

29.11.2021
Item No.36.
Court No.6.
AB

Through Video Conference

M.A.T. No. 1235 of 2021

With

I A CAN 1 of 2021

W.P.A. 17371 of 2021

Nahar Sekh @ Nahar Ali Sk. & Others

Vs

Shibani Sarkar Barai & Others

Mr. Kamalesh Bhattacharya,
Md. Salahuddin,
Md. Ahsanuzzaman ...for the Appellants.

Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata...for the State.

Md. Sarwar Jahan,
Mr. Atis Kumar Biswas,
Mr. Amit Singh,
Ms. Jyoti Agarwal,
Mr. Maidul Islam Kayal ...for the Respdt. No.1.

By consent of the parties, the appeal and the stay application are taken up together for hearing.

The respondent no.1/writ petitioner challenged a requisition notice for removal of the Pradhan of the relevant Gram Panchayat under Section 12(1) of the West Bengal Panchayat Act, 1973, before the learned Single Judge.

Learned Judge by the impugned interim order dated October 28, 2021, restrained the respondents in the writ petition from holding the meeting which was

scheduled to be held on October 29, 2021, on the ground that if the meeting was allowed to be held, the writ petition would become infructuous.

We are of the opinion that the order of the learned Single Judge cannot be sustained since the learned Single Judge, in our view, before passing the interim order ought to have come to a *prima facie* finding as to the merit of the writ petition. A democratic process initiated under Section 12(1) of the said Act could not be stalled on the sole ground that the writ petition would become infructuous in the absence of an interim order.

It has been submitted by the respondent no. 1/writ petitioner before us that the notice of requisition is stigmatic as it states that due to the activities of the Pradhan, the requisitionists have lost confidence in her.

A requisition notice under Section 12(1) must disclose the fact that requisitionists have lost confidence in the Pradhan and it is obvious that such loss of confidence happens only due to the activities of the Pradhan. The mere mentioning of the fact that due to the activities of the Pradhan the requisitionists /members of the Panchayat have lost confidence, does not cast any stigma or aspersion on the Pradhan.

Learned advocate for the respondent no. 1/writ petitioner further submits that, in spite of the order of

the learned Single Judge being communicated to the Prescribed Authority, a meeting was held on October 29, 2021, following the impugned requisition notice.

Mr. Mahata, learned advocate appearing for the State, denies the fact that the order of the learned Single Judge was communicated to the prescribed authority before he had convened the meeting. He, however, submits that since the order of the learned Single Judge was communicated subsequently, the resolution adopted on October 29, 2021, has not been given any effect to.

It has been pointed out by learned advocate for the appellants that the force of the requisition notice has not lapsed in view of Section 12(4) of the said Act which provides that a meeting shall be held not later than 15 working days from the date of receipt of the motion by the prescribed authority except, *inter alia*, in the cases where there is an order or direction by a competent Court.

The interim order dated October 28, 2021 is set aside accordingly. We deem it fit and proper to also set aside the resolution, if any, taken on October 29, 2021, since the meeting was held in violation of the subsisting order passed by the learned Single Judge and further direct the prescribed authority to convene a fresh meeting following the requisition notice dated

October 4, 2021 within a period of 15 days from the date of communication of this order.

Needless to mention that we have not gone into the other aspects of the matter. The authorities concerned shall ensure compliance with the provisions of Section 12 of the West Bengal Panchayat Act, 1973.

With the aforesaid, the appeal being **MAT 1235 of 2021** along with **IA No. CAN 1 of 2021** are disposed of.

No useful purpose will be served by keeping the writ petition pending as nothing survives of it in view of this order. Accordingly, W.P.A. 17371 of 2021 stands withdrawn to this Bench and is disposed of by this order.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all the necessary legal formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)