

31.08.2021
Sl. No.9
srm

W.P.A. No. 13351 of 2021
Naser Alam Haque
Vs.
The State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee,
Mr. Sandipan Das,
Mr. Akashdeep Mukherjee,
Ms. Debolina Sarkar,
Mr. Ankur Sharma,
Mrs. Sreejita Biswas

...for the Petitioner.

Mr. Sufi Kamal

...for the Respondent No.9/Pradhan.

Mr. Lalit Mohan Mahata,
Mr. Manas Kumar Sadhu

...for the State.

Affidavit of service is taken on record.

The Pradhan/respondent No.9 is represented.

The writ petition has been filed by one of the requisitionists, who brought a requisition on August 4, 2021 for removal of the Pradhan of Bhakri Gram Panchayat, District-Malda. By a notice dated August 6, 2021, the prescribed authority issued a notice stating that the meeting could not be held for situation beyond the control of the prescribed authority.

Mr. Sufi Kamal, learned Advocate for the respondent No.7, and Mr. Mahata, learned Advocate for the State-respondents, submit that a notice dated August 27, 2021 has

been issued under Form 1E by the prescribed authority indicating that on the basis of the requisition a meeting has been called on September 8, 2021 at 11.30 a.m. According to both the learned Advocates, the said meeting cannot be held as the period prescribed in the statute has expired.

The Court does not find any reason as to why the meeting could not be held and why it was beyond the control of the prescribed authority to hold the meeting in accordance with law. It is a rather whimsical and arbitrary decision of the prescribed authority.

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 decision of *Ujjwal Kumar Singha v. State of W.B.* reported in 2017 SCC Online Cal 4636, it was held that:

“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).

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."

However, the subsequent notice dated August 27, 2021 and the decision to hold the meeting on September 8, 2021 as also the requisition are bad in law and cannot be sustained.

Under such circumstances, 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 under Section 12(10) of the said Act. 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 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 sending the same by registered post to the 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 basis of the server copy of this order.

(Shampa Sarkar, J.)