

31.08.2021
Sl. No.12
srm

W.P.A. No. 13410 of 2021
Smt. Sampa Rani (Mandal) Sinha
Vs.
The State of West Bengal & Ors.

Mr. Pratik Dhar,
Mr. Srijib Chakraborty,
Mr. Shamim-ul-Bari,
Mr. Aditya Mondal

...for the Petitioner.

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

...for the Respondent Nos.5 to 12.

Mr. Raja Saha,
Ms. Tanusri Chanda

...for the State-Respondents.

Affidavit of service is taken on record.

The petitioner is the Pradhan of Kshempur Gram Panchayat, District-Malda. The requisitionists brought a motion on August 2, 2021 for removal of the Pradhan. The petitioner alleges that the meeting scheduled to be held on September 2, 2021 is beyond the period of 30 days and in violation of the period prescribed under Section 12(10) of the West Bengal Panchayat Act, 1973. As such, the said notice under Form 1E of sub-rule (2) of the Rule 5B of the West

Bengal Panchayat (Constitution) Rules, 1975 as also the requisition should be set aside and cancelled.

Mr. Chatterjee, learned Advocate appearing on behalf of the requisitionists, submits that the prescribed authority had called for a meeting on August 18, 2021 but notified that the same could not be convened as the police authorities were not in a position to provide assistance to the prescribed authority at the meeting. It is further submitted that the right of the requisitionists to remove the Pradhan by a democratic process which has been recognised by Courts, cannot be curtailed by such inaction or illegal action of the prescribed authority. It is further submitted that the Pradhan has no right to continue in his office when the members, who have elected the Pradhan, have lost their confidence. It is submitted that the Pradhan cannot stay in office for a single day. According to Mr. Chatterjee as the meeting could not be held earlier for reasons beyond the control of the prescribed authority, the period of 30 days under Section 12(10) will not be applicable. The outer limit has expired and the requisition has lost its force.

This court is of the opinion that the outer limit to complete the entire process is 30 days from receipt of the requisition.

Heard the parties. It is the democratic right of the requisitionists, to seek the removal of their leader on whom

they have lost their confidence but, 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 such institution. 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:

“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."

However, as the period prescribed under Section 12(10) of the said Act, has expired, this Court sets aside and cancels the requisition and the notice issued by the prescribed authority under Form 1E of sub-rule (2) of Rule 5B of the said Rules by granting liberty to the requisitionists 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). 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 avoid service of the 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 office and residence of the Pradhan.

The administration will be free to take all steps as per law to maintain peace and tranquillity in the area during such meeting if held.

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.)