

S/L 9  
27.09.2021  
Court. No. 19  
GB

WPA 14904 of 2021

Mijanur Rahaman & Ors.  
Vs.  
The State of West Bengal & Ors.

(Through Video Conference)

*Mr. Shamim Ahammed,  
Ms. Gulsanwara Pervin.*

*...for the Petitioners.*

*Mr. Raja Saha,  
Mr. Shamim Ul Bari,  
Mr. Harekrishan Halder.*

*...for the State.*

*Mr. Atarup Banerjee,  
Mr. Sunny Nandy,  
Mr. Subha Pathak,  
Mr. Tamal Singha Roy.*

*...for the Private Respondents.*

The petitioners are the requisitionists, who brought two separate requisitions on September 1, 2021 for removal of the Prandan and Upa-Pradhan of Sripur-I Gram Panchayat.

It is contended by the petitioners that the said requisitions were received by the prescribed authority on September 10, 2021. Despite having received the same, the prescribed authority has not acted in terms of the statutory provisions.

Mr. Saha and Mr. Banerjee, learned advocates appearing on behalf of the State and the Pradhan respectively, submit that the writ petition is not maintainable, inasmuch as, two requisitions brought

separately and guided by separate provisions of law, cannot be clubbed together by seeking reliefs in one writ petition.

The point of maintainability is not required to be decided in this case, in view of the fact that the Court is of the opinion that the requisitions dated September 1, 2021 have lost their force in view of the non-compliance of the provisions of Sections 12(3) and 12(4) of the West Bengal Panchayat Act, 1973. Although Mr. Ahammed, learned advocate for the petitioners submits that the writ petition was filed within time period prescribed under Section 12(2) of the said Act, this Court is of the opinion that any mandatory directions upon the prescribed authority to hold the meeting on a subsequent date would amount to directing the authority to act and proceed in violation of the statutory provisions under Section 12(3) and 12(4) of the said Act. Even satisfaction of compliance of Section 12(2) of the said Act has not been done.

Had it been a case that notices were issued, but for some reason, the time limit fixed, could not be adhered to, the Court may have intervened. However, as nothing has been done by the prescribed authority in terms of Sections 12(3) and 12(4) of the said Act, this Court is of the opinion that both the requisitions dated September 1, 2021 should be set aside only on the ground that the time limit as indicated hereinabove has expired.

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 requisitions have already expired because of lapse of time and the notice dated September 1, 2021 has not been acted upon, the non-compliance of Sections 12(3) and 12(4) of the said Act has come in the way. Thus the requisition notices dated September 1, 2021 are set aside and cancelled.

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 are allegations against the prescribed authority in colluding with the Pradhan, this Court is of the opinion that the District Magistrate shall ensure that the prescribed authority duly complies with this order by discharging his statutory functions but strictly in accordance with law.

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.)**