

S/L 03
15.09.2021
Court. No. 19
CP

W.P.A. 14471 of 2021

Bijoli Khatun Bibi & Ors.
VS
The State of West Bengal & Ors.

(Through Video Conference)

*Mr. Sarwar Jahan,
Mr. Shahan Shah,
Md. Shamim Halder,
Mr. Soumen Barman,*

...for the Petitioners.

*Mr. Sakya Sen, Sr. Adv.
Mr. Hasibul Islam
Mr. S. K. Gupta*

...for the Respondent Nos.7 & 8.

*Mr. Lalit Mohan Mahata,
Mr. Kapil Guha*

...for the State.

The petitioners are the requisitionists, who brought a motion for removal of the Pradhan of 04 No. Modhupur Gram Panchayat on August 28, 2021. It is submitted that the said requisition was served upon the prescribed authority on August 31, 2021. Thereafter, the prescribed authority did not take further steps in terms of Sections 12(3) and 12(4) of the West Bengal Panchayat Act, 1973 (hereafter referred to as the said Act) and the period contemplated under Sections 12(3) and 12(4) of the said Act has already expired. The petitioners pray that orders be passed directing the prescribed authority to hold the meeting.

Mr. Sen, learned senior advocate appearing on behalf of the respondent nos.7 and 8 submits that the time period prescribed under the provision of Sections 12(3) and 12(4) of the said Act has expired and the mandate in Section 12(4) of the said Act to hold the meeting within 15 working days from receipt of the requisition has also expired. He also submits that as no meeting has been held, the requisition notice has lost its force.

Mr. Mahata, learned Senior Government Advocate appearing on behalf of the State, submits that although the prescribed authority has not assigned any reasons as to why the meeting could not be held yet, as the provisions of Sections 12(3) and 12(4) of the said Act have not been complied with, the meeting cannot be held. He also submits that the Police Authorities of Nowda Police Station have agreed to render all help to the prescribed authority when such meeting is called.

The inaction of the prescribed authority in discharging his duties under the statute is arbitrary and unreasonable. In case there were reasons beyond control of the prescribed authority to hold the meeting, a notice to that effect ought to have been issued. This court does not find any reason why the prescribed authority should not hold the meeting for removal of the pradhan.

Here, the prescribed authority has not discharged his function under the law. Such laches is being viewed with seriousness. However, as the provisions of the law have not

been complied with and the time has expired, this Court is of the opinion that the requisition dated August 28, 2021 has lost its force. The same is set aside and cancelled.

However, the requisitionists cannot suffer due to the inaction and/or erroneous action of the prescribed authority.

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. 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. Admittedly the Pradhan has not yet been removed.

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.”

The writ petition is disposed of upon granting liberty to the requisitionists/members to bring a fresh requisition under Section 12(2) of the said Act. If such requisition is brought, the prescribed authority shall act and proceed in terms of the provisions of Sections 12(3) and 12(4) onwards of the said Act and reach the requisition to its logical conclusion. The bar under Section 12(11) of the said Act shall not be applicable. The time frame prescribed by the statute under Section 12(10) shall be adhered to by the prescribed authority.

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 evade service of 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 in the office of the Pradhan in addition to the modes of service provided under Section 12(2) of the said Act.

As there is a specific instruction from the Officer-in-Charge of the concerned Police Station that the police authorities are willing to help, the Court does not think there can be any other reason for the prescribed authority not to act on the basis of the fresh requisition if brought by the requisitionists and the provisions of Section 12(2) are complied with.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the learned advocate's communication.

(Shampa Sarkar, J.)