

S/L 3
3.3.2022
Court No.19
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W.P.A. No.3094 of 2022

Jamuna Rabidas
Vs.
The State of West Bengal & Ors.

Mr. Amitava Mukherjee
Mr. Amal Kr. Banerjee
Mr. Pinaki Ranjan Chakraborty
Ms. Ankita Ghosh
... for the Petitioner.

Ms. Jayeeta Sinha
Mr. Sandip Mondal
... for the State.

Mr. Ali Ahsan Alamgir
Ms. Riya Das
..for the respondent no.5

The writ petition has been filed by the Pradhan of Mahisasthali Gram Panchayat District-Murshidabad. The petitioner is aggrieved by the notice of meeting issued by the prescribed authority under Form 1E of sub-rule (2) of rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975 (hereinafter referred to as the said rules.). The said notice of the meeting for removal of the Pradhan was issued by the prescribed authority on February 2, 2022 and the date of the meeting for removal of the Pradhan was fixed on February 10, 2022. The allegations are :-

a) The motion dated January 18, 2022 was not served upon the Pradhan.

b) The prescribed authority did not satisfy himself about the compliance of Section 12(2) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act).

c) Clear seven days notice was not given by the prescribed authority to the members as provided under Section 12(3) of the said Act.

d) That the prescribed authority could not have acted on the basis of the requisition dated January 18, 2022 as the said requisition was rejected by the prescribed authority by an order dated January 21, 2022, which was communicated to all the parties.

The learned advocate for the requisitionists have handed up the receipts obtained from the office of the Pradhan indicating that the motion was served in the office of the Pradhan by hand delivery which was received by the executive assistant of the said office at 11-30 a.m. on January 18, 2022. It has been submitted that the requisition was brought on the basis of the leave granted by a co-ordinate Bench of this Court by order dated January 7, 2022.

In the earlier round of litigation, the petitioner filed WPA 211 of 2022 challenging the said requisition on the ground that the requisition contained allegations which were stigmatic.

A co-ordinate Bench of this Court was pleased to stay the requisition making the writ petition returnable on January 18, 2022, granting liberty to the requisitionists to bring a fresh requisition in accordance with law.

On January 18, 2022, the writ petition came up for hearing before this Court. The Court set aside the impugned requisition dated December 21, 2021 on the ground that the requisition could not be acted upon and permitted the requisitionists to bring fresh requisition.

It is submitted that the requisition dated January 18, was brought on the basis of the liberty granted by the learned Judge.

The learned advocate for the requisitionists thus submits that the prescribed authority did not act illegally and issued notice upon satisfying himself about the compliance of the provisions of Section 12(2) of the said Act.

The first contention of the writ petitioner that the requisition was not served upon her is rejected in view of the documents produced before this Court.

The second contention of the writ petitioner with regard to the non-compliance of the provisions of Section 12(2) is also not accepted.

The third contention of the writ petitioner with regard to the allegation against the prescribed authority of not adhering to the provisions of Section 12(3) of the said Act, is accepted for the following reasons:-

The requisition dated January 18, 2022 was rejected by the prescribed authority by an order dated January 21, 2022. The prescribed authority recorded as follows:-

“ This is to inform you that the application received by the Prescribed Authority on 18/01/2022 for no confidence motion against Pradhan, Mahisasthali is rejected as the same case for the removal of Pradhan, Mahisasthali already received by the undersigned on 22/12/2021, which is still under Judicial consideration as per the Interim Order of Hon’ble Justice Sabyasachi Bhattacharyya , High Court, Calcutta dated 07.01.2022 via WPA no. 211 of 2022 dated 07.01.2022, in the said order the Hon’ble High Court, Calcutta postponed the above meeting till 15/02/2022 or until further order, whichever is earlier.

This is for your information and taking necessary action.”

The said communication was made to one Sk. Abul Basar, who was one of the requisitionists and is present before this Court through his learned advocate. There is nothing on record to show that the said order of rejection of the motion was either cancelled or set aside by the prescribed authority or by this Court. Although, it is the contention of the requisitionists that the order has been challenged

before this Court in a writ petition, the said writ petition was never moved. On the other hand, the prescribed authority proceeded to issue the notice impugned, with full knowledge of the fact that the requisition dated January 18, 2022 had been rejected by him. The prescribed authority could not proceed with the requisition which he had rejected and as such the satisfaction with regard to compliance of Section 12(2) of the said Act was never recorded by the prescribed authority. It also appears that the impugned notice was issued beyond five working days from the date of receipt of the alleged requisition. The records also do not reveal that seven days clear notice was given to the petitioner by the prescribed authority.

The learned advocate for the State respondents submits that the meeting was held on February 10 2022.

In the opinion of the Court, in view of the fact that the requisition which was acted upon had already been rejected by the prescribed authority, the meeting could not have been held.

There is nothing on record admittedly, to show that the order of rejection dated January 21, 2022 was either cancelled or revoked by the prescribed authority or by this Court. Any resolution passed on February 10, 2022 is set aside as the same is a nullity in the eye

of law, there being no requisition before the prescribed authority, upon which he could have acted.

The Pradhan shall continue in her office, till such time she is removed in accordance with law.

The requisitionists are granted liberty to bring a fresh requisition in accordance with law, upon compliance of all formalities as per Section 12 of the said Act.

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 body. 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 requisition dated January 18, 2022 and the notice of meeting for removal of the Pradhan by the prescribed authority dated February 2, 2022 and the consequential actions taken in the meeting cannot be sustained in law.

Under such circumstances, the requisitionists are granted liberty to bring a fresh requisition in accordance with law. If the said requisition is brought, the prescribed authority shall reach the requisition to its logical conclusion upon complying with the

provisions of Sections 12(3) and 12(4) onwards of the West Bengal Panchayat Act, 1973, by strictly adhering to the time limit fixed by the statute under Section 12(10) of the said Act. The bar under Section 12(11) shall not apply as this is not a case that the requisition failed for want of quorum or could not be carried through.

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 requisition then the requisitionists shall be entitled to serve the same in her office through her secretary or assistant and if, such service is not accepted, then the requisitionists will be entitled to paste the same at the office of the Pradhan in addition to sending the same by registered post to the residence of the Pradhan.

The concerned District Magistrate is requested by this Court to enquire into the activities which have been going on in the Mahisasthali Gram Panchayat District-Murshidabad and also action of the prescribed authority which appears to be completely in violation of law and arbitrary.

With the above observations, this writ petition is disposed of.

There shall be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)