

S/L 3
19.01.2022
Court. No. 19
GB

WPA 644 of 2022

Phani Munda & Ors.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Gangadhar Das,
Mr. Tanmoy Chattopadhyay.
...for the Petitioners.

Mr. Raja Saha,
Mr. Biswabrata Basu Mallick.
...for the State.

Mr. Anjan Bhattacharya.
...for the Respondent No.14.

Affidavit-of-service filed in Court today be kept with the record. The requisition and the notices are also taken on record.

This matter was mentioned before this Court on January 17, 2022 to be listed as an urgent motion before this Court as the meeting for removal of the Pradhan was to be held on January 19, 2022.

The petitioners are aggrieved by the inaction on the part of the prescribed authority. It is alleged that the prescribed authority did not comply with the provisions of Section 12(3) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act'). The copy of the notice issued under Form-1E of Sub-Rule 2 of Rule 5B of the West Bengal Panchayat (Constitution) Rules 1975 had not been served upon the petitioners.

According to Mr. Das, learned advocate appearing on behalf of the petitioners, the said irregularity goes to the very root of the process and the meeting fixed on January 19, 2022 should be set aside and cancelled. According to Mr. Das, the law prescribed that clear 7 days notice must be given to the members of the Gram Panchayat before the requisition is put to vote, so that the members can think over and take a decision on the requisition.

In this case, according to Mr. Das, when the notices were not received by three members, who were entitled to participate in the proceeding and cast their vote on the motion, the entire process should be set aside and cancelled. The mandate of the law has been disobeyed.

Mr. Bhattacharya, learned advocate appearing on behalf of the requisitionist submits that each and every member of the Gram Panchayat was aware of the entire process and three requisitions were brought but could not be reached to its logical conclusion on account of delay on the part of the prescribed authority in holding the meeting.

Ultimately, the requisition brought on December 7, 2021 was acted upon by the prescribed authority and January 19, 2022 1.00 p.m. has been fixed for the meeting for removal of the Pradhan, on the ground of lack of confidence.

Mr. Saha, learned advocate appearing on behalf of the State respondents/prescribed authority has handed over documents to show that apart from the petitioner no.3, who

refused to accept the service of the notice, the petitioner nos.1 and 2 have been served with the notice issued by the prescribed authority, through one Raju Munda and one Jayanta Saha respectively. The said notices were served on January 11, 2022. All the 21 notices have been produced before this Court and it is specifically submitted by Mr. Saha that as the petitioner no.3 refused to accept the notice, the notice was pasted at his residence, at a conspicuous place.

Mr. Das submits that unless the notices were either served upon the petitioners or on the family members of the petitioners, the said services could not be taken as good service.

This Court under Article 226 of the Constitution of India can only sit in judicial review over the procedure adopted by the authority. It does not appear to the Court that the prescribed authority intentionally refused to serve the notice upon the petitioners or had disobeyed the legal provisions. The notices addressed to the petitioner nos.1 and 2 were served upon their agents and their signatures had been obtained with the date on the receipt. The notice which was addressed to Biplab Sarkar was refused and as such, the same was affixed at a conspicuous place at the house of the Biplab Sarkar, as per the statement of the prescribed authority.

Moreover, it appears that 13 out of 21 members of the Gram Panchayat had brought the requisition expressing their intention to remove the Pradhan on the ground of lack

of confidence. The Pradhan himself received the notice. The Pradhan has not challenged the procedure. Even if it is assumed that the petitioners were not served with the notices, they were definitely aware of the meeting before January 13, 2022. It appears that the writ petition was affirmed on January 13, 2022. That instead of approaching this Court, the petitioners could have approached the prescribed authority on January 12, 2022 with the allegation of non-supply of the notice. They would have been supplied with a copy of the notice by the prescribed authority and they would have had seven days time to ponder and think over the requisition.

Under such circumstances, the petitioners' rights have not been curtailed. It is 11.40 a.m. and the petitioners still have the time to proceed to the Gram Panchayat office and cast their vote as per their choice. Thus, no order need be passed cancelling the meeting. The purpose of issuing the notice upon the members is to make them aware that a motion had been brought for removal of the Pradhan and to afford an opportunity to the members to consider the motion and take a decision on it. The petitioners have not been deprived of such opportunity. It has been specifically pleaded in paragraph 7 of the writ petition that on January 12, 2022 they were informed by a reliable source that the meeting had been fixed on January 19, 2022.

The decision of the Hon'ble Apex Court in the matter of Gajanan narayan Patil & Ors. versus Dattatraya Waman

Patil & Ors. reported in (1990) 3 Supreme Court Cases 634 as relied upon by Mr. Das is not applicable in this case, in view of the fact that the decision taken at a meeting held in a cooperative society was challenged on the ground that some of the directors had not attended the meeting due to non-service of notice. The Hon'ble Apex Court held that non-service of notice upon some of the directors rendered the decision in the meeting to be illegal. In this case, the meeting has not yet been held. The petitioners/members of the Gram Panchayat were aware at least since January 12, 2022 that the meeting was to be held on January 19, 2022 at 1.00 p.m. They are still within their right to cast their votes at the meeting and as such this judgment does not help the petitioners. Moreover their agents were served as per the records.

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.

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.”

Thus, this writ petition is dismissed.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocate’s communication.

(Shampa Sarkar, J.)