

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

S/L 4
19.08.2021
Court. No. 19
GB

WPA 1171 of 2021

Shashadhar Ray Singha & Ors.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Md. Sarwar Jahan,
Mr. Firoze Hasan,
Mr. Debanshu Ghorai.

...for the Petitioners.

Mr. Himadri Sekhar Chakraborty.

...for the Respondent No.11.

Mr. Lalit Mohan Mahata,
Mr. Shamim Ul Bari.

...for the State .

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

The petitioners are the requisitionists, who brought the motion before the prescribed authority on July 20, 2021 requesting the authority to call for a meeting in terms of Sections 12(3) and 12(4) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the “said Act”) for removal of the Pradhan of Nazirhat Gram Panchayat.

It appears that the prescribed authority called the petitioners for a meeting in order to satisfy himself about the compliance of Section 12(2) of the said Act. Ultimately, the satisfaction was not recorded and the motion automatically

lapsed as no meeting was convened within five working days. The period of thirty days expires today. Thus, no direction can be passed upon the prescribed authority to hold the meeting as prayed for by the petitioners. The provisions of Sections 12(3) and 12(4) of the said Act will be violated if such order is passed.

Under such circumstances, the prayer of the petitioners for a direction upon the prescribed authority to hold the meeting is not granted. Moreover, it is the allegation of the Pradhan, represented by Mr. Chakraborty that the requisition contains a stigma. The requisition which is in Bengali, read as a whole indicates that the foundation of the no confidence is the incompetence and inability of the Pradhan to carry out developmental works in the locality. This in my view, is stigmatic and for this reason also the requisition cannot be sustained in law.

In the decision of *Ujjal Mondal v. State of West Bengal*, reported in 2013 (1) CHN (CAL) 458, the Division Bench of this Court held that requisition notice/no confidence motion was entertainable only when there was no foundation for bringing the motion. Paragraph 24 of the said decision is quoted below:

“24. Having regard to section 101 of the said Act, we are of the view that a ‘no confidence motion’ is entertainable for removal of Prodhan where there should not be any ground or foundation of bringing ‘no confidence motion’ and if ‘no confidence motion’ is carried on that ground, it will invite civil consequence or evil consequence to the Office Bearers relating to his political career naturally and as such, natural justice principle will have play in the matter,

thereby a breach of Article 14 of the Constitution of India.”

Mr. Mahata, learned advocate appearing on behalf of the State submits that the provisions of Section 12(3) and 12(4) have not been complied with and the statutory periods have already expired.

In my opinion, the provision for removing an elected representative such as 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.

Under such circumstances, as the requisition has already expired because of lapse of time and the bar under Sections 12(3) and 12(4) of the said Act, the same is set aside. The writ petition is disposed of upon granting liberty to the petitioners/members to bring a fresh requisition under 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 Sections 12(3) and 12(4) onwards of the said Act and reach the requisition to its logical conclusion. The

bar under Section 12(11) of the said Act shall not be applicable. The time frame prescribed by the statute shall be adhered to.

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.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the learned advocate's communication.

(Shampa Sarkar, J.)