

S/L 7
16.09.2021
Court. No. 19
sn

WPA 14645 of 2021

Bindu Karmakar
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Dipankar Pal
Ms. Kakali Naskar

...for the Petitioner.

Mr. Raja Saha
Mr. Biswabrata Basu Mallick

...for the State.

Mr. Soumik Ganguly
Mr. Dilip Kr. Sadhu
Mr. Avik Kr. Das

..for the respondent nos. 6-16

The writ petitioner is the Sabhapati of Joypur Panchayat Samiti. The requisition for removal of Sabhapati on the ground of lack of confidence was brought on August 31, 2021. The only ground of challenge in this writ petition is that the prescribed authority had not satisfied himself about the compliance of Section 101(2) of the West Bengal Panchayat Act, 1973.

It is the contention of the petitioner that the petitioner was admitted in hospital on August 31, 2021 at 4-00 p.m. and as such the requisition was not physically delivered to the Sabhapati at his office. Thus, according to Mr. Pal, the provisions of Section 101(2) of the said Act have not been complied with, with regard to service of the requisition upon the office bearer.

Mr. Ganguly, learned advocate for the respondent nos. 6 to 16 submits that the requisition dated August 31, 2021 was delivered in the office of the Sabhapati physically and was received by one Brindaban Pattanayak, the personal assistant of the Sabhapati and an employee of the office. Mr. Ganguly further refers to the admission sheet to show that the symptoms of illness were fever, headache and weakness and as such it was impossible that the Personal Assistant of the petitioner had not informed the Pradhan and had not delivered the same to the petitioner upon receipt thereof. Documents have also been handed over to the Court, which shows that such requisition was also sent by Registered Post on August 31, 2021 to the residence of the Sabhapati. Thus, the records reveal that the compliance with regard to service upon the office bearer has been done and the prescribed authority was within his jurisdiction to issue the notice. Accordingly, the meeting should not be stalled.

Mr. Saha learned advocate for the prescribed authority submits that the prescribed authority was only required to check the compliance. There was no requirement for the prescribed authority to record his satisfaction. Both the modes of service have been complied with.

In this case, the documents reveal compliance and the Sabhapati's office and staff were well aware that the members had brought the requisition for her removal. She had enough time to deliberate on the requisition and there is

no reason to set aside the meeting scheduled on September 20, 2021.

In my opinion, the provision for removing an elected representative such as the Sabhapati 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 Sabhapati has lost support of the majority of the members, he cannot remain in office for a single day.

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.)