

31.01.2022
Court. No. 19
Item no. 4
Cp

WPA 1132 of 2022

Rowsanara Bibi & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Dipankar Pal

... for the Petitioners.

Mr. Raja Saha,
Mrs. Rupsha Chakraborty

... for the State.

Affidavit of service is taken on record.

Despite service, none appears on behalf of the respondent no. 5. The respondent no. 5 is the Sanchalak of Shilpo-O-Pari Kathamo Uposhamity under the Champatala Gram Panchayat.

The petitioners are the requisitionists who brought a motion for removal of the respondent no. 5 in terms of Rule 22(4) of the West Bengal Panchayat (Constitution) Rules, 1975 (hereinafter referred to as the said Rules). The petitioners allege to have complied with the provisions of Rule 22(4)(b) of the said Rules but the Block Development Officer failed to comply with the provisions of Rule 22(4)(c) of the said Rules.

According to Mr. Pal, learned advocate for the petitioners, notice of the meeting should have been issued within five working days from the date of receipt

of the motion by the Block Development Officer. The meeting for such removal ought to have been held in the office of the gram panchayat upon affording seven clear days to the existing members for consideration of the motion and for taking a decision on it.

Mr. Pal submits that the Block Development Officer issued a notice fixing the meeting on January 13, 2022, and thereafter, postponed the said meeting on the grounds mentioned in the notice itself. According to him, the Block Development Officer has denied the petitioners their right conferred by Rule 22(4)(a) of the said Rules.

It appears from the said Rules that a meeting of such nature cannot be held beyond 15 working days. In this case, the requisition was brought on December 13, 2021. The Block Development Officer issued the notice for holding the meeting beyond the period of five working days and, thereafter, once again postponed the said meeting indefinitely.

In view of the statutory non-compliances by the Block Development Officer, this court is of the opinion that the requisition brought by the petitioners on December 13, 2021 has lost its force. The said requisition has become infructuous.

The requisition dated December 13, 2021 and all other communications and orders issued by the Block Development Officer are set aside and quashed.

However, in my opinion, the provision for removing an elected representative such as the Sanchalak 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 Sanchalak 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 Rule 22(4)(a) of the said Rules. If the same is brought, the prescribed authority shall proceed in terms of the Rules and reach the meeting to its logical conclusion. The time period prescribed by the statute should be mandatorily adhered to. The bar under Rule 22(4)(g) of the said Rule shall not be applicable in this case. The covid guidelines and norms must be followed.

It is further made clear that the Block Development Officer 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 Block Development Officer without any delay and laches. It is also made clear that if the respondent no. 5 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 respondent no. 5 in addition to sending the same by registered post to the residence of the respondent no. 5.

As the matter has been disposed of without granting any order as prayed for in the writ petition and the petitioners have been directed to proceed afresh, disposal of the matter in absence of the respondent no. 5 has not caused any prejudice to the said respondent, who does not appear despite service.

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.)