
(2012) 02 CAL CK 0058

In the Calcutta High Court

Case No : Mat No. 938 of 2011, Can No. 5987 of 2011

Anarul Haque

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

West Bengal Panchayat Act, 1973 — Section 12, 12(3), 16, 16(1), 16(2)

Citation : (2012) 02 CAL CK 0058

Hon'ble Judges : Shukla Kabir (Sinha), J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Kallol Bose and Mr. Kushal Kumar Mukherjee, for the Appellant;
Ashok Kumar Chakrabarty, Anirban Dutta, For the State and Mr. Kazi Sajjad Alam
For the respondent No. 7 to 9, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—Kendua Gram Panchayat under the District of Birbhum had thirteen elected members.

2. The appellant asserted that out of thirteen members, six belonged to TMC and six belonged to CPI(M) and the rest one belonged to Congress being the appellant above named. According to the appellant, he was elected Pradhan with the support of Trinomool Congress. On May 30, 2011, seven out of thirteen members expressed their no confidence on the appellant. They communicated their decision in writing to the appellant with a copy submitted to the Block Development Officer, Suri-II being the Executive Officer of the concerned Panchayat. On receipt of the said notice, the Block Development Officer issued a notice u/s 12(3) of the West Bengal Panchayat Act, 1973, inter alia, asking the requisitionists to appear before him for hearing u/s 12(3) of the said Act of 1973. On the very next day on June 1, 2011 all the seven members appeared before him and expressed their no confidence in writing before the concerned Block Development Officer. Being satisfied with the requisition being in order the Block Development Officer convened a meeting of the Panchayat on June 14, 2011 for

consideration of the No Confidence Motion. Accordingly, a meeting was held. Three CPI(M) members voted in favour of the resolution being Baban Kora, Satu Ankur and Chinta Birbangsi who by subsequent letters written to the Block Development Officer informed him that by mistake they described them as TMC candidate in the ballot paper. They however, stuck to their decision to vote in favour of the motion. They informed the Block Development Officer that their party did not issue any whip to vote either in favour or against the motion. On the appointed day eight members attended the meeting where seven voted in favour of the resolution and the rest one being the appellant did not vote. On about June 20, 2011 the appellant filed a writ petition inter alia challenging his removal. The learned single Judge declined to interfere. Hence, this appeal.

3. We find from the prayers of the petition that the challenge was restricted to the notice convening the meeting and not the decision. The Block Development Officer asked for explanation from the respondent nos. 7, 8 and 9 as to how they could change the affiliation of the political party by crossing the floor. All the three members clarified the position by their letters dated June 16, 2011. They contended in their respective letters that through inadvertence they described themselves as TMC candidate. However the situation did not change as they stuck to their decision to support the resolution. They asserted that their party did not issue any whip to vote either in favour or against the motion.

4. On June 17, 2011 the appellant was asked to hand over the charges to Upa-Pradhan. The appellant however did not comply with the said decision. On June 29, 2011 the Block Development Officer issued a notice convening a meeting of the Panchayat to elect the new Pradhan. On July 8, 2011 Nabaranjan Ghosh was elected as Pradhan. On July 11, 2011 Shri Ghosh took charge as Pradhan. The appellant raised a question of law as to whether Section 12, could be applied and set on motion without being assisted by Section 16. According to Mr. Bose, the Block Development Officer acted in undue haste without giving the appellant appropriate opportunity to prove his confidence in the meeting of the Panchayat. In course of hearing we asked the appellant to prove his majority before us. Accordingly, he filed a supplementary affidavit annexing separate affidavits from seven members reposing confidence on him including himself. The said list included one Ananda Sarkar who subsequently lodged a complaint with the Police Station that he was compelled to sign the said affidavit being coerced by the appellant. The respondent nos. 7, 8 and 9 filed Affidavit-in-Opposition wherefrom we find that seven members including the said respondent signed declaration before the Notary Public reposing confidence on the newly elected Pradhan, Nabaranjan Ghosh.

5. Mr. Anirban Dutta, learned counsel appearing for the State being led by Mr. Ashok Kumar Chakrabarty, learned senior advocate while opposing the appeal contended before us that the appellant challenged the notice of convening the meeting of the Panchayat. He did not challenge the subsequent actions as referred to above. According to Mr. Dutta, the notice spent its force once the

meeting was held and a decision was taken, hence the appellant was to challenge the decision. In absence of such challenge the writ petition was infructuous on the day when it was moved. The learned Judge rightly declined to interfere. Mr. Dutta further contended that the respondents participated in the process. Once he found himself out of power and the resolution was passed by majority of the members his challenge to the notice was of no consequence.

6. Mr. Kazi Sajjad Ali, learned counsel appearing for the respondent nos.7, 8 and 9 adopted the submissions made by Mr. Dutta. He referred to the Affidavit-in-Opposition filed by the said respondents, particularly, the complaint made by Shri Ananda Sarkar before the Police.

7. The earlier provision of Section 12, stood repealed by substitution of the new Section vide the West Bengal Panchayat (Amendment) Act, 2010 that came into existence on May 13, 2010. Under the new provision Pradhan and Upa-Pradhan could be removed from office any time by a resolution carried by majority. Section 16 prescribed the procedure for holding of meeting of the Gram Panchayat. As per the proviso to Section 16(1), Pradhan was required to convene a requisition meeting within fifteen days in case such requisition is made by 1/3rd of the members subject to a minimum of three members and in case of default the members could convene the meeting themselves after giving notice to the prescribed authority. With regard to conduct of the meeting Section 16(2) would provide that in absence of Pradhan Upa-Pradhan would conduct the meeting whereas Section 12 proviso would provide that the person against whom the No Confidence Motion was brought should not preside over the meeting. Such co-relation between these two Sections are specific. However, upon reading of both the provisions we are of the view that the Block Development Officer after being satisfied about the strength of the requisitionist should have either waited for the requisite period as prescribed u/s 16(1) proviso or asked the concerned Pradhan to call a meeting that he did not do. On that score, we feel that the contentions of Mr. Bose sounds logic. We however look at the problem from a different angle. The scheme of the Act if taken together and given a combined reading, would suggest a democratic form of governance where majority rule would prevail. Admittedly, the appellant lost faith of majority of the members. Once he lacked faith and confidence of the majority of the members he had no moral or legal right to remain as Pradhan. The Block Development Officer erred in taking up upon himself to convene the meeting without waiting for the reaction of the Pradhan. He was in little haste. We however feel that it was an error of judgment on the part of the Block Development Officer that would however not change the situation since the appellant participated in the process where by an absolute majority he was removed. The only objection which the appellant took in the meeting as we find from the xerox copy of the minutes of the meeting, would relate to the floor crossing of the respondent nos.7, 8 and 9. However, respondent nos.7, 8 and 9 later on clarified their position and asserted that they did not cross the floor and remained as CPI(M) candidate. We thus do not find any illegality committed on that score. Although,

we have upheld the contention of Mr. Bose to the extent referred to above, we are unable to extend any relief to the appellant in view of his failure to muster majority support.

8. The appeal fails and is hereby dismissed.

9. There would be no order as to costs.

10. Urgent Photostat copy will be given to the parties, if applied for.

Shukla Kabir (Sinha), J.

11. I agree.