

S/L 3
28.09.2021
Court. No. 19
srm

W.P.A. No.15730 of 2021

Sanjit Ghosh & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Samim Ul Bari
Mr. Amit Kr. Ghosh

...for the Petitioners.

Mr. Raja Saha,
Mrs. Tanusri Chanda

...for the State.

Affidavit of service is taken on record.

The petitioners are the requisitionists, who have brought the motion for removal of the Upa-Pradhan of Asannagar Gram Panchayat under Krishnagar-I Development Block, District Nadia on May 4, 2021. The prescribed authority convened the meeting on May 19, 2021 upon satisfying himself about compliance of Section 12(2) of the West Bengal Panchayat Act, 1973. Thereafter, on May 17, 2021, the prescribed authority cancelled the meeting on the ground that the Covid-19 pandemic situation would not permit the prescribed authority to hold the meeting as the same would be in contravention to the regulations of the State of West Bengal under the Disaster Management Act, 2005.

The prayer of the petitioners for a direction upon the prescribed authority to hold a meeting as the regulations have been substantially relaxed, cannot be accepted by the

Court in view of the expiry of time prescribed by the statute for holding a meeting.

In my opinion, the provision for removing an elected representative such as the Upa-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 Upa-Pradhan has lost support of the majority of the members, he cannot remain in office for a single day. Admittedly the Upa-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 already expired because of lapse of time and the requisition has not been acted upon, the bar under Sections 12(3), 12(4) and 12(10) of the said Act has come in the way. Thus the requisition notice dated May 4, 2021 is 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 Upa-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 Upa-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.)