

S/L 11
23.11.2022
Court. No. 19
GB/srm

W.P.A. 25688 of 2022

Mantu Sarkar & Ors.
VS
The State of West Bengal & Ors.

*Mr. Gangadhar Das,
Mr. Tanmoy Chattopadhyay.*

...for the Petitioners.

*Ms. Sima Adhikari,
Ms. Kakali Naskar.*

...for the State.

*Sk. Md. Galib,
Mr. Swarvanu Saha.*

...for the Respondent Nos.7 & 9.

The petitioners claim to be the majority members of Mahishbathani Gram Panchayat. They are aggrieved by the inaction on the part of the Commissioner of Panchayats and Rural Development, Government of West Bengal. The prescribed authority under Sections 213(1) and 213(2) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act') failed to dispose of the representation filed under Section 213(1) of the said Act.

With the allegations that the Pradhan was not discharging his duties as required by law, the petitioners approached the prescribed authority. It was the specific contention of the petitioners that the Pradhan had failed to carry out the provisions of the Act. Meetings as per Section 16A of the said Act of the gram sangsad were not called. Budget meetings were not held and the overall duties under law were not performed.

These disputed issues cannot be decided by the Court. The Court cannot express any opinion on the genuineness of

the allegations made in the said representation. The prescribed authority is required by law to dispose of the same within a reasonable time, upon granting an opportunity of hearing to the petitioners as also to the Pradhan against whom the allegations have been made.

Mr. Das, learned advocate appearing on behalf of the petitioners submits that the prescribed authority was duty bound to dispose of the representation filed against the Pradhan. He further submits that as the Pradhan was elected sometime in October 2021, the majority of the members could not have taken any other step seeking her removal in view of the embargo in Section 12(12) of the said Act.

Mr. Galib, learned advocate appearing on behalf of the Pradhan submits that the allegations were misconceived. In view of the embargo in Section 12(12) of the said Act, the members have thought of a circuitous manner to remove the Pradhan by filing a false complaint. He further submits that Section 213 shall not have an overriding effect over the provisions of Section 12(12) of the said Act. As the Pradhan had not completed two years and six months in office, the representation filed under Section 213 could not be considered by the authority.

Heard the parties. Section 213 of the said Act deals with the provision for removal of Pradhan and Upa-Pradhan of a gram panchayat. The section provides that notwithstanding anything contained in Sub-Section 3 of Section 9 of the said Act, the prescribed authority, by an order in writing, may remove any member or office bearer of

a gram panchayat, if in the opinion of the prescribed authority the said office bearer or member had wilfully omitted or refused to carry out the provisions of the Act or the Rules or orders made thereunder or had abused the powers vested in him/her. Thus, the prescribed authority has been empowered to remove a Pradhan on the grounds stated in the said section.

The gazette notification dated July 1, 2010, issued by the department of Panchayats and Rural Development designates the Commissioner, Panchayats and Rural Development, Government of West Bengal as the prescribed authority in this regard.

The section has been incorporated to remove the Pradhan or the Upa-Pradhan or other office bearers or members, notwithstanding the provisions of Section 9(3). Section 9(3) provides that the tenure in the office of any Pradhan would be for five years. Notwithstanding such tenure, a Pradhan may be removed if the prescribed authority comes to a finding that the allegations against the Pradhan of either abusing his powers or not carrying out the provisions of the Act and the Rules were proven to be correct. The Pradhan could be removed even before the tenure was over.

Section 12 however gives an opportunity to the members to remove the Pradhan and Upa-Pradhan by bringing a motion of 'no confidence'. There need not be allegations against the pradhan. A Pradhan can be removed if the majority members lose confidence in the Pradhan.

Section 12(12) provides that no meeting for removal of the Pradhan would be convened under the provision of Section 12(1) within a period of two and a half years from the date of election of the Pradhan. This embargo is restricted to meetings to be held pursuant to motions of 'no confidence' brought by the members under Sections 12(1) of the same Act.

The provision of Section 213 is distinct and separate. The legislature has incorporated the provisions of Section 213 to take care of a situation where an office bearer may be removed before his term ended if there were allegations against him/her. The embargo in Section 12(12) of the said Act was brought in to prevent frivolous motions of the members of the gram panchayat against the Pradhan and Upa-Pradhan and to prevent the Pradhan from being unjustifiably dominated by the members soon after being elected. Section 12(12) does not have any application in this case and as such the contention of Mr. Galib is not accepted.

The Commissioner being the prescribed authority is directed to dispose of the representation filed by the petitioner in accordance with law, upon granting an opportunity of hearing to the petitioner, the Pradhan and any other person or member whose presence or statements may be necessary for complete adjudication of the issues involved and in order to do substantial justice. The application shall be disposed of within a period of six weeks from the date of receipt of the written objection of the Pradhan.

Needless to mention, this Court has not expressed any opinion on the factual allegations which have been levelled against the Pradhan. The Pradhan shall be entitled to file a written objection to the representation within a period of 10 days from date. A reasoned order shall be passed and communicated to the parties.

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.)