

S/L J/1
16.2.2023
Court. No. 19
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In the Circuit Bench at Jalpaiguri

WPA 401 of 2023

Gouri Thakur (Machari)
Vs.
The State of West Bengal & Ors.

Mr. Sarwar Jahan
Ms. Juin Duta Chakraborty
...for the Petitioner.
Md. Galib
Ms. Subhra Nag
...for the State.

The affidavit of service is taken on record. It appears that the respondents have been served by courier and speed post.

The allegation of non-compliance of Section 12 of the West Bengal Panchayat Act, 1973 is not accepted by this Court. Although the foundation of the writ petition is non-compliance of the provisions of Sections 12(3) and 12(4) of the West Bengal Panchayat Act, 1973, this Court is of the view that the said challenges are contrary to the records produced by Mr. Galib, learned advocate for the State. The detailed communication of the prescribed authority is taken on record.

The only issue which survives to be decided in the writ petition is whether the requisition is stigmatic. The point of stigma has been raised in ground No. - V.

The requisition is in Bengali. The foundation of such requisition, if translated to English would indicate that the requisitionists had a complain that the petitioner had

continuously acted contrary to the decision of the party and had violated the policy decisions. The petitioner, as the Upa-Pradhan had failed to perform developmental works. In certain areas, the developmental works had been completely stalled due to the inefficiency of the petitioner.

It has been settled by several decisions of this Court that foundation of a requisition cannot be stigmatic. There cannot be any allegation against the person who is sought to be removed by a vote of “no confidence”. Removal of the office bearers by the members of the gram panchayat on the ground of lack of confidence, is a democratic process. Such right to remove is exercised when the members who had elected their leader from amongst themselves, lose their confidence in their leader.

Yet, when there are allegations of non-performance, non-compliance, failure to execute developmental projects in the area etc., the requisition becomes stigmatic. The foundation of such requisition is not lack of confidence but allegations meaning thereby, the Upa-Pradhan was unfit for the job and was not discharging her duties for the betterment of the locality and in accordance with the provisions of the Act. These allegations cannot be controverted by the petitioner. The person against whom requisition has been brought by other members will not be afforded an opportunity of being heard. Removal of the Upa-Pradhan will be done by majority vote and the office bearer

does not have a right of audience. The allegations become a part of record and remain uncontroverted.

On various occasions, this court had held that if the basis of the requisition and/or foundation of the lack of confidence of the members on their leader/Upa-Pradhan were allegations, such requisition could not be acted upon. In this case the allegations are of non-performance, failure to execute developmental projects in the area and non-cooperation.

In the decision of Ujjal Mondal vs. State of West Bengal, reported in 2013 (1) CHN (CAL) 458, a Division Bench of this court 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 Prodhan 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 upa-pradhan can be removed by the requisitionists if they have lost confidence in her by bringing a requisition with the intention to remove. As soon as there are allegations of non-cooperation, non-performance and failure to execute developmental projects in the area, the requisition becomes stigmatic. As the upa-pradhan is a politically elected representative of the people, any allegation of such nature may have a negative effect on her future prospects and her credibility as a member of the gram panchayat is affected.

Here, the foundation of the ‘no confidence’ and the intention to remove the upa-Pradhan, is the Upa-Pradhan’s failure to implement developmental schemes, non-cooperation and disservice to the locality.

Thus, having considered the requisition notice as a whole, it indicates that the ground for removal of the Upa-Pradhan is not only lack of confidence but also non-performance, failure to execute developmental projects in the area etc. Such allegations may also enrage and turn the people in the locality, against the Upa-Pradhan.

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

Under such circumstances, the requisition dated January 30, 2023 and all actions/notices are set aside and quashed. The notice of the meeting issued on February 3, 2023 fixing the date of the meeting on February 17, 2023 is also quashed. The meeting shall not be held on the date fixed by the prescribed authority.

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. The requisition shall be served upon the Upa-Pradhan and also pasted or affixed in the panchayat office.

This court has not expressed any opinion on the competence of the Upa-Pradhan to continue in office as the issue shall be decided at the meeting, when called for.

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 so that all police support is given to the parties involved in the meeting.

With the above observations, this writ petition is disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)