

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

S/L 15
23.08.2021
Court. No. 19
GB

WPA 1161 of 2021

Maneswar Barman & Ors.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Ms. Jagriti Mishra,
Mr. Debayan Goswami,
Mr. Subham Gupta.

...for the Petitioners.

Mr. Lalit Mohan Mahata,
Mr. Rakesh Singh.

...for the State.

Affidavit-of-service filed in Court today be kept with
the record.

Despite service none appears on behalf of the
Pradhan.

The writ petitioners are the requisitionists, who
brought a requisition on July 22, 2021 under Section 12(2) of
the West Bengal Panchayat Act, 1973 for removal of the
Pradhan of Hazrahat-II Gram Panchayat.

The prescribed authority upon satisfying himself
about the compliance of provisions of Section 12(2) of the
said Act issued a notice under Form 1E, Sub-Rule (2) or Rule
5 of the West Bengal Panchayat (Constitution) Rules, 1975.
The date of the meeting was fixed on August 10, 2021.

On August 5, 2021, the prescribed authority issued a notice that the meeting was postponed as the same could not be held due to the pandemic situation. Mr. Mishra urges that the said notice is arbitrary, malafide and issued without considering the orders of the state-government, relaxing covid restrictions. A prayer is made that the prescribed authority be directed to hold the meeting immediately.

I have considered the questions raised by the petitioners. The Government of West Bengal has issued an order being Memo No.753/IV-ISS/2M-33/2020 dated July 29, 2021, from which it appears that government programmes have been allowed in indoor places with not more than 50% of the total seating capacity. When the order of the Government is clear that even meetings, functions and gatherings can be allowed by maintaining COVID protocol with 50% seating capacity in indoor halls and outdoor activities have also been permitted with restrictions, this Court does not find any reason why the meeting was postponed. The orders issued by the government does not prohibit official meetings and statutory obligations. Duties to be undertaken for proper functioning of government offices or offices like the Gram Panchayat have not been prohibited. All Government offices are functioning. The employees are attending their offices. Such offices have resumed functioning since June 15, 2021 with full strength. As such, this Court does not find any reason for postponement of the

meeting which was scheduled to be held in the interest of democracy and as per the provisions of the statute.

However, the requisition which was brought on July 22, 2021 has lost its force as the period of 30 days has expired. The requisition and all subsequent notices are set aside.

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 writ petition is disposed of, granting liberty to the requisitionists to bring a fresh requisition in accordance with the provisions of Section 12(2) of the West Bengal Panchayat Act, 1973. If the same is brought, the prescribed authority shall proceed in term of Section 12(3), 12(4) and so on and reach the meeting to its logical conclusion. The time period prescribed by the statute should be mandatorily adhered to. The bar under Section 12(11) of the said Act shall not be applicable in this case.

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 order shall not be construed as an observation on the ability of the Pradhan to continue or discontinue in office. The said issue shall be decided in the meeting itself.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

Parties are directed to act on the communication of the learned advocates.

(Shampa Sarkar, J.)