

25.1.2022
Ct,. No.19
Sl.8

W.P.A. No. 1065 of 2022
Mira Sarkar Mondal
Vs.
The State of West Bengal & Ors.

Mr. Atarup Banerjee
Mr. Mrintyunjoy Chatterjee
....for the petitioner
Mr. Susanta Pal
Mr. Prabir Kr. Ray
..for the State
Mr. Uday Narayan Betal
Md. G.M. Imrohi
..for the respdts.7-17
Mr. Usaf Ali Dewan
Mr. Arup Sarkar
Mr. Asif Dewan
..for the respdts.18-29

The petitioner is the Upa-Pradhan of Dewansarai Gram Panchayat, District Murshidabad. The petitioner is aggrieved by the notice issued under Form IE Sub rule 2 of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975, dated January 18, 2022 which is Annexure P/4 to the writ petition.

According to the petitioner, the prescribed authority fixed the date for removal of the Upa Pradhan, initially within the statutory period that is, on January 11, 2022, on the basis of the requisition dated December 24, 2021. However, the prescribed authority postponed such meeting as the police authorities were not in a position to render support on the ground that the police force had been requisitioned for the Gangasagar Mela. According to the petitioner, whatever the reason was for

cancellation of the meeting that was fixed on January 11, 2022, the prescribed authority could not have issued the subsequent notice dated January 18, 2022 fixing the date of meeting on January 27, 2022, for removal of the Upa Pradhan of Dewansarai Gram Panchayat, District Murshidabad, beyond the statutory period of 30 days.

Mr. Basu, learned advocate State respondents submits that the prescribed authority was compelled to cancel the meeting.

Mr. Dewan, learned advocate appearing for the requisitionists and Mr. Betal, learned advocate for the respondent nos. 7-17 also submits that the meeting had been fixed beyond the statutory period of 30 days and such meeting, if held, would be in violation of Section 12(10) of the West Bengal Panchayat Act, 1973.

Having considered the rival contentions of the parties, this Court is of the opinion that the notice dated January 18, 2022 cannot be acted upon as the statutory period of 30 days to complete the process of removal of the Upa Pradhan has expired. Section 12(10) would stand as a bar. The notice dated January 18, 2022 as also the requisition dated December 24, 2021 are set aside and cancelled.

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. In my opinion, the provision for removing an elected representative such as the Pradhan or the Upa-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.

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.”

This writ petition is disposed of with liberty to the requisitionists to bring a fresh requisition in terms of Section 12(2) of the said Act. If such requisition is brought, the prescribed authority shall satisfy himself about compliance of Section 12(2) of the said Act and then act and proceed in terms of Sections 12(3) and 12(4) onwards to reach the requisitions to its logical conclusion within the period mentioned in the statute. In addition to the modes of service of the requisition upon the Upa-Pradhan as prescribed under the statute, a copy shall be pasted at the office of the Upa-Pradhan and also in the residence of the Upa-Pradhan, if either the Upa-Pradhan or her staff do not accept service of the requisition. The bar under Section 12(11) shall not be applicable. The prescribed authority cannot neglect to discharge his duties under the statute. This deliberate neglect and disregard to law is viewed with seriousness.

This Court is not making any observation on the right of the Upa-Pradhan to continue in her office as the said issue will be decided in the meeting itself. If necessary, the prescribed authority may seek police protection, which shall be rendered without any delay or laches on the part of the police authorities.

This writ petition is, thus, disposed of. Parties are directed to act on the communication of the learned Advocates.

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.)