

S/l.14
22.11.2021
Court. No. 19
sn

WPA 18242 of 2021

Emadul Islam
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Atarup Banerjee
Mr. Mrityinjoy Chatterjee
Ms. S. Adhikary

... for the Petitioner.

Mr. L.M. Mahata
Mr. P.B. Mahata

... for the State.

Mr. Dipankar Pal
Mr. Srejeet Basu Roy

... for the spdts. 21, 25, 26
28, 29-32

Mr. Uday Narayan Betal
Mr. G.M. Imrohi

..for the respdts. 19, 20, 22-24 & 27

Despite service, none appears on behalf of the Sabhapati. Let the affidavit of service be taken on record. The matter is taken up as no order is passed adverse to the interest of the Sabhapati.

The petitioner is the requisitioner, who brought a requisition for removal of the Sabhapati of Farakka Panchayat Samity. The requisition was brought on October 5, 2021. The prescribed authority issued a notice on October 27, 2021 fixing November 17, 2011 as the date for holding the meeting for removal of Sabhapati.

The learned advocate for the petitioner submits that challenging the said notice, a writ petition was moved by the requisitionists praying for a direction upon the prescribed authority to bring forward the meeting so that the meeting could be held within the period of 30 days as prescribed under Section 101(10) of the West Bengal Panchayat Act, 1973. Thereafter, the Court directed the prescribed authority to hold a meeting within the statutory period. Instead, the prescribed authority issued a notice dated November 16, 2021 postponing meeting for an indefinite period. Such decision of the prescribed authority is challenged before this Court.

Mr. Banerjee contends that in view of the decision of the Court, the meeting should have been held within the statutory period. That the prescribed authority under no circumstances could have postponed the meeting indefinitely without there being any cogent reason, especially because the statutory period prescribed for completing the entire process could not be extended by the prescribed authority. He prays that orders should be passed directing the prescribed authority to fix the meeting on the basis of the resolution dated October 5, 2021.

The Court finds that ultimate result of the protracted litigation and failure of the prescribed

authority to comply with the earlier order has resulted in the expiry of the motion. Almost 50 days have lapsed from the issuance of the requisition itself. Dates were fixed for the meeting, orders were passed by this Court and ultimately the meeting was postponed without any final decision on the date on which the meeting would be held.

Mr. Mahata, Mr. Pal and Mr. Betal learned advocate for the respondents submit that the requisition has lost its force and the statutory period of 30 days within which the meeting must be held and concluded under Section 101(10) of the West Bengal Panchayat Act, 1973, has expired.

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 12, 2021 and the notice of postponement of the meeting dated November 16, 2021 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 Sabhapati 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 Sabhapati 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 101(2) of the said Act. If such requisition is brought, the prescribed authority

shall act and proceed in terms of the provisions of Section 101(3) & 101(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 101(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 Sabhapati 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 Sabhapati in addition to sending the same by registered post to the residence of the Sabhapati.

As the Court finds that the prescribed authority failed to act in terms of the statute and also in terms of the order passed by this Court, the District Magistrate shall ensure that this order is complied with. The order of this Court shall not be construed as an observations on the right of the Sabhapati to continue in his office or not. The said issue will be decided on the floor of the

house democratically if any requisition is brought. However, the direction is upon the prescribed authority to follow the mandate of law so that the democratic rights of the members are upheld.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

Parties are directed to act on the server copy of this order.

(Shampa Sarkar, J.)