

S/L 13
02.02.2022
Court. No. 19
GB

W.P.A. 1351 of 2022

Jiban Mandal
VS
The State of West Bengal & Ors.

(Through Video Conference)

*Mr. Gangadhar Das,
Mr. Tanmoy Chattopadhyay.*

...for the Petitioner.

*Mr. Lalit Mohan Mahata,
Mr. Rudranil De.*

...for the State.

Affidavit-of-service filed in Court today be kept with the record.

It appears that the respondent nos.10 to 13 have been served. Despite service none appears on behalf of the said respondents.

The petitioner is one of the requisitionists, who brought a motion for removal of the members of various Upa-Samitis of Sahapur Gram Panchayat on December 29, 2021. It is submitted that the said requisition was served upon the prescribed authority on December 29, 2021. Thereafter, the Block Development Officer did not take further steps in terms of Sections 22(4)(c) and 22(4)(d) of the West Bengal Panchayat (Constitution) Rules, 1975 (hereafter referred to as the 'said Rules') and the period contemplated under 22(4)(c) and 22(4)(d) of the said Rules has already expired. The petitioner prays that orders be

passed directing the authority to hold the meeting on the basis of the requisitions.

Mr. Mahata, learned Senior Government Advocate appearing on behalf of the State, submits that although the prescribed authority has not assigned any reasons as to why the meeting was not held, yet as the provisions of Sections 22(4)(c) and 22(4)(d) of the said Rules have not been complied with in this case no such directions can be passed.

The inaction of the Block Development Officer in discharging his duties under the statute is arbitrary and unreasonable. In case there were reasons beyond control of the prescribed authority to hold the meeting, a notice to that effect ought to have been issued. This court does not find any reason why the prescribed authority should not hold the meeting for removal of the members/ Sanchalaks.

Here, the authority has not discharged his statutory function. Such laches is being viewed with seriousness. However, as the provisions of the law have not been complied with and the time has expired, this Court is of the opinion that the requisition dated December 29, 2021 has lost its force. The same is set aside and cancelled.

However, the requisitionists cannot suffer due to the inaction and/or erroneous action of the prescribed authority.

In my opinion, the provision for removing the members/Sanchalaks 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 members/Sanchalaks have lost support of the majority, they cannot remain in office for a single day. Admittedly the members/Sanchalaks have not yet been removed.

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 upon granting liberty to the requisitionists/members to bring fresh requisitions under Section 22(4)(b) of the said Rules. If such requisitions are brought, the Block Development Officer shall act and proceed in terms of the provisions of Sections 22(4)(c) and 22(4)(d) onwards of the said Rules and reach the requisitions to their logical conclusion. The bar under Section 22(4)(g) of the said Rules shall not be applicable. The time frame prescribed by the statute under Section 22(4)(d) shall be adhered to by the prescribed authority.

It is further made clear that the authority shall be entitled to seek police protection and if such request is made, the police authority shall render all support without any delay and laches. It is also made clear that if the members/ Sanchalaks try to evade service of the requisitions, then the requisitionists shall be entitled to serve the same in their office through the secretary or assistant and if, such service is not accepted, then the requisitionists will be entitled to paste the same in the office of the panchayat in addition to the modes of service provided under Section 22(4)(b) of the said Rules.

Although the respondent nos.10 to 13 are not appearing before this Court despite service, the matter is disposed of in their absence as the reliefs prayed for by the

petitioner is not granted, in view of the expiry of the statutory period.

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.)