

S.I. no. 9
22.2.2022
Court. No. 19
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WPA 3002 of 2022

Shridam Pal & Ors.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Kamalesh Bhattacharyya
Mr. Aninda Bhattacharyya

... for the Petitioners

Mr. Moloy Singh
Ms. Neelam Singh

... for the State.

Mr. Tapas Mondal

... for the Respondent no.5

The petitioners are some of the members of Beonta-I Gram Panchayat. The petitioners brought a requisition for removal of the Pradhan of the said Gram Panchayat on February 4, 2022. The said requisition was received by the prescribed authority some time on February 8, 2022.

The allegations are that the prescribed authority sat tight over the requisition and did not take any steps. It is further submitted that the prescribed authority had failed and neglected to comply with the statutory obligations.

Mr. Singh, learned advocate for the State respondents submits that the prescribed authority was confused as he had received two requisitions. The first

requisition was brought some time in January, 2022 and the second requisition was brought on February 4, 2022. Subsequently, the petitioners withdrew the first requisition. According to Mr. Singh, the consecutive notices and subsequent withdrawal led to such inaction as the notices were not brought in compliance of Section 12(2) of the West Bengal Municipal Act, 1973(hereinafter referred to as the said Act) and as such the prescribed authority did not act upon the requisition dated February 4, 2022.

Mr. Mondal, learned advocate for the Pradhan adopts the contentions of Mr. Singh.

Having considered the rival contentions of the parties, this Court is of the opinion that it is an admitted position that two consecutive requisitions were brought by the requisitionists. First of such requisition was withdrawn.

The prescribed authority did not act on the basis of second requisition in view of Covid-19 infections. In the meantime, the statutory time limit prescribed under Section 12(3) of the said Act had expired and the prescribed authority had not satisfied himself about the compliance of Section 12(2) of the said Act.

Under such circumstances, this Court finds that the procedure laid down by the statute has not been followed and as such the requisition dated February 4,

2022 cannot be acted upon. The requisition is set aside.

However, it is the democratic right of the requisitionists, to seek the removal of their leader who has lost their confidence, in accordance with law. They are entitled to enforce such right and any delay by the authorities will actually frustrate such right and destroy the democratic set up of the institution. 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.

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 writ petition is disposed of upon granting liberty to the requisitionists/members to bring a fresh requisition under Section 12(2) of the said Act. If such requisition is brought, the prescribed authority shall act and proceed in terms of the provisions of Sections 12(3) and 12(4) onwards of the said Act and reach the requisition to its logical conclusion. The bar under Section 12(11) of the said Act shall not be applicable. The time frame prescribed by the statute under Section 12(10) shall be adhered to by the prescribed authority.

It is further made clear that the prescribed authority shall be entitled to seek police protection and if such request is made, the police authority shall render all support to the requisitionists as also to the prescribed authority without any delay and laches. It is also made clear that if the Pradhan tries to evade service of the requisition, then the requisitionists shall be entitled to serve the same in the panchayat office

through the secretary or assistant and if, such service is not accepted, then the requisitionists will be entitled to paste the same in the office of the Pradhan in addition to the modes of service provided under Section 12(2) of the said Act.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the learned advocate's communication.

(Shampa Sarkar, J.)