

13.09.2021
Sl. No.6
srm

W.P.A. No. 14399 of 2021
Mantu Sarkar & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Gangadhar Das,
Mr. Swarvanu Saha

...for the Petitioners.

Mr. Raja Saha,
Mr. Pinaki Bhattacharyya

...for the State.

Despite service, none appears on behalf of the Pradhan of Mahishbathani Gram Panchayat, District-Malda. Affidavit of service is taken on record.

The petitioners are the requisitionists who brought a requisition on August 23, 2021 expressing their desire to remove the Pradhan of the said Gram Panchayat on the ground of lack of confidence. The meeting on the basis of the requisition dated August 25, 2021 was fixed on September 8, 2021. The Pradhan and some of the members challenged the earlier notice fixing the meeting for removal of the Pradhan on September 8, 2021 on the ground that the meeting could not be held due to the pendency of a complaint under Section 11(1)(c) of the West Bengal Panchayat Act, 1973 before the Sub-Divisional Officer, Malda Sadar, against one of the requisitionists.

This Court upon consideration of the writ petition being WPA No.13737 of 2021 was of the opinion that the pendency of the complaint before the Sub-Divisional Officer against one of the requisitionists would not stand in the way in holding the meeting scheduled to be held on September 8, 2021. This Court directed that the meeting should be held on the date fixed.

The petitioners have now come before this Court being aggrieved by the postponement of the meeting by an order dated September 7, 2021 and fixed the meeting on September 15, 2021 at 11.30 a.m. The apprehension of the requisitionists are that when the Court had decided not to interfere with the meeting and had directed that the meeting should be held on the date fixed, the postponement of the meeting by the prescribed authority was an attempt to frustrate the requisition. The petitioners apprehend that the prescribed authority would further postpone the meeting and ultimately render the requisition infructuous.

Mr. Saha, learned Advocate appearing on behalf of the prescribed authority, submits that due to some government programmes and unavailability of the police force, the prescribed authority could not hold the meeting. Mr. Saha further submits that the decision of this Court was that the meeting should be held on the scheduled date as no interference was called for, but it was not mandatory that the prescribed authority should

hold the meeting on the date fixed and could not postpone the meeting for reasons beyond control. He assures the court that the meeting will be held.

Having considered the rival contentions of the parties, this Court is of the opinion that the rights of the requisitionists to bring a motion for removal of their elected leader on the ground of lack of confidence is a democratic right.

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 or the Upa-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.

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.”

Thus, this Court is of the opinion that the meeting should be held as per the notice dated September 7, 2021 and no interference is called for. The postponement, according to the Court, was for reasons situation beyond the control. The prescribed authority was in a position to assess the ground reality and was of the opinion that without adequate police

protection the meeting could not be held. The Court cannot interfere with such factual findings of the prescribed authority. The law permits the prescribed authority to hold the meeting beyond the mandatory period of 15 working days from the date of receipt of the requisition, for the reasons beyond the control. The apprehension of breach of peace and violence and the inability to hold the meeting without adequate police protection are reasons beyond the control of the said authority and this Court does not find any reason to interfere with the notice of postponement and subsequent notice fixing the meeting on September 15, 2021. The meeting shall be held in accordance with law with adequate police protection and reached to its logical conclusion within the statutory period of 30 days. No further postponement will be permitted. The Superintendent of Police, Malda shall ensure deployment of police force at the meeting.

The adequate police protection

The adequate police protection be given to all the participants in the meeting including the officials and the prescribed authority.

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.)