

28.02.2022
Sl. No.6
srm

W.P.A. No.14556 of 2021
Tarun Goswami
Versus
The State of West Bengal & Ors.

With

W.P.A. No. 19644 of 2021
Jaheda Khanam & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Kishore Dutta,
Mr. Gangadhar Das,
Mr. Tanmoy Chattopadhyay
...for the Petitioners.

Mr. Piyush Chaturbedi,
Mr. Tapas Singha Roy
...for the Respondent No.10/Pradhan.

Mr. Lalit Mohan Mahata,
Mr. Swapan Kumar Pal
...for the State-Respondents.

The above writ petitions involved similar causes of action and were tagged together. The writ petition being WPA No.14556 of 2021 has been de-tagged and dealt with separately and disposed of.

WPA No. 19644 of 2021

This writ petition was filed by the requisitionists/some of the members of the Kotwali gram panchayat.

The parties have filed their affidavits.

The petitioners, who are the requisitionists, preferred this writ petition with a prayer for a direction upon the

prescribed authority to convene a meeting under the provisions of Sections 12(3) and 12(4) of the West Bengal Panchayat Act, 1973 on the basis of the requisition dated November 26, 2021. The requisition was brought for removal of the Pradhan of Kotwali Gram Panchayat, District-Malda, who is continuing in office on the basis of an order passed by this Court. As the prescribed authority did not take any steps despite having received the requisition, the writ petition was moved. This Court was of the *prima facie* opinion that as WPA No.14556 of 2021 was pending for a final decision and the report of the CID, West Bengal was awaited with regard to the resignation of the Pradhan, no orders could be passed in this writ petition, at that stage.

By an order dated January 5, 2022, this Court held that the prayer in this writ petition for a direction upon the prescribed authority to hold a subsequent meeting for removal of the selfsame Pradhan on the ground of lack of confidence could not be entertained as the *bona fide* of the requisitionists had not been decided by the Court. There were allegations of forgery against the requisitionists.

The allegation of forgery made against the requisitionists/some of the members would become infructuous if the orders prayed for, in this writ petition, were granted.

Upon perusal of the report filed in WPA No.14556 of 2021, it appears that the Investigating Agency has negated the allegation of forgery. Thus, nothing further now remains to be decided with regard to the allegations of forgery in the earlier proceedings arising out of the resignation letter tendered by the Pradhan.

The Pradhan is continuing in his office on the basis of an order of this Court. The law permits removal of the Pradhan in accordance with law.

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."

However, the requisition dated November 26, 2021 cannot be sustained in law. The same is cancelled and set aside, as the requisition has lost its force due to lapse of time prescribed under the statute and the provisions of Sections 12(3), 12(4) and 12(10), clearly operate as a bar.

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 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.

The Court deprecates the practice of the Pradhan who is trying to hold on to his office by making false and frivolous allegations against the members and by abusing the process of Court.

This writ petition is, thus, disposed of.

There will be no order as to costs.

Parties and the prescribed authority are directed to act on the basis of the learned Advocates' communication or server copy of this order.

(Shampa Sarkar, J.)