

S/L 2
17.11.2021
Court. No. 19
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WPA 17980 of 2021

Bandana Mahato
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Shuvro Prokash Lahiri

... for the Petitioner.

Mr. Jaharlal De
Mr. Shamim Ul Bari

... for the State.

Mr. Atarup Banerjee
Mr. Saugata Mitra
Mr. Rameshwar Sinha
Ms. Ankita Dey
Ms. Jahanara Begum

for the pvt.respdts.

The writ petition has been filed by the Pradhan of Agaya Narrah Gram Panchayat. The Pradhan has challenged a notice dated November 9, 2021 issued under Form 1E under the provisions of Sub-Rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975. The date of the meeting has been fixed on November 17, 2021 at 12 noon.

The grounds of challenge in the writ petition are as follows:-

a) That the notice of the meeting dated November 9, 2021 was issued beyond 5 working days from the date of receipt of the motion.

b) That the meeting was called beyond 15 working days.

c) That the statutory period for conclusion of the entire process expired on November 4, 2021.

Records reveal that the prescribed authority issued notice on the 11th working day and the outer limit of 30 days within which the meeting is required to be given effect to under Section 12(10) of the said Act, has expired.

Thus, the petitioner has approached this Court for cancellation of the notice dated November 9, 2021, by which the meeting for removal of the Pradhan was sought to be convened and also for cancellation of all subsequent actions taken on the basis of such notice.

Mr. Banerjee, learned advocate for the requisitionists submits that this Court has held that the issue of notice within five working days under Section 12(3) of the West Bengal Panchyat Act, 1973 is not a mandatory provisions and if the procedure is otherwise followed, mere delay in issuing the notice beyond five working days would not be fatal to the result of the meeting. He further submits that due to the intervening holidays, the time limit as prescribed under Section 12(10) of the said Act could not be adhered to.

Mr. De, learned advocate for the prescribed authority submits a list of dates in order to substantiate that the prescribed authority was helpless and could not adhere to the provisions of law due to the intervening holidays. He further submits that the question of impossibility to perform must be taken into consideration while computing the period of 30 days within which the entire process for removal should be disposed of. According to Mr. De, the intervening holidays made it impossible for the prescribed authority to complete the entire procedure within the statutory period of 30 days.

The West Bengal Panchayat Act is a special statute governing the provisions of appointment and removal of the Pradhan and other office bearers of a Gram Panchayat. The procedure by which the requisitionists/members can remove the Pradhan by bringing a motion of no confidence has been elaborately discussed in the said statute under Section 12(2) to Section 12(11) thereof.

Section 12(2) prescribes that three members can sign the motion in writing expressing their lack of confidence against the Pradhan or record their intention to remove the Pradhan. Certain other criteria has been laid down which have to be fulfilled and the said motion is to be served upon the prescribed

authority and also upon the incumbents sought to be removed.

Section 12(3) provides that the prescribed authority must satisfy himself about the compliances under Section 12 (2) and convene a meeting within five working days from the date of receipt of the motion. Such meeting is to be convened with seven clear days' notice to the members. At the meeting, the motion is put to vote and the fate of the said motion is decided on majority votes, provided there is a quorum as per the requirement of law. If the motion goes through, the Pradhan is removed.

Section 12(4) mandates that the meeting shall not be held later than 15 working days from the date of receipt of the motion. Although, the provision of Section 12(3) with regard to issuance of notice convening the meeting within five working days and giving seven clear days' notice to the members before the meeting, are not couched in a negative language and thus not mandatory, the provision under Section 12(4) directing that the meeting shall not be held later than 15 working days is mandatory, in view of the language imported in the said section. The said period has been couched in a negative form i.e. "not later than" unlike in the preceding sub-section. Thus, the

meeting ought to have been called within 15 working days from October 5, 2021.

Secondly, Section 12(10) categorically states that after the meeting is held, a report shall be submitted by the presiding officer, and the prescribed authority within the next five days shall take such action as he may deem fit and the entire process commencing from submission of the motion up to the action finally taken shall be completed within 30 days.

In my opinion, the legislature was conscious while fixing the said period of 30 days for completion of entire process and in this sub-section the expression 'shall' is mandatory in nature. The legislature has also provided the time period within which each and every step shall be taken by the prescribed authority from the date of receipt of the motion. In some cases working days are to be taken into consideration and holiday are to be excluded and in some case holidays need not be excluded. For example, Sections 12(3) and 12(4) provide for both such situations.

In Section 12(10), the legislature has consciously omitted the expression 'working days' and provided that the entire exercise of removal of the Pradhan from the submission of the motion till the final decision shall be completed within 30 days and this conscious exclusion of the expression 'working days', is in my

opinion, for the need to eliminate floor crossing or horse trading. The mentioning of party allegiance of the requisitionist in the notice of motion is a legal mandate. Moreover while Section 12(4) provides that the meeting may not be held within 15 working days from the receipt of the motion for reasons beyond the control of the prescribed authority or if the process is stayed by the court, such exception has not been made in case of Section 12(10).

The special statute has made the entire process time bound. The cases in which the provision of Section 12(3) has been held to be directory are those rare cases where the entire result has been given effect to and the challenge was thrown at a later state. Those are all relating to notices and knowledge of the motion was held to be of prime consideration.

In this case, the prescribed authority did not follow either Section 12(3) or Section 12(4) and ultimately the period prescribed under Section 12(10) expired. The provision of holding the meeting not later than 15 working days has been held to be mandatory which was also not followed.

The procedure as laid down and the time limit as fixed by the statute should be adhered to. The court has not ventured into an enquiry as to why the prescribed authority did not follow the time limit.

The Court is of the opinion that the right of the requisitionists to bring a motion is a democratic one and the same can be protected. They can be allowed to exercise such right upon being granted a liberty to bring a fresh resolution in accordance with law. The rights of both parties are protected if such liberty is given upon setting aside the present requisition and all subsequent notices and decisions taken thereupon including any resolution that may have passed in any meeting. The question of inability to perform has not been decided here.

Leave is granted to the requisitionists to bring a fresh motion in accordance with law.

The requisition dated October 5, 2021 and the notice of meeting dated November 9, 2021 and any further action taken on the basis of the same are set aside and quashed. The meeting shall not be held on the basis of such 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, he cannot remain in office for a single day.

The requisitionists are granted liberty to bring a fresh requisition with immediate effect in accordance with the provisions of 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 Section 12(3) and 12(4) of the West Bengal Panchayat Act, 1973 in order to reach the requisition to its logical conclusion. The time period prescribed by the statute shall be strictly adhered to. The bar under Section 12(11) of the said Act shall not apply.

The prescribed authority shall be entitled to call for police help if the situation so demands and the police authorities shall ensure and take prompt action so that all police support is given to the parties involved in the meeting. Delay or laches on the part of the police authority shall be viewed strictly. 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 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 Pradhan in addition to sending the same by registered post to the residence of the Pradhan.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

Parties are directed to act on the learned Advocate's communication as the meeting has been fixed today at 12-00 noon.

The learned advocates representing the respective parties are directed to communicate this order to the parties over telephone and also electronically.

(Shampa Sarkar, J.)