

24.06.2022
Item No.19
Court No.6.
AB

M.A.T. 909 of 2022
With
I A CAN 1 of 2022

Rumi Bera (Giri)
Vs
The State of West Bengal & Others

Mr. Dilip Kumar Samanta,
Mr. Sanat Kumar Roy,
Mr. Abhishek Banerjee ...for the Appellant.

Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata...for the State.

Mr. Saibal Acharyya,
Mr. Pradip Paul...for the Respondent Nos.8 -14.

By consent of the parties, the appeal and the application are taken up for hearing together.

This is the second round of litigation. The present appellant had approached this Court earlier by filing WPA No.6566 of 2022 assailing a requisition notice for her removal as Pradhan of Baghasti Gram Panchayet. The learned Single Judge dismissed the writ petition. The appellant went up in appeal by filing MAT No.685 of 2022. A Coordinate Bench by an order dated May 5, 2022, allowed the appeal, albeit reluctantly, on the technical ground that the requisitionists had not mentioned their political affiliation or independent status in the requisition notice as is mandatorily required under Section 12(2) of the West Bengal Panchayat Act, 1973. This made

the notice incurably bad and hence, the notice and all actions taken pursuant to such notice were set aside by the Division Bench. The result was that the resolution for removal of the appellant as Pradhan that had already been taken by a majority of members at the meeting convened by the Prescribed Authority on the basis of the defective requisition notice, was also set aside. However, the Division Bench expressly granted liberty to the requisitionists to submit fresh requisitions for holding meeting for removal of the Pradhan.

It appears that subsequently the requisite number of members submitted a requisition notice dated June 1, 2022, for holding a meeting for removal of the Pradhan, who is the present appellant. Pursuant to such notice, the Prescribed Authority issued a notice fixing the meeting on June 21, 2022. These notices were challenged by the appellant by filing the present writ petition being WPA No.10659 of 2022.

The only point that the appellant argued before the learned Single Judge was that the bar under Section 12(11) of the West Bengal Panchayat Act, 1973 is attracted and hence, another meeting for removal of the Pradhan could not be held before the expiry of one year. The learned Single Judge by a detailed judgment dismissed the writ petition holding that none of the pre-requisites, which attract the bar under Section 12 (11) of the 1973 Act, is fulfilled in the present case and

the Prescribed Authority was well within its rights to convene the meeting for removal of the Pradhan on the basis of the requisition notice dated June 1, 2022. We understand that the meeting was held on June 21, 2022, and the present appellant has been removed as Pradhan.

Before us, Mr. Samanta, learned Counsel appearing for the appellant has argued two points. Firstly, he argued that Section 12(11) of the 1973 Act does not enumerate exhaustive grounds for the bar being attracted. Section 12(11) of the said Act reads as follows:

“If the motion is not carried by the majority of its existing members or the meeting cannot be held for want of quorum, no notice of any subsequent motion for the removal of the same office bearer shall be taken into cognizance within a period of one year from the date appointed for such meeting”.

Learned Counsel submitted that the Court has power to see if other incidental grounds are present which attract the bar under Section 12(11) of the 1973 Act. In this connection, learned Counsel relied on a decision of the Hon’ble Supreme Court in the case of ***Khargram Panchayat Samiti Vs State of West Bengal & Others*** reported in ***(1987) 3 SCC 82***. Mr. Samanta relied on paragraph 4 of the judgment. With great respect, we do not see how this judgment is relevant. What the Hon’ble Apex Court observed in paragraph 4 of the judgment is that the view taken by

the High Court in that case that although the Panchayat Samity was vested with the power to grant a licence for the holding of a haat or fair under Section 117 of the 1973 Act, it had no consequential or incidental power to specify a day for holding of such haat or fair, was erroneous. It is well accepted that the conferral of statutory powers on the local authorities must be construed as impliedly authorizing everything which could fairly and reasonably be regarded as incidental or consequential to the power itself. We see absolutely no relevance of the said judgment in the facts of the present case.

Learned Counsel also submitted that after the resolution removing the Pradhan was set aside in the earlier round of litigation by the Division Bench on May 5, 2022, the appellant was permitted to resume charge only on June 6, 2022. However, in the meantime, in hot haste, the requisition notice dated June 1, 2022 was issued by the requisitionists. This shows mala fide. Learned Counsel relied on a decision of the Hon'ble Supreme Court in the case of ***Inderpreet Singh Kahlon Vs State of Punjab*** reported in ***AIR 2006 SC 2571*** wherein the Hon'ble Supreme Court observed in the facts of that case that the impugned decision of the authority was also suspect on the ground of it being taken in undue haste. With respect, this decision also does not help the appellant to any extent. In the present case, no

decision was taken in undue haste. The requisitionists were well within their rights to issue the requisition notice on June 1, 2022. Indeed, express liberty had been granted to them by the Division Bench in the earlier round of litigation.

We do not see how Section 12(11) of the 1973 Act gets attracted in the aforesaid facts and circumstances. In our considered opinion, the question of the bar being attracted would arise only if a meeting is actually held and the resolution is defeated by a majority or the meeting has to be adjourned for lack of quorum. In the present case, none of these conditions are fulfilled. The appellant had been removed by an earlier resolution by a majority of members. Such resolution was set aside by the Division Bench in the earlier round of litigation only because the notice was found to be incurably defective and not in accordance with the statutory mandate. Liberty was granted to the requisitionists to issue fresh requisition notice in accordance with law. In our view, the fresh requisition notice dated June 1, 2022 was wholly in accordance with law and not in contravention of any provision of law. The learned Single Judge was absolutely right in holding that the bar under Section 12(11) of the Act is in no manner attracted in the present case.

There is absolutely no merit in this appeal and we consider this to be a frivolous appeal. We were

mind to impose costs on the appellant but have been dissuaded from doing so by the eloquence of learned Counsel appearing for the appellant.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

MAT No.909 of 2022 stands dismissed along with IA CAN 1 of 2022.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)