

S/L 5
07.10.2021
Court. No. 19
GB

WPA 16011 of 2021

Archana Das & Ors.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Samiran Mondal,
Mr. Abhinaba Dan.

...for the Petitioners.

Mr. Raja Saha,
Mr. Supratim Dhar.

...for the State.

Mr. Pratip Kumar Chatterjee.

...for the Respondent No.6.

The petitioners are the requisitionists, who brought a motion for removal of the Pradhan of Futigeda Gram Panchayat. The petitioners are aggrieved by the inaction of the prescribed authority, that is the Block Development Officer, Jaynagar Block –II in frustrating their motion.

It is contended that, this is the third motion, which was brought on September 27, 2021, but the prescribed authority failed and neglected to take steps in accordance with law.

Mr. Saha, learned advocate appearing on behalf of the State respondents denies the allegations. He submits that the first requisition was set aside by the Court in view of the stigma attached to it. The second requisition was brought by the requisitionists but the prescribed authority failed to issue notice within five working days. However, the third

requisition, was brought by the petitioners, which was a subsequent notice and the said notice could not be acted upon in view of the fact that, an earlier requisition dated September 17, 2021 was already pending.

The Court is in agreement with Mr. Saha to the extent that repeated requisitions cannot be brought, unless leave is granted by the Court. The law does not provide that in case of failure of the prescribed authority to act on a particular requisition, the requisitionists could automatically bring a second requisition within ten days from the earlier requisition. The Court also notes further submission of Mr. Saha that the prescribed authority was unable to act on the requisition dated September 27, 2021, in view of the pendency of the requisition dated September 17, 2021.

Mr. Saha assures the Court that the prescribed authority shall act and proceed in accordance with law. The District Magistrate, South 24 Parganas shall also ensure that the prescribed authority acts and proceeds in accordance with law.

The Court does not find any reason why the prescribed authority first of all did not act on the basis of the requisition dated September 17, 2021 by satisfying himself about the compliance of the provisions of Section 12(2) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act') and then thereafter issue a notice convening the meeting within five working days. Such explanation is not before the Court. However, keeping the writ petition

pending in order to allow the prescribed authority to explain his conduct would cause unnecessary delay as the Court recognises that the requisitionists have a right to bring a motion of no confidence against their Pradhan under the law and their attempts have been frustrated. Thus, the requisitions dated September 17, 2021 and September 27, 2021 are set aside and cancelled in view of the non-compliance of Section 12(3) and 12(4) of the said Act.

The Court does not find any reason as to why the prescribed authority did not take proper steps. Section 12(3) of the West Bengal Panchayat Act, 1973 has not been complied with and the meeting has not yet been called.

It is the democratic right of the requisitionists, to seek the removal of their leader who has lost their confidence. They are entitled to enforce such right 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.

In the decision of *Ujjwal Kumar Singha v. State of W.B.* reported in 2017 SCC Online Cal 4636, it was held that:

“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).

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, the requisitionists are granted liberty to bring a fresh requisitions in accordance with law. If the said requisitions are brought, the prescribed authority shall reach the requisitions to their 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(4) and 12 (10) of the said Act. The bar under Section 12(11) shall not apply, as this is not a case

that the requisitions 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 the office through the 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 no order as to costs.

All parties are to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)