

03.09.2021
Sl. No.4
srm

W.P.A. No. 13651 of 2021
Bablu Ghosh
Vs.
The State of West Bengal & Ors.

Mr. Rabi Lal Maitra,
Mr. Aniket Mitra,
Mr. Swarvanu Saha

...for the Petitioner.

Mr. Lalit Mohan Mahata,
Mr. Kapil Basu

...for the State.

Mr. Tapas Kumar Sinha

...for the respondent No.9.

Affidavit of service is taken on record.

All parties are represented.

The petitioner is one of the requisitionists. The petitioner is aggrieved because the prescribed authority despite issuing a notice under Form 1E of sub-rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975 could not hold the meeting for removal of the Pradhan of Kotwali Gram Panchayat, District-Malda on August 31, 2021 due to lack of police assistance. The prescribed issued a notice on August 27, 2021 that due to a programme of the Government of West Bengal, namely "Duare Sarkar" the police force was not available.

Mr. Mahata, learned Senior Government Advocate appearing on behalf of the State-respondents, submits that

statutory period of 30 days has not yet expired and as such the prescribed authority should be directed to hold the meeting on the basis of the requisition dated August 17, 2021 within the statutory period.

Mr. Tapas Singha Roy, learned Advocate appearing on behalf of the Pradhan/respondent Nos.9 and 17, submits that the Pradhan has always discharged his duties in accordance with the provisions of the Act and there are no legitimate allegations against the Pradhan. That the prescribed authority could not hold the meeting for legitimate reasons and the Pradhan did not have a role to play in such decision.

Mr. Maitra, learned Senior Government Advocate appearing on behalf of the petitioner, submits that the requisition is in order. The prescribed authority has satisfied himself about the compliances of Section 12(2) of the West Bengal Panchayat Act, 1973. That a notice was issued on the basis of the requisition giving 7 clear days to the members. The meeting was fixed on August 31, 2021. The meeting could not be held for reasons beyond the control of the prescribed authority as adequate police support was not available due to a programme of the Government of West Bengal. Thus, not holding the meeting within 15 working days in this case is not fatal as an exception has been made in Section 12(4) of the said Act.

Having considered the rival contentions of the parties, this Court is of the opinion that the requisitionists have a democratic right to remove their Pradhan in accordance with law. Once the prescribed authority has been satisfied about the compliances of Section 12(2) of the said Act, in the opinion of the Court, such requisition should be allowed and reached to its logical conclusion as per 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.”

These institutions 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 provisions for removing an elected representative such as the Pradhan or the Upa-Pradhan are 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.

As the period of 30 days as prescribed under Section 12(10) of the said Act is not over and the members already have been given seven clear days’ notice, this Court directs that the meeting should be held by the prescribed authority on September 10, 2021 at 12.00 noon on the basis of the requisition dated August 17, 2021. The parties are represented. This order shall be treated as a notice to all. The learned Advocate for the petitioner as also the learned Advocate for the prescribed authority are directed to communicate this order to the respective parties. The prescribed authority shall issue an appropriate notice within September 4, 2021 at 12.00 noon

indicating that the meeting will be held on September 10, 2021 at 12.00 noon. The meeting shall be held strictly in accordance with law.

The police authorities shall render all support to the prescribed authority. The Superintendent of Police, Malda is requested to render adequate police force at the time of the meeting on September 10, 2021. If in the assessment of the district administration further stringent measures are required to be taken during the meeting, then all such steps including the imposition of Section 144(1) of the Cr.P.C. shall be taken. This court has not expressed any view on the right of the Pradhan to remain in office as the result of the meeting would be the deciding factor.

The meeting shall be reached to its logical conclusion and the prescribed authority is directed to complete the entire process in accordance with law, within September 15, 2021.

The 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.)