

S/L 4
22.03.2022
Court. No. 19
GB

W.P.A. 4906 of 2022

Jamuna Rabidas
VS
The State of West Bengal & Ors.

Mr. Amal Kumar Banerjee.

...for the Petitioner.

*Mr. Jahar Lal De,
Mr. Benazir Ahmed.*

...for the State.

*Mr. Ali Ahsan Alamgir,
Ms. Riya Das,
Ms. Rabia Khatoon.*

...for the Respondent No.5.

Affidavit-of-service filed in Court today be kept with the record.

The petitioner is the Pradhan of Mahisasthali Gram Panchayat, District – Murshidabad. The petitioner is aggrieved by the notice issued by the prescribed authority dated March 10, 2022 under Form-1E, Sub-Rule (2) of Rule 5B of the of the West Bengal Panchayat (Constitution) Rules, 1975 (hereinafter referred to as the ‘said Rules’).

The petitioner submits that the prescribed authority could not have initiated proceedings on the basis of a requisition, which was brought on March 7, 2022. It is submitted that the said requisition was brought within a period of six months from the rejection of the earlier requisition by the prescribed authority and as such, the meeting, which has been fixed on March 22, 2022 for removal of the Pradhan was barred by the provisions of Section 12(11) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the ‘said Act’).

Mr. De, learned senior Government advocate and Mr. Alamgir, learned advocate appearing on behalf of the requisitionists submit that the said requisition dated March 7, 2022 was brought pursuant to a liberty granted by this Court in WPA 3094 of 2022. It is further submitted by Mr. De that this Court had not only granted liberty to the requisitionists to bring a fresh motion by upholding their democratic right to remove the Pradhan in accordance with law, but had also specifically observed that the subsequent motion, if brought, would not be hit by the provisions of Section 12(11) of the said Act.

In the earlier round of litigation, the petitioner as the Pradhan had challenged the notice issued by the prescribed authority under Form-1E, Sub-Rule (2) of Rule 5B of the said Rules on several grounds. First, that the requisition was not in accordance with law. Second, that the satisfaction had not been recorded and clear seven days time had not been given by the prescribed authority to the members as provided under Section 12(3) of the said Act and lastly, the requisition which was acted upon by the prescribed authority had already been rejected by the prescribed authority by an order dated January 21, 2022, which had also been communicated to all the parties.

This Court had accepted the above contention of the writ petitioner and held that the prescribed authority could not have proceeded on the basis of the earlier requisition dated January 18, 2022, when by an order dated January 21, 2022, the same prescribed authority himself, had rejected

the requisition. Such rejection was also informed to one of the requisitionists. There was nothing on record which would show that the prescribed authority had either withdrawn, revoked or cancelled the order of rejection. Thus, this Court was of the view that when the members had been informed that the requisition had been rejected, subsequently the prescribed authority could not have acted upon the same requisition, which he had himself rejected. On such ground alone, the earlier proceedings were set aside by the Court and the petitioner was allowed to continue, with the liberty to the requisitionists to bring a fresh motion in accordance with law.

On the basis of the liberty granted by the Court, the requisition dated March 7, 2022 was brought and the notice for holding the meeting for removal of the Pradhan was issued. There are no further challenges to the said notice and the motion, except on the ground that the motion was brought within six months from the date of rejection of the earlier motion.

The law does not prohibit the members from bringing a motion of no confidence in close succession, if the earlier motion was not acted upon for some reason or other. Only if a motion is not carried in the meeting held for removal of the Pradhan or the meeting fails due to lack of quorum, a fresh motion cannot be brought, within one year from such meeting. This situation has not arisen in this case. This court had set aside the motion/requisition dated January 18, 2022

and all consequences which followed thereafter as the court held that there was no requisition in the eye of law.

The earlier motion dated January 18, 2022 was rejected by the prescribed authority. Thereafter, the prescribed authority acted on the said motion. Such action was challenged before the Court and the Court had set aside the motion dated January 18, 2022 as also the notice issued by the prescribed authority as all the outcomes of such notice, that is, the resolution passed on February 10, 2022. The meeting had not failed due to lack of quorum or because the motion was not carried by majority. The requisitionists were granted liberty to bring a fresh motion in accordance with law. In this case, Section 12(11) of the said Act, will not be a bar. The meeting shall be held as per schedule.

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 basis of the learned advocate's communication.

(Shampa Sarkar, J.)