

Item No.5
21.03.2023
Court. No. 19
GB

WPA 5543 of 2023

Raj Kumar Gupta
Vs
The State of West Bengal & Ors.

*Mr. Mritunjoy Chatterjee,
Mr. Ravi Ranjan Kumar*
...for the Petitioner.

*Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata*
...for the State.

*Mr. Gangadhar Das,
Mr. Soumya Ray,
Mr. Tanmoy Chattopadhyay*
...for the Respondent No.9.

Mr. Victor Chatterjee.
...for the Respondent Nos.10 to 17.

The Block Development Officer has failed and neglected to discharge his duties in terms of the provisions of the West Bengal Panchayat Act, 1973 and also has failed to comply with the order of this Court dated January 5, 2023.

The respondent no.9 was reinstated as the Pradhan as the motion seeking her removal was set aside on a technical ground that the earlier requisition by which she was removed, was defective and stigmatic.

Leave was granted to the requisitionists to bring fresh requisition in exercise of their democratic right to remove the Pradhan, by a vote of no confidence.

The requisitionists brought a motion sometime in February 2023 which was allegedly received by the Block Development Officer on February 13, 2023. On February 16, 2023, a notice was issued by the prescribed authority fixing March 2, 2023 as the date of the meeting for removal of the

Pradhan. On March 1, 2023, the meeting was cancelled by the prescribed authority as police force was not available. Further date was fixed on March 17, 2023 the meeting could not be held as the presiding officer fell ill. In the meantime, the time period expired. The statutory period of 30 days within which such meeting was to be held and steps were to be taken, had lapsed due to inaction on the part of the prescribed authority.

Although the learned advocate for the petitioner relies on the decision of *Rasida Bibi versus The State of West Bengal* reported in 2022 (1) CLJ (Cal) 448, in which the Hon'ble Division Bench held that there was no scope to read Section 12(10) in isolation from Section 12(4) and time limit indicated in Section 12(10) would be controlled by the operation of Section 12(4), this Court is of the view that the time limit cannot be extended by taking recourse to *Rasida Bibi* (Supra). The earlier meeting was not adjourned, but cancelled. Had the prescribed authority adjourned the earlier meetings fixed as per the requisition, in that event, the time period could have been extended by recording that the situation was beyond the control of the prescribed authority to hold the meeting within the time limit prescribed.

Under such circumstances, the writ petition is disposed of with a liberty to the petitioner to bring a fresh requisition in accordance with law. If such requisition is brought, the same shall be dealt with in accordance with the provisions of Sections 12(2), 12(3) and 12(4) of the West

Bengal Panchayat Act, 1973. The time limit prescribed under Section 12(10) shall be adhered to by the prescribed authority and necessary steps shall be taken.

If the Pradhan is not available to accept a copy of the requisition, the same shall be served in the office and at the residence by registered post and shall also be affixed at conspicuous places in the office and at the residence. The eligibility of the Pradhan or the controversy between the parties, are not relevant in this case and are not gone into. The law allows the members to remove the Pradhan by a vote of no confidence and they are entitled to exercise their democratic right.

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 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."

The Joint Block Development Officer is before the Court and undertakes that the prescribed authority will comply with the provisions of law if any requisition is brought by the requisitionists and found to be in order.

This order be served in the office of the Sub-Divisional Officer and the District Magistrate, Howrah who shall ensure that the Block Development Officer performs his duty more sincerely. It is also directed that the police authorities should co-operate with the prescribed authority.

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.)