

21.09.2021
Sl. No.104
srn

W.P.A. No. 14681 of 2021
Himmat Khan & Ors.
Vs.
The State of West Bengal & Ors.

Mr Gangadhar Das,
Mr. Swarvanu Saha

...for the Petitioners.

Mr. Raja Saha,
Ms. Susmita Chatterjee

...for the State-Respondents.

Affidavit of service is taken on record.

The petitioners are the requisitionists. The petitioners brought a requisition for removal of the Pradhan of Baharal Gram Panchayat, District-Malda on August 18, 2021, which was received by the prescribed authority on August 27, 2021. It is submitted that no notice convening a meeting has yet been issued by the prescribed authority on the basis of the requisition. The petitioners pray that the prescribed authority be directed to convene the meeting for removal of the Pradhan.

It is contended by Mr. Das, learned Advocate appearing on behalf of the petitioners, that the prescribed authority has not taken any steps despite receiving the requisition. According to Mr. Das, the prescribed authority satisfied himself about the compliance of Section 12(2) of the West

Bengal Panchayat Act, 1973 and thereafter remained inactive. Hence, the petitioners have come up before this Court for mandatory orders.

This Court is surprised that the prescribed authority has taken his own sweet time to proceed in the matter without adhering to the time limit fixed by the statute under Sections 12(3), 12(4) and 12(10) of the said Act. It is only because of the inaction of the prescribed authority that the valuable rights of the requisitionists have been frustrated. This Court has taken serious note of the laches and dereliction of duties by the prescribed authority. The District Magistrate shall ensure that the prescribed authority should function with more responsibility and abide by law. However, the prayer of Mr. Das for a direction upon the prescribed authority to hold the meeting on the basis of the requisition dated August 18, 2021 cannot be entertained as the said requisition has lost its force. The Court does not find any plausible reason as to why the prescribed authority did not call the meeting. Section 12(3), Section 12(4) and Section 12(10) of the West Bengal Panchayat Act, 1973 have not been complied with and the same stand as a bar for holding the meeting on the basis of the requisition.

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.”

It is the democratic right of the requisitionists, to seek removal of their leader on whom they have lost their confidence. They are entitled to enforce such right as per the statute and any delay by the authorities will actually frustrate such right and destroy the democratic set up of the institution. 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 explains why this provision of no-confidence motion has been provided under the law.

The requisition notice is set aside and cancelled as the same has lost its force.

The requisitionists are granted liberty to bring a fresh requisition in accordance with law. If the said requisition is brought, the prescribed authority shall reach the requisition to its logical conclusion upon complying with the provisions of Sections 12(3) and 12(4) onwards of the West Bengal Panchayat Act, 1973, by strictly adhering to the time limit fixed by the statute under Section 12(10) of the said Act. The bar under Section 12(11) shall not apply as this is not a case that the requisition failed for want of quorum or could not be carried through.

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 at the office of the Pradhan in addition to sending the same by registered post to the residence of the Pradhan.

This writ petition is, thus, disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)