

S/L 14
31.08.2021
Court. No. 19
CP

WPA 13415 of 2021

Arsi Bibi
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Srijib Chakraborty,
Mr. Aditya Mondal

...for the Petitioner.

Mr. Gangadhar Das
Mr. Tanmoy Chattopadhyay

....for the respondent no. 6.

Mr. Lalit Mohan Mahata,
Mrs. Jhuma Chakrabarty

...for the State.

Affidavit of service filed in Court today be kept with the record.

The writ petitioner is one of the requisitionists who had brought a requisition on August 19, 2021, requesting the prescribed authority to convene a meeting for removal of the Pradhan of Fulbaria Gram Panchayat, District-Malda on the ground of lack of confidence.

This is the second time that the prescribed authority has failed to take steps in accordance with law despite there being a specific direction of this court that if the petitioners bring a fresh requisition in terms of Section 12(2) of the West Bengal Panchayat Act, 1973 (hereafter referred to as the 'said Act'), the prescribed authority shall adhere to the time limit

fixed by the statute and proceed in accordance with law to reach the requisition to its logical conclusion.

Mr. Das, learned advocate appearing on behalf of the pradhan, submits that the writ petition is premature as the period of 30 days has not expired. The requisitionists do not have the right to move this court at this stage.

Mr. Mahata, learned Senior Government Advocate appearing for the State-respondents, submits that the requisition of August 19, 2021 has lost its force and the same cannot be revived by the order of the Court as the statutory period prescribed under Section 12(3) of the West Bengal Panchayat Act, 1973 has expired. Mr. Mahata further submits that the prescribed authority was bound to act in terms of the provisions of the statute and there is no explanation as to why the prescribed authority did not take any steps in accordance with law.

Having heard the rival contentions of the parties, as the time period prescribed under Section 12(3) of the statute, has expired, the requisition dated August 19, 2021 has become infructuous and liable to be set aside.

The requisition notice and all subsequent actions are set aside and quashed.

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. 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.

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 requisitionist 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.)