

21.2.2022
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W.P.A. No. 2055 of 2022
Bipasa Das(Sinha)
Vs.
The State of West Bengal & Ors.

Mr. Abdur Rakib
..for the petitioner
Mr. Amales Ray
Mr. Aman Gupta
..for the respdt.nos.10,12&13
Mr. L.M. Mahata
Mr. P.B. Mahata
..for the State

The writ petition was filed challenging the notice issued by the prescribed authority dated January 24, 2022 fixing February 7, 2022 at 1-30 p.m., as the date and time for removal of Karmadhyaksha of Kshudra Shipla Bidyut O Achiracharit Shakti Sthayee Samity, Uttardinajpur Zilla Parishad.

It is the contention of the petitioner that the said notice was issued pursuant to the requisition dated June 21, 2021, for the second time when the first meeting called on January 6, 2022 had failed due to lack of quorum. On the first day when this matter was moved, the court was satisfied that the petitioners may have a valid point. The writ petition was admitted, an interim protection was granted prohibiting election of the new Karmadhyaksha. The meeting was however directed to be held by the Court. The matter was made returnable today.

The requisitionists and the prescribed authority are represented.

The prescribed authority has submitted a report before this Court, from which it appears that the meeting was called on the basis of a requisition dated December 20, 2021. The notice of the meeting was first issued on December 22, 2021. The letter dated June 21, 2021 as claimed by the petitioner to be the requisition had not been acted upon. It has been specifically stated that the meeting scheduled to be held on January 6, 2022 was postponed in exercise of power under Rule 18(6)(d) of the West Bengal Panchayat (Constitution) Rules, 1975(hereinafter referred to as the said rules).

The prescribed authority has categorically stated that in view of the directions issued by the District Magistrate under the Disaster Management Act, due to the sudden rise in Covid-19 infections, the meeting was postponed. Such power was exercised by the prescribed authority as it was anticipated that the meeting would give rise to a situation which would pose to be a serious health hazard. Thereafter, the meeting was again fixed on February 7, 2022, once the pandemic situation had improved and the restrictions were relaxed.

Mr. Amales Ray, learned advocate appearing on behalf of the requisitionists submits that the motion dated June 21, 2021 was not the basis of the meeting to be held on February 7, 2022. The said requisition was

issued six months ago. Thereafter, the requisitionists brought a motion on December 20, 2021.

The prescribed authority issued a notice on December 22, 2021 fixing a meeting on January 6, 2022 for removal of Karmadhyaksha as per the requisition. The contention of the writ petitioner is that the subsequent meeting could not be held as the earlier meeting failed due to lack of quorum. This is a complete misstatement. An interim order had been obtained on the basis of such false statement.

The notice of the Court has been brought to the decision of Rasida Bibi Vs. The State of West Bengal & Ors. passed in MAT 652 of 2021. The Division Bench had considered and upheld the observations of the single Bench that postponement of a meeting due to covid restrictions could be treated as a reason beyond the control of the prescribed authority to hold the meeting within the time period mentioned under Section 12(4) of the West Bengal Panchayat Act, 1973.

Having perused the documents produced by the prescribed authority and having considered the facts narrated hereinabove, the court is of the opinion that the meeting had been rightly fixed on February 7, 2022. The writ petitioner contended that the meeting dated February 7, 2022 could not have been held as the meeting dated June 6, 2021, failed for lack of quorum

and no motion for removal of the Karmadhyaksha could have been brought within one year from June 6, 2021.

The contention of the writ petitioner is that the meeting was called and held within a month of the failure of the previous meeting on the ground of lack of quorum. The other contention that the motion dated December 20, 2021 was not served on the petitioner, is not pleaded in the writ petition. If the Karmadhyaksha was actually unaware of the subsequent requisition dated December 20, 2021 on the basis of which the meeting dated February 7, 2022 was fixed and subsequently held, she ought to have brought this to notice of the prescribed authority. This was not done. As such, the action of the prescribed authority cannot be held to be bad in law. The records reveal that the Karmadhyaksha was aware of the subsequent meeting. The contention of the writ petitioner that the meeting dated February 7, 2021 could not have been held in view of the bar under Rule 18(6)(g) of the said Act, fails.

The next question is whether the prescribed authority had the power under the law to postpone the meeting fixed on June 6, 2022. Rule 18(6)(d) provides that such a meeting for removal of the Karmadhyaksha should be held not later than fifteen working days from receipt of the motion and the meeting shall not be cancelled or adjourned, except for reasons beyond the control of the prescribed authority. The prescribed

authority postponed the meeting by a letter dated January 6, 2022 vide letter no. 361/Com/Mid.V/25-21, in exercise of power conferred under Rule 18(6)(d). In the opinion of the Court, postponement of the meeting due to the sudden rise in Covid-19 infections during the third wave, was inevitable and the situation was beyond the control of the prescribed authority. Such power was exercised keeping public order and health as primary considerations and to safe guard the persons who were to participate in such a meeting. There was huge rise in the Covid-19 infections during the third wave and there were sufficient reasons for the prescribed authority to postpone the meeting, specially in view of the directives/orders by the government issued from time to time.

This Court does not find any illegality either in the meeting or in the process adopted by the prescribed authority in holding the meeting on February 7, 2022. Moreover, unlike the provisions for removal of Pradhan where there is no statutory outer limit within which the entire process for removal must be completed, for removal of a Karmadhyaksha, no such outer limit has been provided by law.

The writ petition fails. The meeting will be given effect to. New Karmadhyaksha will be appointed in accordance with law.

The Karmadhyaksha is constantly trying to stall a democratic process. The right of removal of the Karmadhyaksha is a democratic right.

The writ petition is dismissed.

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.)