

S/L 12
15.09.2022
Court. No. 19
GB

WPA 19147 of 2022

Kumud Ranjan Halder & Ors.
Vs.
The State of West Bengal & Ors.

*Mr. Uday Sankar Chattopadhyay,
Mr. Santanu Maji,
Ms. Snigdha Saha,
Mr. Pronay Basak.*

...for the Petitioners.

*Mr. Rajarshi Basu,
Mr. S.T. Mina.*

...for the State.

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

The petitioners are the requisitionists. They brought a requisition for removal of the Pradhan on June 15, 2022. The learned advocate for the petitioners prays for a direction upon the prescribed authority to issue a notice in terms of the West Bengal Panchayat (Constitution) Rules, 1975, and call a meeting for removal of the Pradhan, on the basis of the requisition.

The learned advocate for the State respondents submits that the notice is defective. That the entire time period prescribed by law, has expired and as such, the notice does not have any legal sanctity. He further submits that the party affiliation of the candidates have not been mentioned in the requisition notice and as such, the prescribed authority rightly did not act upon such notice.

Having heard the learned advocates for the respective parties, this Court agrees with Mr. Basu, learned advocate for the State respondents. The notice is defective, as it does not mention the party affiliation of the requisitionists. Moreover, the time period fixed under the law as per Sections 12(3) and (4) of the West Bengal Panchayat Act,

1973 (hereinafter referred to as the said Act), has also expired.

In my opinion, the provision for removing an elected representative such as the Pradhan is of fundamental importance, to ensure the democratic functioning of the institution as well as to ensure the transparency and accountability in the functions performed by the elected representatives. 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 is the essence of democratic republicanism. If the Pradhan has lost support of the majority of the members, he cannot remain in office for a single day.

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.”

Under such circumstances, for the reasons stated hereinabove, the requisition dated June 15, 2022 is set aside and cancelled.

The writ petition is disposed of, granting liberty to the requisitionists/members to bring a fresh requisition under 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 Sections 12(3) and 12(4) onwards of the said Act and reach the requisition to its logical conclusion. The bar under Section 12(11) of the said Act shall not be applicable. The time frame prescribed by the statute under Section 12(10) shall be adhered to by the prescribed authority.

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 in the office of the Pradhan in addition to the modes of service provided under Section 12(2) of the said Act.

This writ petition is, thus, disposed of.

There will be, however, no order as to costs.

All parties are directed to act on the basis of the learned advocate’s communication.

(Shampa Sarkar, J.)