

S/L 8
27.09.2021
Court. No. 19
GB

WPA 14815 of 2021

Md. Sahidur Rahaman Shaikh & Ors.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Partha Sarathi Bhattacharyya,
Mr. Atarup Banerjee,
Mr. Sudarshan Ghosh.

...for the Petitioners.

Mr. Anirban Ray, Ld. G.P.,
Mr. Raja Saha,
Mr. Shamim Ul Bari.

...for the State.

Mr. Ratul Biswas.

...for the Respondent No.2.

Mr. Biswas, learned advocate appears on behalf of the Pradhan of Sahajadapur Gram Panchayat. It is the specific contention of the Pradhan that the requisition was not received by the Pradhan. It is next contended that on previous occasions as well, requisitions were not received, as a result of which, the prescribed authority had decided not to hold the meeting as he was not satisfied about the compliance of Section 12(2) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act').

The petitioners are the requisitionists. The petitioners submit that this is the third requisition brought seeking removal of the Pradhan on the ground of no confidence.

According to Mr. Bhattacharyya, learned senior advocate appearing on behalf of the requisitionists, the

prescribed authority has failed and neglected to perform his duties under the statute. He prays for a direction upon the prescribed authority to act on the basis of the requisition dated September 8, 2021.

Mr. Ray, learned Government Pleader submits that the requisitionists have time and again failed to comply with the provisions of Section 12(2) of the said Act. The first requisition was not acted upon, as the Pradhan had not been served with the requisition. The second requisition was set aside by this Court as the same was stigmatic. It is the third requisition, which is apparently in form.

Mr. Biswas, on the other hand, submits that the requisition, which is before this Court dated September 8, 2021, has not been served upon the Pradhan and section 12(2) of the said Act has not been complied with.

Having heard the rival contentions of the parties, as the time prescribed by the statute for compliance of Sections 12(3) and 12(4) has expired, even if, the 15 working days expires on September 29, 2021, the court cannot grant the reliefs sought for. The requisition has become infructuous due to such non-compliances.

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.”

Under such circumstances, as the requisition has become infructuous the notice dated September 8, 2021 cannot be acted upon. The bar under Sections 12(3) and 12(4) of the said Act has come in the way and the Court cannot direct an authority to hold the meeting without compliances of the statutory provisions of Sections 12(3) and 12(4) of the said Act. As such, the requisition is set aside and quashed.

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 as it is the specific case of the Pradhan that the notice of requisition was not served upon the Pradhan, the requisitionists shall be liable to serve the same in the office of the Pradhan 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 the parties are directed to act on the learned advocate's communication.

(Shampa Sarkar, J.)