

14.02.2022
Sl. No.13
srm

W.P.A. No. 2526 of 2022

Gopal Chowdhury

Vs.

The State of West Bengal & Ors.

Mr. Ritzu Ghoshal,
Mr. Mrityunjoy Chatterjee

...for the Petitioner.

Mr. Usof Ali Dewan,
Mr. Asif Dewan

...for the Respondent Nos.13 to 20.

Mr. Uday Narayan Betal,
Mr. Debapriya Majumdar

...for the Respondent Nos.7 to 12.

Despite service none appears on behalf of the State-respondents. Affidavit of service is taken on record.

The only point raised in this writ petition is whether the meeting for removal of the Pradhan of Mahanandapur Gram Panchayat, District-Malda scheduled to be held on February 16, 2022 can be held in view of the pending proceeding against Mr. Niranjana Mandal, the respondent No.20, one of the requisitionists and a member of the said gram panchayat. Such proceeding is pending before the Sub-Divisional Officer, Chanchal, Malda under Section 11(1)(d) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act).

The Pradhan had also initiated a proceeding before this Court challenging inaction of the said Sub-Divisional Officer, Chanchal, Malda, in concluding the proceedings under Section 11(1)(d) of the said Act. The writ petition was disposed of with a direction upon the said Sub-Divisional Officer to proceed with the hearing and pass a reasoned order within reasonable time.

Today, a point has been raised by Mr. Ghoshal, learned Advocate appearing on behalf of the petitioner, that the respondent No.20, namely, Niranjana Mandal was likely to be removed as a member by the prescribed authority in the proceeding initiated. Thus, according to Mr. Ghoshal, the result of the meeting must not be declared and the new Pradhan must not be elected until the decision is taken by the prescribed authority with regard to the prayer for removal or disqualification of one of the requisitionists that is, Niranjana Mandal. It is further submitted that if the said requisitionist, who is likely to be removed or disqualified, ceases to be a member of the said gram panchayat, in that case, the requisition brought by him would not have the majority and the result of the meeting would be also null and void as the vote of the removed member could not be counted.

It is settled law that the two proceedings are separate. The law permits the requisitionists to remove their leader in

accordance with the provisions of Section 12(1) and Section 12(2) of the said Act. The meeting has been called on the basis of Section 12(3) and Section 12(4) thereof. Till now, the said Niranjana Mandal continues to be a member. Even if, he is removed by the prescribed authority later, the removal cannot have a retrospective effect. Thus, any action prior to the removal cannot not be negated by the subsequent removal. The result of the meeting shall not be affected by the subsequent order of removal. Such order is anticipated by the Pradhan, although the prescribed authority has not even proceeded with the hearing. The meeting cannot be interfered with on the assumption or presumption that one of the requisitionist may be removed from his membership. Thus, the prayer of Mr. Ghoshal cannot be allowed. The fate of Mr. Ghoshal's client has not yet been decided. The same will be decided only on the floor and will be subject to the result of the meeting. No irregularity in the action of the prescribed authority has been pointed out. The Court is not inclined to interfere with the proceeding because the Court is of the opinion that until and unless Niranjana Mandal, the respondent No.20 is removed or disqualified from his membership of the said gram panchayat, the Court cannot prevent the said person from participating in the meeting and consequences of such meeting cannot be stalled. When

the majority has lost confidence on the Pradhan, it would be impossible for the gram panchayat to function and withholding the result and/or election of the new Pradhan would create a stalemate condition.

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).

9. That apart and in any event, upon perusal of the reasons provided by the learned Single Judge while dismissing the writ petition, this Court does not

notice any palpable infirmity or perversity, which would warrant any interference in an Intra-Court Mandamus Appeal.”

Under such circumstances, as there are no further challenges either to the requisition or to the notice issued by the prescribed authority, this Court does not find any reason to interfere with either the requisition or with the notice of meeting for removal. The meeting shall be held as per schedule.

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 or the learned Advocates’ communication.

(Shampa Sarkar, J.)