

S/L 4
25.01.2022
Court. No. 19
GB

WPA 924 of 2022

Shaktipada Das & Ors.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Dipankar Pal
Mr. Amit Bikram Mahata.

...for the Petitioners.

Mr. Raja Saha,
Mr. Shayak Chakraborty.

...for the State.

The writ petitioners are the requisitionists, who brought a motion on December 27, 2021 under Section 12(2) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act), for removal of the Pradhan of Chandrahati-I Gram Panchayat.

The prescribed authority upon satisfying himself about the compliance of the provisions of Section 12(2) of the said Act, issued a notice dated December 28, 2021 under Form 1E, Sub-Rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975. The date of the meeting was fixed on January 11, 2022. By a letter dated January 7, 2022, the prescribed authority postponed the meeting as the Chandrahati-I Gram Panchayat under the Chinsurah Mogra block had been notified as a micro-containment zone as per the order of the District Magistrate,

Hooghly. Thereafter the prescribed authority did not notify a subsequent date.

It is submitted by the petitioners that the Chandrahati-I Gram Panchayat was not an area which fell within the containment zone and the District Magistrate's order was not applicable in this case. It is prayed that directions be issued for holding the meeting.

Mr. Saha, learned advocate appearing on behalf of the State respondents submits that Chandrahati-I Gram Panchayat was made a containment zone by the Block Development Officer in view of the rising infections and as such, the meeting could not be held.

This Court is not an expert to assess the situation that had prevailed at the particular time when the meeting was postponed. However, the Court cannot lose sight of the fact that during the first week of January, 2022, there was huge surge in the infection. The statutory period will expire on January 26, 2022 which is a holiday. Thus the prayer of the petitioner cannot be allowed. Thus, without going into any further deliberation on the reasons as to why the meeting was postponed, this Court is of the opinion that justice would be sub-served if the requisitionists are granted liberty to bring a fresh requisition in accordance with law. The Government circulars do not debar holding of such official meetings at present and the situation has improved. The requisition dated December 27, 2021 and all subsequent notices are set aside and quashed. It also appears that the

requisition contains allegations against the Pradhan which are stigmatic. Such requisition cannot be acted upon.

However, 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.

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."

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 terms 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. The covid guidelines and norms must be followed.

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 the office through the 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.)