

31.08.2021
Sl. No.2(Jalpaiguri)
srm

W.P.A. No. 1190 of 2021
Bijli Khatun & Ors.
Vs.
The State of West Bengal & Ors.

Md. Sarwar Jahan,
Mr. Firoze Hassan,
Mr. Maidul Islam Kayal

...for the Petitioners.

Mr. Shyamal Kumar Das,
Mr. Anindya Ghosh,
Mr. Sudip Guha

...for the Respondent Nos.11&12.

Mr. Abnirban Roy, ld. G.P.
Mr. Subir Saha,
Mr. Raja Saha,
Mr. Shamim-ul-Bari

...for the State-Respondents.

Affidavit of service is taken on record.

The petitioners are the requisitionists. The petitioners are aggrieved by the notice issued by the prescribed authority on August 4, 2021 by which the authority has postponed the meeting to be held on August 9, 2021 at 12.00 noon for removal of the Pradhan of Gitaldaha-I Gram Panchayat, District-Coochbehar.

Mr. Jahan, learned Advocate appearing for the petitioners, relies on an order of this Court dated August 5, 2021 by which the meeting scheduled to be held on August 9, 2021 for removal of the Pradhan was not interfered with in a writ petition filed by the Pradhan. The writ petition was

disposed of with the observation that once the Pradhan was aware of the meeting and was aware of the requisition, the meeting should be held as per the statute and on the principles of democracy on which the institution functions.

It appears that prior to the order passed by this court, the prescribed authority issued the impugned notice. As such, despite the dismissal of the writ petition filed by the Pradhan challenging the decision of the prescribed authority to hold the meeting, the meeting could not be held and the efforts of the requisitionists are frustrated.

Mr. Saha, learned Advocate for the State-respondents, and Mr. Das, learned Advocate appearing for the respondent Nos.12 and 13, submit that the meeting should not be held as the statutory period of 30 days is over. The requisition brought by Mr. Jahan's clients has lost its force.

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

“5. 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).

6. 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."

It is the democratic right of the requisitionists, to seek removal of their leader on whom they have lost their confidence. They are entitled to enforce such right as per the statute and any delay by the authorities will actually frustrate such right and destroy the democratic set up of the institution. 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.

The requisitionists are apprehensive that the Pradhan might avoid service of the requisition and their apprehension

is based on the earlier challenge of the Pradhan to the decision of the prescribed authority to hold the meeting on the ground that the notice had not been received by him. Thus, if the Pradhan avoids service, apart from the modes prescribed under the statute, substituted service by hanging the requisition at a conspicuous place at the Pradhan's office and residence shall be accepted.

The requisition notice as also the notice of the motion for removal of the Pradhan are set aside and cancelled.

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 could not be carried through.

The prescribed authority mentioned in the notice that the Covid-19 restrictions is the ground for postponing the meeting. The said notice was issued on a date when the Covid-19 restrictions has been relatively relaxed and there was no impediment to hold such a meeting. The Covid-19 restrictions

have further been relaxed and the Court does not find any reason as to why the prescribed authority should not call a meeting in accordance with law.

This writ petition is, thus, disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)