

S/L 633
04.10.2021
Court. No. 19
srm

W.P.A. No. 16402 of 2021

Sabina Khatun (Pradhan)
Vs.
The State of West Bengal & Ors.

Mr. Dipankar Pal,
Mr. Sabyasachi Chatterjee
...for the Petitioner.

Mr. Raja Saha,
Mr. S.P. Lahiri
...for the State.

Mr. Subrata Ghosh
...for the Respondent Nos.4 to 13.

Affidavit of service filed in Court today is kept with the record.

The writ petitioner is the Pradhan of Sambalpur Gram Panchayat, District-Malda. The petitioner is aggrieved by the multiple requisitions brought by some of the members of the said Gram Panchayat without any order of the prescribed authority cancelling the prior requisition.

According to the petitioner, a requisition was brought on September 7, 2021. The fate of the said requisition was not intimated to the petitioner. Thereafter, another requisition was brought on September 22, 2021 and the second requisition was brought without any order of cancellation of the earlier requisition and also without service of the requisition upon the petitioner.

Mr. Saha, learned Advocate appearing on behalf of the prescribed authority, submits that admittedly no steps were taken by the prescribed authority either by acting upon the requisition dated September 7, 2021 or by setting aside or cancelling the same.

Mr. Ghosh, learned Advocate appearing on behalf of the respondent Nos.4 to 13/requisitionists, submits that the Pradhan refused to accept the requisition, as a result of which, a fresh requisition had to be brought on September 22, 2021. He further submits that refusal of the Pradhan to accept the requisition would amount to good service.

This Court is of the opinion that the requisitionists do not have the liberty to bring multiple requisitions on their own, without any order from the prescribed authority as to cancellation or lapse of previous requisition.

Under such circumstances, the requisition dated September 7, 2021 and September 22, 2021 are set aside and cancelled. The notice dated September 22, 2021 issued by the prescribed authority fixing October 5, 2021 as the date for holding the meeting for removal of the Pradhan is also set aside and cancelled.

This Court is conscious of the rights of the requisitionists to remove their Pradhan/leader as per the statute. Such democratic right has been recognised by Courts of law.

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. 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.

Reliance is placed on the *decision of Ujjwal Kumar Singha versus State of West Bengal & Ors. reported in (2017) 2 CHN 258* 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 Madamus Appeal. It appears that the appellant/writ petitioners 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 the 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 utilization by the Mediation and Conciliation Committee of the High Court.”

This writ petition is disposed of with liberty to the requisitionists to bring a fresh requisition in terms of Section 12(2) of the said Act. If such requisition is brought, the prescribed authority shall satisfy himself about compliance of Section 12(2) of the said Act and then act and proceed in terms of Sections 12(3) and 12(4) onwards to reach the requisitions to its logical conclusion within the period mentioned in the statute. The bar under Section 12(11) shall not be applicable.

It is made clear that as this is a festive season, the notified holidays will be excluded while serving the requisition upon the prescribed authority, and accordingly taken into consideration while computing the time frame as mentioned in the statute.

This Court is not making any observation on the right of the Pradhan to continue in her office as the said issue will be decided in the meeting itself. If necessary, the prescribed authority may seek police protection, which shall be rendered without any delay or laches on the part of the police authorities. In addition to the modes of service required by the statute, the requisitionists shall be at liberty to paste the requisition at a conspicuous place in the office of the Pradhan and also at the residence of the Pradhan, in addition to sending the same by registered post to the office and 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 learned advocates' communication.

(Shampa Sarkar, J.)