

S/L 5
25.01.2022
Court. No. 19
GB

WPA 1010 of 2022

Dipak Chandra Das & Ors.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Usof Ali Dewan,
Mr. Asfi Dewan.

...for the Petitioners.

Mr. Raja Saha,
Ms. Tanushri Chanda.

...for the State.

Mr. Ritzu Goshal,
Mr. Mrityunjay Chatterjee.

...for the Respondent No.5.

Mr. Uday Narayan Betal,
Md. G.N. Imrohi.

...for the Respondent Nos.6 to 11.

Supplementary affidavit is taken on record.

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 Mahanandapur 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 31, 2021 under Form 1E, Sub-Rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975 fixing January 17, 2022 as the date of meeting for removal of the Pradhan. By a letter

dated January 16, 2022, the prescribed authority cancelled the meeting.

It is urged by the requisitionists that the meeting was cancelled without any reason. It is further submitted that the statutory period has not expired yet, and as such, the meeting should be directed to be held forthwith.

Mr. Goshal, learned advocate appearing on behalf of the Pradhan submits that the statutory limit as prescribed under Section 12(10) of the said Act expires on January 26, 2022, which is a holiday. According to Mr. Goshal, the Court cannot direct at this stage, that the meeting should be held forthwith, especially because none of the members would be put on notice about the meeting. This would be contrary to the requirement of granting seven days notice to the members, to think and decide on the requisition. The contentions of Mr. Goshal is correct.

Ms. Chanda, learned advocate appearing on behalf of the prescribed authority submits that the meeting could not be held as adequate police force was not available. The prescribed authority anticipating that there may be law and order problems, cancelled the meeting. According to Ms. Chanda, the situation was beyond the control of the prescribed authority.

Considered the rival contentions of the respective parties. It is submitted by the learned advocate for the State respondents that now the police authorities shall abide by the directions of the Court to provide police assistance, if the

need so arises. The requisition dated December 27, 2021, has lost its force in view of the fact that steps were not taken within the statutory period. The said requisition and all subsequent actions and notices are set aside.

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."

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.

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.

All said norms and notifications in this regard shall be followed.

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.)