

14.2.2022
Ct. No.19
Sl.no.11
sn

W.P.A. No. 2156 of 2022

Hosnewara Molla
Vs.
State of West Bengal & Ors.

Mr. Sanjib Bandopadhyay
Mr. Ashok Kr. Singh
Mr. Pritam Das
Ms. Suchitra Chakraborty
....for the petitioner
Mr. L.M. Mahata
Mr. P.B. Mahata
..for the State
Mr. Pankaj Halder
Mr. S. Panja
Mr. Tapas Manna
..for the respdts. 8-15

The meeting for removal of Pradhan of Sahajadpur Gram Panchayat, under Jaynagar-II Development Block has been scheduled to be held on February 16, 2022 at 12 noon. The petitioner is the Pradhan of the said Gram Panchayat.

The petitioner has challenged the requisition as also the notice issued under Form 1E sub-rule(2) of Rule 5 of the West Bengal Panchayat (Constitutional) Rules, 1975 (hereinafter referred to as the said Rules).

The contention of the petitioner is that the prescribed authority was not satisfied about the compliance of Section 12(2) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act.), but issued the notice fixing the date for holding the meeting for removal of the Pradhan on February 16, 2022. The

petitioner contends that Section 12(2) of the said Act has not been complied with by the requisitionists. The petitioner further contends that the prescribed authority did not take into consideration the provisions of Section 12(3) of the said Act. According to the petitioner, the prescribed authority ought to have satisfied himself about the service of the requisition upon the petitioner.

Mr. Mahata, learned senior government advocate appearing for the prescribed authority submits that the requisition was received by the prescribed authority at around 2-15 p.m on February 2, 2022 after the order was passed by this Court granting liberty to the requisitionists to bring a fresh requisition in accordance with law. Such order was passed by this Court in WPA 1307 of 2022.

Mr. Mahata, next submits that by a letter of the same date the prescribed authority requested the requisitionists to attend the meeting scheduled to be held on February 3, 2022 for verification of the compliances under Section 12(2) of the said Act. According to Mr. Mahata, the prescribed authority upon being satisfied that the law had been complied with, issued a notice under Form 1E on February 3, 2022. According to Mr. Mahata, the law does not prescribe any minimum time within which such notice should be issued. On the contrary, the law prescribes that the notice under Form 1E has to be issued within five working days from receipt

thereof. Thus, five working days is the outer limit. He submits that the contention of the petitioner that issuance of the notice under Form 1E on February 3, 2022 suffers from a procedural defect of not satisfying himself of the legal compliances, could not be accepted.

Mr. Halder, learned advocate for the requisitionists have handed over a bunch of original papers which contain copies of the requisition which were served in the office of the Pradhan and received on February 2, 2022 at 2-15 p.m. by the Secretary. The postal article which was sent to the address of the Pradhan was attempted to be served on three occasions by the postal peon. The endorsement on the postal envelope shows that on February 3, 2022, the door was locked on February 4, 2022 and February 5, 2022 the article was kept on hold and on February 7, 2022, the postal article was refused. The said postal article had been returned to the sender. The original copies of the receipts of requisition signed by the Secretary of the Gram Panchayat office shows that the said official had accepted two copies of the requisition, one for himself and one for the Pradhan. Those have been filed before this Court.

The order dated February 2, 2022 was dictated in open Court and the requisitionists were given liberty to bring a fresh motion in accordance with law. Parties were also directed to act on the learned advocate's communication.

The requisitionists in their haste to remove the Pradhan brought the requisition in the afternoon of the day the order was passed by this Court and the prescribed authority acted on such requisition.

The Court has often experienced that the office bearers are mostly unavailable in their office or at their residence. Thus, this Court always makes a provision in the order, for service of the requisition in the office of the Gram Panchayat upon the Secretary or the office assistant of the office and in case such service was not accepted liberty is granted to affix the motion at an appropriate place in the office. This system of service has been recognized in the administration rules.

Records submitted before the Court show that the requisition was served in the Office of the Gram Panchayat, which was accepted by the Secretary also on behalf of the Pradhan. The postal article sent to the residence of the Pradhan was refused. The address of the petitioner in this writ petition and in the postal envelope, which was sent to the residence of the Pradhan containing the motion/requisition, are the same. Thus, this Court does not find any reason to hold that the requisition was not in accordance with law and the prescribed authority had not applied his mind before issuing the notice convening the meeting to be held on February 16, 2022.

In order to ascertain compliance of the provisions of Section 12(2) of the said Act, the prescribed authority asked the requisitionists to attend a meeting on February 3, 2022 and thereafter the notice was issued. Now, the Pradhan is trying to stall the meeting. It is not in doubt that the copy of the motion was received by the Pradhan because the learned advocate for the Pradhan has submitted a copy of the receipt of the motion dated February 2, 2022 received on the same day at 12.54 p.m. According to the Pradhan, the same was received by some other person and handed over to the Pradhan only on February 5, 2022. This fact has not been disclosed. Neither has the identity of the person been mentioned.

The allegation against the prescribed authority does not survive in view of the facts mentioned hereinabove and the prescribed authority was only required to satisfy himself whether both modes of service under Section 12(2) of the said Act had been complied with, that is, a copy of the requisition was delivered to the officer bearers in the office and sent to the residence by registered post. In this case, the requisition was served upon the Secretary of the Gram Panchayat and the receipt was obtained. The learned Advocate for the petitioner also submits a receipt copy of the motion. This Court had permitted service upon the Secretary in case the Pradhan was not available for service in the office. Such order was accepted by the Pradhan. Postal receipt showing that

the requisition was sent to the residence of the Pradhan and served in the office was also before the prescribed authority. Whether the office bearer physically received the copy or not was not further required to be investigated into. Moreover, a copy of the requisition has been produced before the court by the petitioner's Advocate. The Pradhan was always aware that the requisitionists had lost confidence in her, in view of the several rounds of litigation in which the Pradhan was a party.

The further allegation that the notice under Form 1E was not received by the petitioner is not accepted in view of the fact that this writ petition was affirmed on February 7, 2022 and the notice under Form 1E has been annexed hereto. The reason for service of motion upon the office bearer is only to make the office bearer aware that the members have sought to remove her. The office bearer has had enough time to deliberate on such notice and mobilise her supporters. Removal of an office bearer is a democratic act conferred upon the members by the statute and the members have a right to remove the Pradhan on whom they have lost confidence.

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."

These institutions 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. In my opinion, the provisions for removing an elected representative such as the Pradhan are of fundamental importance to ensure the democratic functioning of the institution as well as to ensure transparency and accountability in the functions performed by the elected representatives.

In the matter of Usha Bharti v. State of U.P., (2014) 7

SCC 663 the Hon'ble Apex Court held as follows:-

"44. We reiterate the view earlier expressed by this Court in Bhanumati [(2010) 12 SCC 1] , wherein this Court observed as follows: (SCC p. 19, paras 57-58)

"57. It has already been pointed out that the object and the reasons of Part IX are to lend status and dignity to Panchayati Raj institutions and to impart certainty, continuity and strength to them. The learned counsel for the appellant unfortunately, in his argument, missed the distinction between an individual and an institution. If a no-confidence motion is passed against the Chairperson of a panchayat, he/she ceases to be a Chairperson, but continues to be a member of the panchayat and the panchayat continues with a newly-elected Chairperson. Therefore, there is no institutional setback or impediment to the continuity or stability of the Panchayati Raj institutions.

58. 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. This explains why this provision of no-confidence motion was there in the Act of 1961 even prior to the Seventy-third Constitution Amendment and has been continued even thereafter. Similar provisions are there in different States in India."

45. The whole edifice of the challenge to the constitutionality of Section 28 is built on the status of the petitioner as a member belonging to the reserved category. It has nothing to do with the continuance, stability, dignity and the status of the Panchayat Institutions. In our opinion, the personal desire, of the petitioner to cling on to the office of Adhyaksha is camouflaged as a constitutional issue. The provision of no-confidence motion, in our opinion, is not only consistent with Part IX of the Constitution, but is also foundational for ensuring transparency and accountability of the elected representatives, including Panchayat Adhyakshas. The provision sends out a clear message that an elected Panchayat Adhyaksha can continue to function as such only so

long as he/she enjoys the confidence of the constituents.”

In the matter of Sujata Bhachhar v. State of W.B. (2017) 2

CHN 103(DB) this Court held as follows:-

“There is no manner of doubt whatsoever that the appellant/writ petitioner has been removed as the Pradhan of the concerned Gram Panchayat by a majority vote. The requisition notice issued by the members of the concerned Gram Panchayat was sought to be challenged by her before the writ Court. Even though it is evident that the Prescribed Authority has acted in conformity with the provision of section 12 of the West Bengal Panchayat Act, the conduct of the appellant/writ petitioner leaves no manner of doubt whatsoever that instead of adhering to and abiding by the established democratic principles governing institutions such as a Gram Panchayat, she has chosen to try and wriggle out from a situation where, admittedly, she lacks support majority of the elected members of the Gram Panchayat, by nit-picking before a writ Court on such hypertechnicalities which are not at all germane for consideration or adjudication in the facts of the present case, in order to cling on to power, somehow. In this context, one may take notice of the observation made by this Court in a judgment rendered on 8th September, 2016, in FMA 1209 of 2015 with CAN 1814 of 2015 (Panchu Mandal v. State of West Bengal).”

The Court is satisfied that the authority has not proceeded in violation of the statute. Judicial review of the decision making process or of the procedure followed by the authority is permitted by law. Here, the prescribed authority acted in accordance with law. Disputed questions of facts as raised by the petitioner to the effect that the requisition was received by some other person who

handed over the same to the Pradhan on February 5, 2020 and that the postal peon was colluding with the requisitionists were matters of trial on evidence. The mere fact that the prescribed authority acted in hot haste as alleged cannot render his action illegal.

Under such circumstances, this Court does not find any reason to interfere with either the requisition or with the notice of meeting of the motion. The meeting shall be held as per schedule.

This writ petition is disposed of.

There will be, however, no order as to costs.

All parties are directed to act on the server copy of this order. All parties are directed to learned advocate's communication.

(Shampa Sarkar, J.)