

11.11.2021
Sl. No.6
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W.P.A. No. 17374 of 2021
C.A.N. 1 of 2021 with
C.A.N. 2 of 2021
Bablu Mondal
Vs.
The State of West Bengal & Ors.

Mr. Mohinoor Rahaman,
Ms. Maria Rahaman

...for the Petitioner.

Mr. Tapan Mukherjee
Mr. Pranab Halder
Ms. Sahali Mukherjee

...for the State-Respondents.

Mr. Surajit Basu
Mr. Manoj Kurmi

...for the Respondent Nos.6 & 7
and added respondent no. 1

Despite service none appears on behalf of the respondent Nos.8 and 9, who are some of the requisitionists. The respondent Nos.6 and 7 and added respondent no.1 are also the other requisitionists, who are represented.

The only contention in the writ petition is that the meeting for removal of the petitioner from the post of Karmadhyakhya of Matshya O Prani Sampad Bikash Sthayee Samiti under Hasnabad Panchayat Samiti was convened in contravention to the provisions of Rule 18(6)(d) of the West Bengal Panchayat (Constitution) Rules, 1975 (hereinafter referred to as the said Rules). According to the petitioner, the

meeting could not be held beyond the period of 15 working days from the date of receipt of the motion.

Mr. Mukherjee, learned Additional Government Pleader appearing on behalf of the prescribed authority and Mr. Basu, learned Advocate appearing for the requisitionists submit that the meeting was held on the 22nd day. The delay occurred due to the declaration of the bye-election of Khardah Assembly Constituency and the application of the model code of conduct in the entire area in the North 24-Parganas.

It submitted on behalf of the Sub-Divisional Officer, Basirhat, North 24-Parganas, from which it appears that the requisition was received on September 24, 2021. The requisitionists were called to satisfy compliance of the procedure. The District Election Officer was intimated on September 28, 2021 about the declaration of the bye-election and the applicability of the model code of conduct. The prescribed authority by a letter sought clarification from the Election Commission. The Election Commission clarified on October 6, 2021 that there was no impediment in holding the meeting for removal of the petitioner from the post of Karmadhyakhya. Hence the notice under Form 1F was issued thereupon convening the meeting on November 3, 2021.

A Division Bench of this Court has clarified that declaration of the bye-election shall not have any effect in

holding meetings of such nature. However, even if it is accepted that the meeting could not be held for reasons beyond the control of the prescribed authority, such reason does not appear from the records. The prescribed authority even after receiving the clarification from the Election Commission had enough time to convene the meeting which could be held within 15 working days. The Government offices resumed functioning on and from October 25, 2021 and the meeting could have easily been held within the mandatory period of 15 working days. In the opinion of the Court, if the prescribed authority could not hold the meeting for reasons beyond his control, the prescribed authority ought to have given notice intimating the same to the requisitionists prior to fixing the date of the meeting beyond the period of 15 days. If an order to that effect had been issued by the prescribed authority, *inter alia*, stating that in view of the confusion created by declaration of the bye-elections, the meeting could not be convened and the decision of the Election Commission was awaited during which 15 working days had expired, the situation may have been otherwise and the Court may have considered the same and taken cognizance of the said situation as an exception enumerated in Rule 18(6)(d) of the said Rules.

Since the prescribed authority had been given a go ahead by the Election Commission on October 6, 2021, the

Court does not find any reason why the meeting could not have been scheduled seven days prior to November 3, 2021 so that the strict adherence to the law could have been maintained.

The meeting shall not be held beyond fifteen working days as provided in Rule 18(6)(d), is a mandatory provision and thus the Court does not hesitate to hold that the meeting for removal of the petitioner from the post of Karmadhyakhya of Matshya O Prani Sampad Bikash Sthayee Samiti held on November 3, 2021 was irregular and illegal and deserves to be set aside on this ground alone.

The requisition notice, the notice of the meeting of motion and the result of the meeting are all set aside and cancelled.

The requisitionists are granted liberty to bring a fresh requisition with immediate effect in accordance with the provisions of Rule 18(6)(b) of the West Bengal Panchayat (Constitution) Rules, 1975. If such requisition is brought, the prescribed authority shall act and proceed in terms of the provisions of Rule 18(6)(c) and 18(6)(d) of the West Bengal Panchayat (Constitution) Rules, 1975 in order to reach the requisition to its logical conclusion. The time period prescribed by the rules shall be strictly adhered to. The bar under rule 18(6)(g) of the said rules shall not apply.

It is the democratic right of the requisitionists, to seek removal of their leader on whom they have lost their confidence. They are entitled to enforce such right as per the statute and any delay by the authorities actually frustrates such right and destroys 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 removal by bringing on no-confidence motion has been provided under the law.

This court has not expressed any opinion on the competence of the Karmadhyakhya of Matshya O Prani Sampad Bikash Sthayee Samiti to continue in office as the issue shall be decided at the meeting when called for. 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 Karmadhyakhya of Matshya O Prani Sampad Bikash Sthayee Samiti 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 at the office of the Karmadhyakhya of Matshya O Prani Sampad Bikash Sthayee Samiti in addition to sending the same by registered post to the residence of the Karmadhyakhya of Matshya O Prani Sampad Bikash Sthayee Samiti.

C.A.N. 1 of 2021 is an application for addition of parties and C.A.N. 2 of 2021 is an application for extension of interim order. These applications are not on record. Photo copies of the same are taken on record with the consent of the parties and the same are treated to be the original.

In view of the disposal of the writ petition, these applications are disposed of accordingly with the consent of the parties.

This writ petition is, thus, disposed of.

There will be, however, no order as to costs.

All parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)