

07.02.2022
Item no.29
Court No.6.
AB

**M.A.T. 93 of 2022
With
I A CAN 1 of 2022**

Torina Khatun

Vs

The State of West Bengal & Others

Mr. Partha Sarathi Deb Barman,
Mr. Dipankar Pal,
Mr. Jahangir Alam,
Ms. Juin Dutta Chakraborty,
Mr. Suvro Prakash Lahirifor the Appellant.

Mr. Uday Narayan Betal,
Mr. Abdur Rakib,
Mr. Somnath Adhikary....for the Respdt. 12-16.

Mr. Lalit Mohan Mahata,
Mr. Rudranil Defor the State.

By consent of the parties, the appeal and the application are taken up together for hearing.

Some members of the Malior-II Gram Panchayat initiated a process for removal of the Pradhan by a requisition dated November 2, 2021. Following the said requisition, the Prescribed Authority convened a meeting on November 23, 2021, for removal of the Pradhan. However, by a subsequent notice dated November 22, 2021, the Prescribed Authority adjourned the meeting until further order on his perceived notion that the meeting could not be held

without adequate police help and such police help was not available to him.

The Prescribed Authority subsequently by another notice dated December 8, 2021, rescheduled the meeting on December 17, 2021.

The Pradhan/appellant challenged the said notice dated December 8, 2021, by filing a Writ Petition being WPA No.20088 of 2021 (Torina Khatun Vs The State of West Bengal & Others) on the ground that the prescribed time limit under Section 12(10) of the West Bengal Panchayat Act, 1973, had expired.

The said Writ Petition was disposed of by the learned Single Judge by an order dated December 17, 2021, with the following observations:

“W.P.A. 20088 of 2021 is disposed of in view of the above reasons by setting aside the notice dated 8th December, 2021 including any action taken or which may be taken pursuant to such notice. Counsel appearing for the private respondents seeks liberty to make a fresh requisition for a meeting. Such prayer cannot be entertained at this stage since the parties before the court can always approach the writ court on the strength of subsequent developments.”

Following the aforesaid observations made by the learned Single Judge, the said requisitionists /respondents filed the present writ application praying, inter alia, for the following reliefs:

“(a) A writ in the nature of mandamus commanding respondent authorities more particularly the respondent No.8 herein to strictly act in accordance with the provisions contained in West Bengal Panchayat Act, 1973 and the Rules framed there under ;

(b) A writ in the nature of mandamus thereby granting liberty to the petitioners herein to bring a fresh requisition in accordance with the provisions contained in West Bengal Panchayat Act, 1973 and the Rules framed there under, for removal of the pradhan of Malior-II Gram Panchayet i.e. the private respondent herein ;

(c) A writ in the nature of mandamus commanding respondent authorities more particularly the respondent No.8 herein that upon receiving the fresh requisition from the petitioners herein 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 ;

(d) A writ in the nature of mandamus commanding respondent authorities more particularly the respondent No.8 herein that upon receiving the fresh requisition from the petitioners herein the prescribed authority shall be entitled to seek police protection and the police authority shall render all support to the requisitionists i.e. the petitioners herein and also to the prescribed authority without any delay and latches ;

(e) A writ in the nature of mandamus commanding respondent authorities thereby directing the District Magistrate, Malda and the Superintendent of Police, Malda that when the petitioners will bring a fresh requisition the District Magistrate, Malda to monitor the entire situation with respect to the actions of the Prescribed Authority cum Block Development

Officer, Harishchandrapur-II Development Block, Malda and the Superintendent of Police, Malda to monitor the entire situation with respect to the actions of the Inspector in Charge, Harishchandrapur Police Station”

The present writ petition was allowed by the learned Single Judge by an order dated January 27, 2020, granting liberty to the requisitionists /respondents to bring a fresh requisition in terms of Section 12(2) of the West Bengal Panchayat Act, 1973.

It was further directed that if the said motion was brought, the Prescribed Authority should proceed in terms of Section 12 of the West Bengal Panchayat Act, 1973. Further directions were passed for police protection.

The Pradhan/appellant challenges the order of the learned Single Judge contending that the prayer made in the writ petition could not have been entertained since no Mandamus can be issued for granting liberty.

It has further been contended that since the second requisition was barred in view of Section 12(11) of the West Bengal Panchayat Act, 1973, the learned Judge could not have granted the liberty to the requisitionists/respondents to proceed further with the process of removal of the Pradhan.

We are not convinced. Following the notice dated December 8, 2021, no meeting could be held for

removal of the Pradhan due to the order dated December 17, 2021, passed in WPA 20088 of 2021 (*Torina Khatun v. State of West Bengal and others*) at the instance of Pradhan/appellant.

We do not see any bar under Section 12(11) of the West Bengal Panchayat Act, 1973, since in order to come within the scope of Section 12(11) of the said Act, it is imperative that a meeting should be held in terms of the requisition and in the meeting, the motion for removal must fail or the meeting is incapable of being held for want of quorum. Neither is the case here.

By the order impugned, the learned Single Judge has allowed the requisitionists/respondents to proceed with the process of removal afresh. No prejudice has been caused to the appellant by such observation or order.

Since there is no bar under Section 12(11) of the West Bengal Panchayat Act, 1973, for a fresh requisition, the requisitionists were always at liberty to proceed with the process of removal afresh. In fact, no liberty from the Court was required.

Hence, the order impugned does not call for any interference.

Since we have not called for affidavits, the allegations in the stay petition are deemed not to be admitted by the respondents.

MAT 93 of 2022 along with IA CAN 1 of 2022 is, accordingly, dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)