

S/L 2
06.07.2021
Court. No. 19
GB

W.P.A. 10911 of 2021

Gour Chandra Mandal
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Bikash Ranjan Bhattacharya,
Mr. Billwadal Bhattacharya,
Mr. Debanik Banerjee,
Mr. Anish Kumar Mukherjee,
Mr. Amrit Sinha.

...for the Petitioner.

Mr. Saptansu Basu,
Mr. Sanjay Basu,
Mr. Amit Kumar Nag,
Mr. Piyush Agrawal,
Ms. Utsha Dasgupta.

...for the Respondent Nos. 9, 10, 11, 13,
14, 15, 16, 17, 18, 20, 22, 23, 26, 29, 31,
32, 34, 35, 36, 37, 38, 39, 40, 42.

Mr. Lalit Mohan Mahata,
Mr. Sufi Kamal.

...for the Zilla Parishad.

Mr. Pantu Deb Roy.

...for the State.

The writ petition has been filed challenging the notices being Annexure P-2 and P-3 to the writ petition.

The notice at page 22, Annexure P-2 is a motion in writing of more than one-third of the members of the Malda Zilla Parishad seeking a special requisition meeting for removal of the Sabhadhipati (the petitioner herein) on account of no confidence. The notice at page 26, Annexure P-3 was issued under Form 1E by the prescribed authority and

Divisional Commissioner, Malda Division, Malda. The agenda to be considered is the motion for removal of the Sabhadhipati due to lack of confidence. The date of the meeting is July 8, 2021. The time of the meeting is 12.30 p.m.

The first contention of Mr. Bhattacharya, learned senior advocate, appearing on behalf of the petitioner is that the identity of the persons who signed the motion calling for a requisition meeting on the above agenda were doubtful. He next submits that during the pandemic situation, there could not be any grave urgency in calling for such a meeting. Thirdly, Mr. Bhattacharya submits that the prescribed authority did not follow the provisions of Section 146(3). According to Mr. Bhattacharya, the prescribed authority could not have issued a notice in Form 1E without having applied his mind on the subject and the notice itself reflects non-application of mind.

Mr. Basu, learned senior advocate appearing on behalf of the members/signatories submits that all the signatories have put their signatures and their designation and party affiliations are also on record. He next submits that in case the petitioner alleges forgery or impersonation, he would have to file an appropriate complaint before the police authorities. He further submits that the Hon'ble Apex Court as also this Court have time and again settled the principle that the Sabhadhipati having been elected by following a democratic process, democracy demanded that such a person in case he did not enjoy the confidence of the members,

should step down. This according to Mr. Basu, is the hallmark of democracy in our country. He further submits that the Court under judicial review would be empowered to set aside such notices when there violations of the statutory provisions and not otherwise.

Mr. Deb Roy, Mr. Mahata and Mr. Sufi Kamal learned advocates appearing on behalf of the State respondents and Zilla Parishad respectively, also submit that the law has been settled by the Hon'ble Apex Court in the matter of ***Usha Bharti versus State of U.P & Ors.*** reported in ***AIR 2014 SC 1686***. Mr. Mahata has also placed reliance on a decision of this Court in the matter of ***Parimal Sarkar versus The State of West Bengal & Ors.*** reported in ***(2017) 2 CHN 103***.

Having considered the rival contentions of the parties, this Court in judicial review should not investigate into the genuineness of the signatures of the persons, who have signed the notice of motion. Party affiliations of at least 20 of such candidates has also been indicated. Their booth numbers have been given. The designations have been provided. Thus, I do not find any reason not to accept that these are genuine signatures. Moreover, it is only a doubt expressed but no specific instances have been given by the petitioner as to who were the alleged fictitious persons. They have not been identified.

The number of signatories is more than one-third of the existing members of the Zilla Parishad. At the time of

voting on the date fixed, the members voting shall carry with them their identity and if there is any doubt with regard to their identity or otherwise, the competent authority can proceed in accordance with law against such persons including debarring them from casting their vote. Next, contention is non-compliances of the provisions of Section 146(3). In the notice issued by the prescribed authority calling for the meeting, I do not find that the provisions of Section 146(2) has not been complied with. Thus, the prescribed authority was within his power under Sections 146(3) and (4) to issue the notice being Annexure P-3 to the writ petition dated June 21, 2021. In the decision of Usha Bharti (supra) the Hon'ble Apex Court held that an institution (read as "Zilla Parishad") must run on democratic principles and all persons heading such public bodies could continue to hold office provided they enjoyed the confidence of the persons who comprise such bodies. This is the essence of the democratic republicanism.

Since, the Sabhadhipati is an elected post, he has to accept any decision that may be taken in a democratic process. In a democracy, the voice of the majority should be honoured. Otherwise, the entire function of the democracy would collapse. In this case, as majority of the members have requisitioned a meeting for removal of the petitioner on the ground of lack of confidence on the Sabhadhipati. I am not inclined to set aside the notice and the process initiated, as the petitioner has failed to show statutory non-compliances

and any other illegality. The meeting shall be held upon observing all covid norms.

Under such circumstances, the writ petition is disposed of without any orders.

This Court has not expressed any opinion as to the competence of the Sabhadhipati.

Accordingly, the writ petition is disposed of.

There will be however no order as to costs.

All parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)