

11.02.2022
Sl. No.1
srn

W.P.A. No. 2244 of 2022
Torina Khatun
Vs.
The State of West Bengal & Ors.

Mr. Shuvro Prokash Lahiri
...for the Petitioner.

Mr. Sukanta Chakraborty,
Mr. Anindya Halder
...for the Respondent Nos.5 to 9.

Mr. Raja Saha,
Mr. Amit Kumar Ghosh
...for the State-Respondents.

Affidavit of service is taken on record.

Mr. Lahiri, learned Advocate appearing on behalf of the petitioner/the Pradhan of Malior-II Gram Panchayat, District-Malda, has challenged the notice dated February 3, 2022 issued under Form 1E of sub-rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975 by the prescribed authority fixing February 15, 2022 at 12.00 noon as the date and time of the meeting for removal of the Pradhan.

Mr. Chakraborty, learned Advocate appears on behalf of the respondent Nos.5 to 9/the requisitionists.

The contention of Mr. Lahiri is that the requisition could not be acted upon on the ground that two requisitions on the same date were brought by the requisitionists. According to

Mr. Lahiri, the prescribed authority could act only on the basis of a legally maintainable motion brought by the requisitionists as per Section 12(2) of the West Bengal Panchayat Act, 1993 (hereinafter referred to as the said Act) and not on the basis of both the requisitions. According to him, the law does not permit simultaneous requisitions by the same requisitionists. He relies on the provisions of Section 12(2) of the said Act and submits that the law envisages that one-third but not less than three members of a gram panchayat can bring 'a' motion for removal of the Pradhan or lack of confidence. According to Mr. Lahiri, when the law envisages that 'a' motion should be brought, the prescribed authority ought not to have accepted two motions both dated January 31, 2022 brought and served by the same members at the same time.

Mr. Chakraborty has handed up a copy of the letter of the same date written by the requisitionists to the prescribed authority, which is taken on record. The letter was for withdrawal of the first motion dated January 31, 2022, which is at page 38 of the writ petition, on the ground that some errors had taken place and the requisitionists wanted to correct those errors and file a fresh motion. Accordingly, the prescribed authority permitted the requisitionists to withdraw the first motion and file afresh.

Mr. Saha, learned Advocate appearing on behalf of the State-respondents, submits that the prescribed authority did not act on the basis of the first motion, which is at page 38, as the requisitionists wanted to withdraw the same to correct some technical errors.

The errors, as pointed out by Mr. Chakraborty, are that two sections were mentioned in the requisition, namely, Section 12 and Section 16 of the said Act. According to Mr. Chakraborty, Section 16 was not required to be incorporated. The Judges name and order mentioned was also sought to be deleted. In the second motion they had deleted those portions.

It appears that both the motions have been simultaneously filed along with the letter for withdrawal of the first motion. The first motion was withdrawn on the same day. The prescribed authority proceeded on the second motion, which is at page 40 of the writ petition. The contention of Mr. Lahiri that two separate motions were brought and both were acted upon is not accepted, in the facts of this case. The motion, which is at page 38, contained some averments which were sought to be corrected. Thus the said motion was withdrawn and another corrected version was filed immediately, as soon as the requisitionists realised that Section 16 and the name and order of the Court, should not have been mentioned in the motion.

The same requisitionists have brought both the motions. First one was withdrawn by all of them. Service of both the motions upon the Pradhan does not vitiate the proceeding. The purpose of service of notice upon the Pradhan was let the Pradhan know that there was a “no confidence” motion against her, brought by the members in accordance with law. The Pradhan has to prepare herself and mobilise her supporters in the intervening period. In this case, the Pradhan got sufficient time from January 31, 2022 up to February 15, 2022 to be ready to face the meeting. The meeting has been fixed at 12.00 noon on February 15, 2022. No other irregularity or non-compliance has been pointed out by the petitioners.

The motion also satisfies the requirement of law. Even if two motions were filed before the prescribed authority, but when the prescribed authority applied his mind under Section 12(3) of the said Act with regard to the compliances of Section 12(2) of the said Act, only one motion was before the prescribed authority as the earlier one was withdrawn.

The motion which was acted upon by the prescribed authority, was a legally acceptable motion. The first motion was also not legally unacceptable. Unnecessary averments were made which were irrelevant. The law does not prohibit the requisitionists from withdrawing a motion before the prescribed authority satisfied himself on it. The law prohibits

that a second motion could not be brought within one year from the date appointed for the meeting if the first motion was not carried by majority or the meeting was not held due to lack of quorum.

It is the democratic right of the requisitionists, to seek removal of their leader in accordance with law upon whom they had lost their confidence. They are entitled to enforce such right and unnecessary interference on such hyper technical pleas will actually frustrate such right and destroy the democratic set up of the institution. 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 explains why the provision of removal, by way of a 'no confidence' motion has been incorporated in the statute.

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."

The requisition dated January 31, 2022, which is at page 40 of the writ petition, and the notice dated February 3, 2022 issued by the prescribed authority are not interfered with. The meeting will be held on the date and time fixed by the prescribed authority.

This writ petition is, thus, disposed of.

There will be no order as to costs.

The parties are to act on the basis of the server copy of this order and/or the learned Advocates' communication.

(Shampa Sarkar, J.)