

S/L 13
19.09.2022
Court. No. 19
GB

W.P.A. 21335 of 2022

Kimkim Begum
VS
The State of West Bengal & Ors.

*Mr. Kamalesh Bhattachaya,
Mr. Robiul Islam,
Mr. Raju Mondal,
Mr. S.A. Munshi,
Ms. Feroja Khatun.*

...for the Petitioner.

*Mr. Raja Ghosh,
Mr. Amit Kr. Ghosh.*

...for the State.

*Mr. Robilal Mitra,
Mr. Golam Mastafa,
Mr. T.S. Samanta,
Mr. Samirun Sardar.*

...for the Respondent Nos.7 to 18.

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

The petitioner is the existing Pradan of Sarangpur Gram panchayat. It is the contention of the petitioner that the requisition notice was not served upon her. The allegation of non-compliance of Section 12(2) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act') has been made.

Mr. Bhattacharya, learned advocate appearing on behalf of the petitioner submits that the Block Development Officer had not satisfied himself with regard to the service of the requisition upon the petitioner and also with regard to the consensus amongst the requisitionists while bringing the requisition. The allegation is, that some alleged requisitionists did not even sign on the requisition.

Mr. Maitra, learned senior advocate, appearing on behalf of the requisitionists has handed over two envelopes, which have returned to the sender. Service at the office of the Pradhan was refused. An endorsement to that effect has been made by one S. Dutta, on September 1, 2022, who is presumably the postal peon. It also appears that the service at the residence was also not accepted, as the petitioner was not available. Such endorsement has also been made. The originals of both the envelopes are taken on record. The postal receipts indicate that the authority had attempted to serve the petitioner both at the residence and at the office of the Gram Panchayat by registered post. The first allegation fails.

The other allegation of Mr. Bhattacharya with regard to non-compliance of Section 12(3) of the said Act is also not substantiated. The notice impugned before this Court under Form-1E, Sub-Rule 2 of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975, indicates that the notice was issued on September 7, 2022, that is, within five working days from the receipt thereof. The meeting for removal of the Pradhan, has been fixed on September 21, 2022 which is also within fifteen working days from the date of receipt of the notice.

The allegation, that some of the requisitionists had actually not signed the requisition, need not be gone into. If the said requisitionists are actually with the Pradhan and do not want to remove the Pradhan, they are at liberty either not to attend the meeting or not to vote at the meeting in

favour of the motion or to support the Pradhan, during the meeting.

Under such circumstances, the writ petition is disposed of without any orders. The meeting will be held as per procedure, on the scheduled date and time.

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.”

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 server copy of this order.

(Shampa Sarkar, J.)