberty to requisition for police support in case he apprehends breach of peace. The respondent Nos.4 and 5 shall render such support to the prescribed authority during such meeting on the scheduled date. If the Pradhan avoids service, apart from the modes prescribed under the statute, substituted service by hanging the requisition at a conspicuous place at the Pradhan's office and residence shall be accepted.

The writ petition is, thus, disposed of.

There will be, however, no order as to costs.

All parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)