

Sl.2
4.3.2022
Court No.19
sn

W.P.A. No.3660 of 2022

Ajit Kumar Samanta
Vs.
The State of West Bengal & Ors.

Mr. Dibyendu Chatterjee
Mr. Reshmi Ghosh
Ms. Piyali Paul

... for the Petitioner.

Mr. L.M. Mahata
Mr. Susanta Pal
Ms. Rupsa Chakraborty

... for the State.

Mr. Kamalesh Bhattacharyya
Mr. Goutam Dey
Mr. Rajesh Naskar
Mr. Diptendu Sarkar
Mr. K. Kumar

..for the respondent nos.11-13

Mr. Amitava Mukherjee
Mr. P.R.Chakraborty
Mr. A. Banerjee

..for the respondent no.8

Yesterday, it was submitted that the meeting for removal of the Pradhan of Raghunathbari Gram Panchayat, District Purba Medinipur, has been fixed today (4.2.2022) at 12 noon and unless the matter is taken up, the writ petition would become infructuous. On the basis of such submissions, the matter has been fixed as item no.2.

Today, the matter is taken up for hearing.

The allegations are completely different to what was mentioned before this Court, for listing the matter on an urgent basis.

It appears from the records that the Pradhan has already been removed by majority vote on the basis of a 'No Confidence' motion. The motion was brought on February 8, 2022 pursuant to leave granted by this Court. Six members out of fifteen members had brought the motion. The prescribed authority fixed the meeting on February 21, 2022 for removal of the Pradhan. Neither the requisition nor the notice of the meeting had been challenged before this Court at the relevant point of time. The prescribed authority passed an order after the motion was carried and nine members out of fifteen members supported the motion of 'No Confidence' against the Pradhan and accordingly the order was passed. The Pradhan was removed from his office on the basis of 'No Confidence' motion. Necessary order to that effect was passed on February 21, 2022. The petitioner prays that the said order be set aside and cancelled. The petitioner is the removed Pradhan.

The petitioner now submits that the date for election of the new Pradhan has been fixed today. Neither the prescribed authority nor the requisitionists, accept such contention. No notice of

such election has been annexed. In any event, the petitioner who has been removed by majority votes cannot claim to be reinstated upon cancellation of the motion, which was carried by majority votes. The only ground of challenge in this petition is that during pendency of the application for disqualification/removal of three members under Section 11(1)(d) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act), the meeting for removal was held and those three members were wrongly allowed to vote.

It is submitted that the motion could not have been carried, upon taking into consideration the votes of those three members.

Heard the parties. Until and unless the three members are disqualified or removed by an order passed under the provisions of law, they can continue to exercise their functions and powers in the gram panchayat as members thereof. The court cannot pass the orders as prayed for, on the assumption that those three members would ultimately be removed by the Sub-Divisional Officer under Section 11(1)(d) of the West Bengal. This would amount to pre-judging the issue. The order of disqualification or removal if passed, would have a prospective effect. Moreover a proceeding to that effect has to be initiated and held,

upon observing the principles of natural justice. The application for removal of the member was filed after the prescribed authority fixed the meeting for removal of the Pradhan. Thus there is no illegality in the order of removal dated February 21, 2022 issued by the prescribed authority.

This is the third attempt of the requisitionists to remove the Pradhan on the ground of lack of confidence. The Pradhan who has lost confidence cannot remain in his office for a single day.

The writ petition needs no consideration.

The Pradhan failed to show any illegality either in the requisition or in the action of the prescribed authority and has wasted the time of the Court. He has been trying to hold on to the office somehow or the other. This writ petition is misconceived and frivolous.

The writ petition is dismissed with cost of Rs.5,000/-, to be paid to the treasury of the concerned Gram Panchayat office and the same will be kept in the contingency fund of the said office and used accordingly. The pending application be disposed of by the concerned Sub-Divisional officer, expeditiously.

All the parties are directed to act on the basis of the server copy of this order and/or learned advocate's communication.

(Shampa Sarkar, J.)