

S/L 10
14.3.2022
Court No.19
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W.P.A. No.4366 of 2022

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

Mr. Kamalesh Bhattacharyya
Mr. Aninda Bhattacharyya
... for the Petitioners

Mr. Tapas Kumar Mondal
Mr. Priya Dey
....for the Pradhan

Mr. Raja Saha
Mr. Biswabrata Basu Mallick
... for the State.

Serious allegations have been levelled against the Block Development Officer, Bhangar Block-II, who is the prescribed authority. The contention of the petitioners is that their requisition dated February 22, 2022 was not acted upon by the Block Development Officer, despite specific directions of this Court.

It is submitted by Mr. Bhattacharyya, learned advocate for the petitioners that on an earlier occasion as well, the requisition was not acted upon. The prescribed authority received the requisition on February 24, 2022 and had called the petitioners to attend the meeting for verification and satisfaction in terms of section 12(3) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act'). It is

alleged that the police authorities of Kolkata Leather Complex Police Station, stopped the petitioners on their way and intimated the petitioners that in view of the law and order problems, it would be beneficial for the petitioners not to attend the meeting in the office of the Block Development Officer. Thereafter, the Sub-Divisional Officer issued a notice calling for the said meeting in his office. The meeting was called on March 8, 2022. Thereafter, such notice of the meeting was withdrawn. Withdrawal of the notice of the meeting by the Sub Divisional Officer, was intimated to the petitioners by WhatsApp. The challenges are as follows:-

a) The prescribed authority called the meeting for recording his satisfaction, beyond five working days from the receipt of the motion. This itself amounted to violation of the provisions of law and violation of the order of this Court.

b) Such intentional laches on the part of the prescribed authority was granting more life to the Pradhan, who had otherwise lost confidence of the members.

c) By citing law and order problems, the authorities were intentionally not acting upon the motion brought by the requisitionists, only to support

the Pradhan and allow him to continue in the said post.

d) That the democratic rights of the petitioners have been curtailed, repeatedly.

Mr. Mondal, learned advocate for the Pradhan submits that the prayer of the petitioners for a direction upon the prescribed authority to call a meeting on the basis of the requisition dated February 22, 2022 cannot be allowed in view of the non-compliance of Sections 12(3) and 12(4) of the said Act.

Mr. Saha, learned advocate for the State respondents submits that there had been law and order problems and as a result, the police authorities had prevented the requisitionists from going to the office of the Block Development Officer. That the Sub Divisional Officer had issued a notice of the meeting, not in the capacity of the prescribed authority, but in view of the law and order problems, had decided to hold the satisfaction meeting in his office.

The Sub Divisional Officer has already withdrawn the notice of the meeting. This Court is not required to go into the question of legality of the notice of the Sub Divisional Officer.

However, this Court has taken the conduct of the prescribed authority to be an affront to the court.

His inability to discharge his function in accordance with law, raises questions about his competence.

It is submitted by Mr. Saha that both the Kolkata Leather Complex Police Station, under Bhangar police district and Kashipur police station under Baruipur, police district will control the law and order problems and grant adequate support if the meeting is held, after the Madhyamick examination is over. The submission of Mr. Saha seems to be reasonable. However, Mr. Saha has not been able to apprise this Court as to why the prescribed authority did not act in accordance with law.

The prescribed authority has to discharge his functions within the parameters of the provisions of Sections 12(3) and 12(4) of the said Act and the time line prescribed, must be obeyed by him, in letter and spirit.

Under such circumstances, as removal of the Pradhan by way of no confidence is a democratic right, the petitioners are granted liberty to bring a fresh motion in accordance with law. The previous requisition dated February 22, 2022 and subsequent notices issued by the prescribed authority as also Sub Divisional Officer are set aside and cancelled. Such liberty shall be exercised upon completion of Madhyamick Examination and the festival of Holi.

It is expected that the right of the requisitionists to bring the motion shall be preserved by the authorities and the Court shall not be called upon to decide a subsequent writ petition on the self-same allegations. In such an event, the Court will be constrained to make serious observations against failure of the prescribed authority to discharge his functions in accordance with law.

The requisitionists are granted liberty to bring a fresh requisition with immediate effect in accordance with the provisions of 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 Section 12(3) and 12(4) of the West Bengal Panchayat Act, 1973 in order to reach the requisition to its logical conclusion. The time period prescribed by the statute shall be strictly adhered to. The bar under Section 12(11) of the said Act shall not apply.

In the decision of *Ujjwal Kumar Singha v. State of W.B.* reported in 2017 SCC OnLine Cal 4636, it was held that:

“5. 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).

6. 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.”

This court has not expressed any opinion on the competence of the pradhan to continue in office as the issue shall be decided at the meeting, when called for.

The prescribed authority shall be entitled to call for police help if the situation so demands and the police authorities shall ensure and take prompt action so

that all police support is given to the parties involved in the meeting. Delay or laches on the part of the police authority shall be viewed strictly. 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 his office through his 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.

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.)