

15.02.2022
Court No. 19
Item no.05
CP

WPA 1028 of 2022

Jiban Mandal & ors.
Vs.
The State of West Bengal & ors.

Mr. Gangadhar Das
Mr. Tanmoy Chattopadhyay

.....for the petitioners.

Mr. Lalit Mohan Mahata
Mr. Prasanta Bihari Mahata

.....for the State.

Ms. Nadira Abedin

....for respondent no. 10.

The petitioners are the majority members of the Sahapur Gram Panchayat, under Old Malda Development Block, Dist. - Malda. The petitioners brought a motion for removal of the Upa-Pradhan, the respondent no. 10 herein. It is alleged that the prescribed authority despite receiving the motion for removal of the Upa-Pradhan on December 29, 2021, sat tight over the matter since then. Hence, the petitioner has come up before this Court.

Ms. Abedin, learned Advocate appearing on behalf of the respondent no. 10, submits that the said requisition cannot be acted upon in view of the fact that more than 30 days have expired since the receipt of the said motion by the prescribed

authority. The meeting cannot be held beyond the statutory period.

Mr. Mahata, learned senior government advocate, submits that the said requisition cannot be acted upon as the same has died a natural death in view of the inaction on the part of the prescribed authority.

The Court does not find any reason as to why the prescribed authority did not call the meeting. In the meantime Section 12(3) and Section 12(4) of the West Bengal Panchayat Act, 1973 has not been complied with.

It is the democratic right of the requisitionists, to seek the removal of their leader who has lost their confidence, in accordance with law. They are entitled to enforce such right 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.

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

“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). 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.”

As the outer limit of thirty days provided under Section 12(10) of the West Bengal Panchayat Act, 1973 has also expired, the requisition dated

December 29, 2021 as also subsequent actions, if any, are set aside and cancelled.

Under such circumstances, 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.

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 Upa-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

Upa-Pradhan in addition to sending the same by registered post to the residence of the Upa-Pradhan.

This writ petition is, thus, disposed of.

There will be no order as to costs.

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

(Shampa Sarkar, J.)