

30.11.2021
Sl. No.10
srm

W.P.A. No. 18578 of 2021
Krishna Kanta Mandal & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Dipankar Pal,
Mr. Amit Bikram Mahata

...for the Petitioners.

Mr. Mahim Sasmal

...for the Pradhan.

Mr. Raja Saha,
Mrs. Tanusre Chanda

...for the State-Respondents.

Affidavit of service is taken on record.

The Pradhan is represented.

Six out of ten members of Raniganj-I Gram Panchayat brought a requisition for removal of the Pradhan of the concerned Gram Panchayat on the ground of lack of confidence. The prescribed authority issued a notice dated November 9, 2021, that is, within five working days and convened a meeting for removal of the Pradhan. The meeting was scheduled to be held on November 17, 2021 at 12.00 noon. On November 16, 2021, the prescribed authority issued a notice postponing the said meeting on the ground of non-availability of police force and apprehended breach of law and order in the absence of police.

Mr. Amit Bikram Mahata, learned Advocate appearing on behalf of the petitioners, who are the requisitionists, prays that the writ petition be disposed of with a direction upon the prescribed authority to hold the meeting within December 7, 2021 as the mandatory period of 30 days under Section 12(10) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act) has not expired as yet.

Mr. Saha, learned Advocate appearing on behalf of the prescribed authority, submits that the prescribed authority called the meeting initially within 15 working days but the meeting was postponed due to reasons beyond control and such action of the prescribed authority cannot be called in question as the law permits the prescribed authority not to hold a meeting within 15 working days in case the situation is beyond his control. According to him, anticipating the law and order problem if such meeting would be held and the serious consequences thereof, the prescribed authority postponed the meeting for reasons beyond his control.

Mr. Sasmal, learned Advocate appearing on behalf of the Pradhan, submits that as the provisions of Section 12(2) of the said Act had not been complied with by the requisitionists and the prescribed authority did not satisfy himself about such compliance, no order can be passed in this writ petition. According to Mr. Sasmal, the service of the requisition upon

the office assistant does not prove that the requisition was delivered at least in one mode upon the Pradhan. He submits that the office assistant, who received the requisition, was not attending office and the said requisition was not handed over to the Pradhan.

This is a serious breach, if the submission of Mr. Sasmal is accepted by this Court. Mr. Mahata has failed to produce any document before this Court in order to show that the requisition was delivered upon the Pradhan at least by one mode, that is, either in the office or at the residence. Mr. Mahata has also not been able to produce any document to show that the mandate of the law of sending the requisition by registered post to the residence of the Pradhan, had been complied with. The office assistant is not before the Court to support the claim of the requisitionists that the said requisition was sent to the Pradhan. Thus, in the facts of the case herein, the records do not reveal that the service upon the Pradhan had been done in accordance with the provisions of law.

Under such circumstances, this Court is of the opinion that these factual disputes cannot be resolved at this stage and as such no order can be passed in favour of the requisitionists. Moreover, the Pradhan has categorically submitted that neither the requisition nor the notice of motion for removal of

the Pradhan issued by the prescribed authority has been served upon the Pradhan.

Thus, the requisition notice dated November 8, 2021, notice of motion dated November 9, 2021 and the notice of postpone of the meeting dated November 16, 2021 issued by the prescribed authority are set aside and cancelled for the reason of procedural irregularity.

It is the democratic right of the requisitionists, to seek the removal of their leader who has lost their confidence, in accordance with law. They are entitled to enforce such right and any delay by the authorities will actually frustrate such right and destroy the democratic set up of the body. 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 no-confidence motion has been provided under the law.

In the decision of *Ujjwal Kumar Singha v. State of W.B.* reported in 2017 SCC Online Cal 4636, it was held that:

“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).

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."

Under such circumstances, the requisitionists are granted liberty to bring a fresh requisition in accordance with law. If the said requisition is brought, the prescribed authority shall reach the requisition to its logical conclusion upon complying with the provisions of Sections 12(3) and 12(4) onwards of the West Bengal Panchayat Act, 1973, by strictly adhering to the time limit fixed by the statute under Section 12(10) of the said Act. The bar under Section 12(11) shall not apply as this is not a case that the requisition failed for want of quorum or the motion could not be carried through. The meeting was postponed 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 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.

This writ petition is, thus, disposed of.

There will be no order as to costs.

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

(Shampa Sarkar, J.)