

08
05.01.2022
KC

WPA No.26 of 2022
(VIA VIDEO CONFERENCE)

Samir Saha
Vs.
The State of West Bengal Ors.

Mr. Anjan Bhattacharya.
... for the petitioner.

Mr. Gangadhar Das
Mr. Tanmoy Chattopadhyay.
... for the respondent no. 8.

Mr. Raja Saha
Mr. S. P. Lahiri.
... for the State.

The petitioner has alleged that the Prescribed Authority as acted in collusion with the 'Pradhan' of Bulbul Chandi Gram Panchayat, thereby postponing the meeting for the removal of the 'Pradhan' to January 7, 2022 and thereafter to January 11, 2022. It is the contention of the petitioner who is one of the requisitionist that the Prescribed Authority neglected to act in terms of the provisions of Section 12(4) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act). The requisitionist has brought a motion on November 18, 2021. The requisitionist lost their confidence in the Pradhan and wanted to remove the

'Pradhan'. On the requisition brought on November 18, 2020, the Prescribed Authority did not act and a prayer was made for a direction upon the Prescribed Authority to act on the basis thereof. This Court set aside the requisition dated November 18, 2021 on the ground that the same was stigmatic and granted liberty to the requisitionists to bring a fresh motion in accordance with law. Such order was passed by this Court on December 6, 2021 in WPA 19271 of 2021. This order was challenged by the 'Pradhan' in appeal. The Hon'ble Division Bench did not interfere with the said order. Pursuant to the leave granted by this Court a requisition was brought on December 7, 2021. The Prescribed Authority fixed December 27, 2021 at 1 P.M. as the date and time of the meeting for removal of the 'Pradhan'. The petitioner made an application before the Superintendent of Police, seeking police help. The Inspector-in-Charge, Habibpur Police Station, Malda informed the Block Development Officer that due to law and order problem in the area police assistance cannot be granted. It is submitted that the police authorities and the Prescribed Authority were hands in glove with the 'Pradhan' and time and again efforts has been made by the said authorities to frustrate the requisition brought by the petitioner. It is

submitted that the 'Pradhan' has lost confidence of the people and he cannot continue even for a single day. It is further submitted that the Prescribed Authority had intentionally fixed the date of the meeting after the period of thirty days so that the entire process becomes infructuous and is rendered as a nullity.

Mr. Das, learned advocate appearing for the 'Pradhan' submits that, there has been law and order problem in the area and the police authorities are within their right to decide whether a situation would arise which may compromise the security of the people in the area and affect the peace and tranquility. He further submits that the 'Pradhan' does not have any role to play with regard to the decision of either the police authorities or the Prescribed Authority.

Mr. Saha, learned advocate appearing on behalf of the State submits that the police authority and the Prescribed Authority can assess the ground reality and come to a conclusion that the meeting could not be held on December 27, 2021. He next submits that, acting on the said requisition, the requisitionists held the meeting on December 27, 2021 and passed a resolution for removal of the 'Pradhan' although the said meeting had been adjourned to January 7,

2022. It also appears that the Prescribed Authority by an order dated December 24, 2021 postponed the meeting to January 7, 2022 and thereafter issued a notice dated December 27, 2021, fixing the meeting on January 11, 2022. There is no explanation as to why the Prescribed Authority issued the notice on December 27, 2021 fixing the date of meeting on January 11, 2022 without cancelling the notice dated December 24, 2021. It also appears that the requisitionists had themselves held the meeting in violation of the procedure established by law and unilaterally removed the 'Pradhan' on the basis of the requisition dated December 7, 2021. In view of the confusion and irregularities in the process as also in view of the fact that the statutory period of 30 days is over, this Court is of the opinion that the entire process initiated on and from December 7, 2021 must be set aside and the notices of the Prescribed Authority dated December 24, 2021 and December 27, 2021 are also set aside and quashed.

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 requisitionists are granted liberty to bring a fresh requisition with immediate effect in accordance with the provisions of 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 Section 12(3) and 12(4) of the West Bengal Panchayat Act, 1973 in order to reach the requisition to its logical conclusion. It is made clear that unless there is an advisory from the State of West Bengal by which the functioning of the Gram Panchayat Office and the office of the Prescribed Authority are regulated or interrupted in view of the pandemic situation, the Prescribed Authority shall conclude the entire process if a requisition is brought afresh, in terms of this order by adhering to the statutory period. The bar under Section 12(11) of the said Act shall not apply.

The District Magistrate, Malda shall ensure that the order of this Court is complied with. The prescribed authority shall assess the situation and, if required, pray for police assistance in case there is any apprehension of breach of peace.

The writ petition is, thus, disposed of.

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

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

(Shampa Sarkar, J.)