

S/L 4
16.09.2021
Court. No. 19
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WPA 14584 of 2021

Rintu Kumar Rana & Ors.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Bilwadal Bhattacharya
Mr. Debanik Banerjee
Mr. A.K. Mukherjee
Mr. Amit sinha

...for the Petitioners.

Mr. Lalit Mohan Mahata
Ms. Kumkum Das

...for the State.

Mr. Subhojit Saha

..for the respondent no.5

The petitioners are the requisitionists, who brought a requisition on September 2, 2021 for removal of the Pradhan of Gurgram Gram Panchayat, District Purba Medinipur. It is the contended that the prescribed authority has not taken any step pursuant to such requisition.

Mr. Bhattacharya, learned advocate for the petitioners submits that the prescribed authority has intentionally delayed the mater so that the requisition loses its force and become infructuous.

Mr. Mahata, learned advocate for the prescribed authority submits, that the petitioners brought the second requisition by withdrawing the earlier requisition. The law does not permit a second requisition without any liberty of Court. He submits that in any event even if the orders are now passed directing the prescribed authority to hold the

meeting, the provisions of Section 12(3) and 12(4) of the said Act would not be complied with even if the period of 30 days was not over. If the prayer of the petitioners directing the authority to hold the meeting is allowed, it would be directing a statutory authority to act beyond the provisions of the statute. Every step to be taken by the prescribed authority has been fixed by the statute within a prescribed time period.

The prescribed authority in this case has not considered the compliance of Section 12(2) of the said Act and as such even if the period framed under Section 12(10) of the said Act has not expired, yet, directing the prescribed authority to hold the meeting within 30 days would amount to giving a complete go-by to the provisions of the statute under Sections 12(3) and 12(4) of the said Act.

Under such circumstances, as the requisition has not been acted upon within the time prescribed, the bar under Sections 12(3), 12(4) starts operating. Thus the requisition notice dated September 2, 2021 is set aside and cancelled.

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.

Although, the petitioners are apprehensive about their safety and security, Mr. Mahata, assures the Court that the police authorities have specifically written to Mr. Mahata, that the Officer-in-Charge, Bhagwanpur Police Station will render all assistance and protection to the members and officials present during the meeting that may be called on the basis of the requisition to be brought afresh pursuant to the leave granted by the Court. The written instructions of the Sub-Inspector, Bhagwanpur Police Station is kept on record.

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 avoid service of the 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.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

All parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)