

S/L 7
7.10.2021
Court. No. 19
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WPA 16802 of 2021

Rintu Kumar Rana & Ors.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Billwadal Bhattacharya
Mr. Debanik Banerjee

... for the Petitioners.

Mr. L.M. Mahata
Mr. Rudranil De

... for the State.

Mr. Bhattacharyya, learned advocate appearing on behalf of the petitioners submits that the prescribed authority failed and neglected to take steps on the basis of the requisition dated September 24, 2021 and aggrieved by the said inaction, the writ petition had been filed.

During the pendency of the writ petition, a notice has been issued by the prescribed authority fixing October 29, 2021 as the date for removal of the Pradhan on the basis of the requisition brought by the requisitionists for removal of the Pradhan of Gurgram Panchayat, Bhagwanpur-I Block, District Purba Medinipore.

Mr. Bhattacharyya seeks a direction upon the prescribed authority to mandatorily hold the meeting

on the date fixed with police protection. He further submits that adequate police support should be given to the requisitionists as they have been constantly intimidated by the opposition.

Although, the grievance of the petitioners has been met in view of the decision of the prescribed authority to hold the meeting on October 29, 2021, Mr. Mahata, learned Senior Advocate appearing on behalf of the prescribed authority submits that the date fixed by the prescribed authority on October 29, 2021 is beyond the period of 30 days as provided under Section 12(10) of the statute. Section 12(10) of the West Bengal Panchayat Act, 1973 is quoted below: -

“12(10) on receipt of the minutes of the meeting and the report under sub-section (9), the prescribed authority shall, within next five working days, take such action as he may deem fit and the entire process commencing from submission of motion to the prescribed authority up to the action finally taken by him shall be completed within thirty days.”

Under such circumstances, this writ petition is disposed of by setting aside the requisition dated September 24, 2021 and the notice dated September 30, 2021. The meeting shall not be held beyond the statutory period of 30 days.

It is made clear that the requisitionists shall have liberty under the law to bring a fresh requisition.

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, she 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.”

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 the office through the 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.

The District Magistrate shall ensure compliance of the order.

The prescribed authority shall act and proceed in terms of this order, taking note of the notified holidays.

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.)