

15.02.2022
Court No. 19
Item no.07
CP

WPA 1258 of 2022

Madhabi Halder Purkait & ors.
Vs.
The State of West Bengal & ors.

Mr. Debabrata Saha Roy
Mr. Debashis Banerjee
Mr. Supreem Naskar
Mr. N. Mondal

.....for the petitioners.

Mr. Mahim Sasmal

....for respondent nos. 3 and 4.

The petitioners are the majority members of the Nandakumrpur Gram Panchayat, Dist. – South 24 Parganas. The petitioners are aggrieved by the inaction of the prescribed authority in taking steps on the requisition for removal of the Pradhan of the said gram panchayat brought on January 4, 2022. The petitioners pray that the prescribed authority be directed to convene the meeting in terms of Section 12(4) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as ‘the said Act’).

Mr. Sasmal, learned advocate appearing on behalf of the Pradhan, submits that the requisition cannot be acted upon for the reasons stated hereunder:

a) The requisition is stigmatic;

- b) One of the signatories, namely, Smt. Paramita Sahoo alleged that her signature on the requisition was obtained by force;
- c) Smt. Paramita Sahoo wrote a letter to the learned Registrar General of the High Court stating that her name be deleted from the array of writ petitioners in this instant writ petition.

The requisition indicates that there are some comments against the Pradhan, although they are not seriously stigmatic. Nevertheless, any opinion on the activities of the Pradhan may lead to some serious consequences. Thus, the requisition as per the provisions of law is liable to be set aside.

Secondly, the prayer of the petitioner for a direction upon the prescribed authority to convene a meeting on the basis of the said requisition cannot be allowed also because the statutory periods prescribed under Section 12(3), 12(4) and 12(10) of the said Act have expired.

Finally, there are controversies with regard to the signature of Smt. Paramita Sahoo. Thus, in any event, leaving aside the disputed questions of obtaining the signature of Smt. Paramita Sahoo

by force, the requisition has died a natural death due to efflux of time.

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."

Under such circumstance, the requisition dated January 4, 2022, as also subsequent actions, if any, are set aside and cancelled.

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 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.

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.)