

9.2.2022  
Ct. No.19  
Sl.no.18  
sn

**W.P.A. No. 2158 of 2022**

**Hosnahara Molla**

**Vs.**

**The State of West Bengal & Ors.**

Mr. Sanjib Bandopadhyay

Mr. Ashok Kr. Singh

Mr. Pritam Das

....for the petitioner

Mr. Pankaj Halder

Mr. Tapas Manna

..for the pvt. respondents

Mr. Piyush Chaturvedi

Mr. Santanu Panja

..for the respondents 9,10& 13

Mr. Lalit Mohan Mahata

Mr. Supratim Dhar

..for the State

The petitioner is the upa-pradhan of Sahajadapur Gram Panchayat, under Jaynagar-II Development Block is preferred this writ petition challenging the requisition notice dated January 28, 2022 on two grounds:

a)That the requisition was not served upon the petitioner at her residence.

b)That the requisition contains as stigma.

Mr. Chaturvedi, learned advocate for the requisitionists have handed over the receipt copy of the requisition accepted by the Secretary of Jaynagar-II development block, South 24 Parganas on behalf of the petitioner dated January 28, 2022. Service of notice in the office of the Gram Panchayat is also not denied by the

petitioner. The stand of the petitioner is that the petitioner has a family problem and has shifted from her erstwhile residential address.

On the point of stigma, this Court does not find that the foundation of requisition are allegations against the petitioner. The requisition states that the members who have lost confidence want to remove the Upa-Pradhan from her office in public interest. There are no specific allegation of nepotism, non-cooperation, arbitrariness, misappropriation and failure to perform etc. against the Upa-pradhan.

On the point of notice, the petitioner has been aware of the said requisition since January 28, 2022 or soon thereafter. Pleadings in paragraph 4 indicates that the petitioner came to know of the requisition from the panchayat office.

The postal article sent to the address of the residential address of the petitioner, i.e. the address recorded in the office has come back with endorsement "Refused". The same is taken on record.

It is contended that the requisition was served upon the husband of the petitioner and not on the petitioner. Pleadings to that effect has been made in paragraph 4.

This Court in judicial review can only examine whether the law has been complied with by the requisitionists. Whether service in the office and the residence of the petitioner had been done.

The petitioner is well aware of the requisition. The Court does not find that the requisitionists had the knowledge that the petitioner was not living with her husband at the matrimonial home and had changed her address. A person holding an important post as the Upa-Pradhan ought to have intimated her changed address to the office. Moreover, the pleadings also do not disclose any change of address.

The need for service of notice upon the office bearer is to inform the office bearer there has been a motion for her removal. As long as the criteria mentioned under Section 12(2) are complied with, whether the petitioner received the motion at the residence or not becomes irrelevant. The law provides that a copy of the motion must be sent to the residence of the Upa-Pradhan by registered post, in addition to service in the office.

It is the democratic right of the requisitionists, to seek the removal of their leader who has lost their confidence. They are entitled to enforce such right. 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. If the Upa-Pradhan has lost confidence of the members, the Upa-Pradhan cannot remain in office for a single day. Here, majority of the members have lost confidence in the Upa-Pradhan.

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 circumstances, the meeting which is fixed on February 10, 2022 at 12 noon is not set aside. The meeting shall be held as scheduled.

This writ petition is disposed of.

There will be however no order as to costs.

All parties are directed to act server copy of this order as also the learned advocate’s communication.

**(Shampa Sarkar, J.)**