

03.09.2021
Sl. No.2
srm

W.P.A. No. 13462 of 2021

Anikul Islam
Vs.
The State of West Bengal & Ors.

Mr. Partha Sarathi Bhattacharyya,
Mr. U.A. Dewan,
Mr. Raju Bhattacharyya
Mr. Asif Dewan

...for the Petitioner.

Mr. Raja Saha,
Mr. Sayan Ganguly

...for the State.

Mr. Arup Sarkar

...for the Respondent Nos.7, 9 & 18 to 23.

Mr. Sukanta Chakraborty,
Mrs. Sreyashee Biswas,
Mr. Anindya Halder

...for the Respondent Nos.6, 8 & 10 to 17.

Affidavit-of-service is taken on record.

The petitioner is the Pradhan of Sadikpur Gram Panchayat, District-Murshidabad. The writ petition has been filed challenging the notice dated August 26, 2021 issued by the prescribed authority fixing the date for holding the meeting for removal of the Pradhan on September 7, 2021.

The petitioner submits that the requisition was not delivered either in the office of the Pradhan or sent to the residential address of the Pradhan by registered post. It is contended that the prescribed authority did not satisfy himself about the compliances of Sections 12(2) of the West Bengal

Panchayat Act, 1973 (hereinafter referred to as the said Act) has issued the notice contrary to law.

The first contention of the Mr. Bhattacharyya, learned Senior Government Advocate appearing on behalf of the petitioner, is that the prescribed authority ought to have satisfied himself that the modes of service of the requisition upon the office bearer as prescribed under the provisions of Section 12(2) of the said Act had been complied with, before issuing the impugned notice. The next contention of Mr. Bhattacharyya is that two of the requisitionists have subsequently given a letter to the prescribed authority indicating that they are withdrawing from the requisition and as such, the requisition must fail.

Mr. Sukanta Chakraborty, learned Advocate appearing on behalf of the requisitionists, submits that the prescribed authority satisfied himself by calling a meeting of the requisitionists. He submits that the requisition was physically delivered in the office of the Pradhan on August 23, 2021 and the same was sent by registered post to the residence of the Pradhan on August 23, 2021.

Mr. Saha, learned Advocate appearing on behalf of the State-respondents, produces documents in proof of the fact that the requisition was received by the Secretary of the office of the Pradhan on August 28, 2021. A copy of the receipt

bearing the seal and signature of the Secretary has been produced in Court. Postal receipts have been produced before this Court which shows that the notice of motion was sent to the residential address of the Pradhan. The court is satisfied that the conditions of service of the requisition upon the Pradhan has been complied with.

The right of the requisitionists to seek removal of the Pradhan is a democratic right and hyper-technicalities cannot come in the way in holding such meeting.

In the decision of Rajendra Kujur vs. The State of West Bengal & Ors. passed in WP No. 28717(W) of 2014, this court held that service upon the Pradhan was mandatory and either more of service upon the Pradhan would satisfy the requirement of Section 12(2) of the said Act. The law requires that the requisition should be delivered to the office of the officer bearer either by hand or by registered post and also sent by registered post to the residential address. The Pradhan was aware of the requisition, prior to the issuance of the notice for removal.

In my opinion, the provision for removing an elected representative such as 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.

Thus, this Court does not find any reason to interfere with the impugned notice. The meeting as scheduled to be held in accordance with law. If two of the requisitionists have withdrawn from the requisition they are entitled not to participate in the meeting but their withdrawal shall not have any adverse effect on the meeting or the requisition.

With the above observations, this writ petition is disposed of. The meeting will be held as per law.

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.)