

29.09.2022
Court No. 19
Item no.16
CP

W.P.A. No. 22574 of 2022

Tapan Shit

Vs.

The State of West Bengal & Ors.

Mr. Uday Narayan Betal

Mr. Bhaskar Hutait

...for the petitioner.

Mr. Raja Saha

Mr. S.P. Lahiri

....for the State.

Mr. Supratim Dhar

Mr. A. B. Mahata

...for the respondent nos. 11 to 18.

Mr. Mrityunjoy Chatterjee

Mr. Debapriya Majumder

Mr. Dilip Kr. Shyamal

....for the respondent nos. 7 to 10.

The writ petition has been filed for cancellation of the requisition which was brought by the respondent nos. 11 to 18 for removal of the petitioner from the post of Pradhan, Beliaberah No. 5 Gram Panchayat, District – Jhargram as also for cancellation of the notice dated September 20, 2022 issued by the prescribed authority. According to the petitioner, the requisition contains a stigma and the same is also undated. Thus, no action can be taken on the basis of such requisition. A prayer has been made for cancellation of the same.

Mr. Chatterjee, learned advocate for the members, submits that the requisition cannot be acted upon and supports the case of the petitioner.

It appears that there are allegations of nepotism, non-cooperation, inability and recklessness against the Pradhan. Such requisition cannot be sustained in the eye of law.

Mr. Dhar, learned advocate for the requisitionists, submits fairly that opportunity may be granted to the requisitionists to bring a fresh requisition.

I have heard the learned Advocate for the respective parties.

In the decision of Ujjal Mondal vs. State of West Bengal, reported in 2013 (1) CHN (CAL) 458, a Division Bench of this Court had held that requisition notice/no confidence motion was entertainable only when there was no foundation for bringing the motion. Paragraph 24 of the said decision is quoted below:

“24. Having regard to section 101 of the said Act, we are of the view that a ‘no confidence motion’ is entertainable for removal of Pradhan where there should not be any ground or foundation of bringing ‘no confidence motion’ and if ‘no confidence motion’ is carried on that ground, it will invite civil consequence or evil consequence to the Office Bearers relating to his political career

naturally and as such, natural justice principle will have play in the matter, thereby a breach of Article 14 of the Constitution of India.”

This court in the matter of Sourendra Nath Das v. The State of West Bengal & ors. (WPA 11903 of 2021) held as follows:

“Having considered the submissions made by the petitioner and the learned advocates for the prescribed authority, this court is of the opinion that a reading of the requisition notice (which is in bengali), as a whole, would indicate that in the opinion of the members, the pradhan has proved to be incompetent as he did not perform his duties and developmental works, causing deprivation to the people of the locality from the benefits all governmental projects, and thus the members had lost confidence in their leader and wanted his removal.

The effect of such a requisition is that the pradhan being incompetent to perform his duties had caused suffering to the people and would be consequently removed as the members lost confidence on account of such non-performance. The pradhan has a career. If the requisition is allowed to stand, it would be a reflection of his inability and incompetence in performing his duties as a leader of the gram panchayat. This is the foundation of the requisition. The ‘no confidence’ is based on the allegation of incompetence and inability of the pradhan and the suffering caused to the people in the locality due to such incompetence. This is not a simple requisition for removal of the pradhan. The removal if carried through in the meeting will carry a stigma that the pradhan was removed as he failed to perform his duties and developmental works.

In my opinion, the decision of Ujjal Mondal (supra) applies. Even if the allegations are not as serious as misappropriation or misconduct, incapacity or incompetence of a

political leader to perform works in the locality which has cause disillusionment, unhappiness and suffering to the people in the locality are allegations which can be viewed with seriousness. The future prospects of the pradhan might be jeopardized. He will also not get a chance to explain his conduct. Thus, the requisition notice and subsequent notice are set aside for the reasons stated hereinabove.”

The Pradhan can be removed by the members if they have lost confidence in him, by bringing a requisition with the intention to remove. As soon as there are allegations of failure of duty, incompetence to conduct developmental work in the locality, nepotism, recklessness etc., the same becomes stigmatic. The Pradhan is a politically elected representative of the people. Any allegation of such nature, may have a negative effect on his future prospects and his credibility as a member of the Panchayat, may be affected. The people in the locality voted for him with some expectations and had reposed faith in his capability. He was elected as the Pradhan by the members. He was their leader. The majority of the members who do not want him to continue as such, have decided to remove him by bringing a motion of ‘no confidence’. The process of removal for lack of confidence should not be based on allegations of incompetence, corruption or failure of the said elected member. The elected member does not get an opportunity to explain himself or justify

his cause and can be removed from office automatically, by majority votes. No one can be condemned unheard. If the basis of no confidence are allegations against the Pradhan, it shall have a serious impact on his reputation in the locality and in the minds of people who had elected the petitioner into power. Thus, a requisition for removal on account of lack of confidence, should not contain any kind of allegation against the Pradhan.

Here, the foundation of the 'no confidence' and the intention to remove the Pradhan, are based on allegations of nepotism, non-cooperation, inability and recklessness.

Thus, in my view, the requisition cannot be sustained in law on the ground that there are some allegations against the Pradhan which operate as a stigma.

Under such circumstances, the requisition as also the notice of the meeting for removal dated September 20, 2022, are set aside and cancelled.

The requisitionists are granted liberty to bring a fresh requisition with immediate effect in accordance with the provisions of 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 Section 12(3) and 12(4) of the West Bengal Panchayat Act, 1973 in order to reach

the requisition to its logical conclusion. The time period prescribed by the statute shall be strictly adhered to. The bar under Section 12(11) of the said Act shall not apply.

This court has not expressed any opinion on the competence of the Pradhan to continue in office and the issue shall be decided at the meeting, to be scheduled by the prescribed authority, upon receipt of the requisition.

The prescribed authority shall be entitled to call for police help if the situation so demands and the police authorities shall ensure and take prompt action. It is also made clear that if the Pradhan tries to evade service of the requisition notice, 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.

With the above observations, this writ petition is disposed of.

There shall 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.)