

(2015) 02 CAL CK 0063
In the Calcutta High Court

Case No : Writ Petition Nos. 26758 and 27279 (W) of 2014

Astami Biswas (Dey) and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:

West Bengal Panchayat Act, 1973 — Section 12, 16, 16(1), 4

Citation : AIR 2015 Cal 158 : (2015) 3 CHN 270 : (2015) 4 WBLR 989

Hon'ble Judges : Debasish Kar Gupta, J.

Bench : Single Bench

Advocate : Rabilal Moitra, Senior Advocate, P. Chaturvedi and Bhagbat Choudhuri, for the Appellant; Biswajit De, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Debasish Kar Gupta, J.—The first writ application is directed against a motion dated September 5, 2014 initiated by ten (10) elected members (requisitionists) out of total eighteen (18) for removal of the petitioner from the office of Prodhan of Rampur-I Gram Panchyat, District-Cooch Bihar on the ground of lack of confidence on the petitioner and a notice of meeting on motion issued by the respondent No. 4 with a forwarding letter under his memo No. 3050 (15) dated September 9, 2014 fixing September 19, 2014 for a special general meeting of the above Gram Panchayat for moving the above motion for removal/lack of confidence against the petitioner from the above office.

2. It appears from the statements made in affidavit-in-opposition to the above writ application filed by the State-Respondents that during the pendency of this writ application on September 19, 2014 a resolution was adopted in the special general meeting of the above Gram Panchayat in favour of removal of the petitioner from the office of Prodhan of the above Gram Panchayat.

3. The second writ application bearing W.P. No. 27279 (W) of 2014 is directed against above notice of meeting on motion for removal of the respondent No. 6

from the office of the Prodhan, Rampur-1 Gram Panchayat, District - Cooch Bihar. The petitioner No. 1 was the Upa-Prodhan and the petitioner No. 2 was an elected member of the above Gram Panchayat. By an order dated October 31, 2014 has been tagged with the first writ application bearing W.P. No. 26758 (W) of 2014 for analogous hearing.

4. It is submitted by Mr. Robilal Moitra, learned Senior Advocate appearing on behalf of the petitioner of the first writ application that the impugned motion dated September 5, 2014 suffered from ambiguity. According to him, the impugned motion was initiated for lack of confidence or for removal of the petitioner from the office of Prodhan of the above Gram Panchayat. According to Mr. Moitra, the meanings of "lack of confidence" and "removal" were not same. A motion could be initiated by the requisitionists under the provisions of sub-Sections (1) and (2) of Section 12 of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act, 1973) expressing their lack of confidence against the petitioner or recording their intention to remove the petitioner from the office of Prodhan of the above Gram Panchayat.

5. According to Mr. Moitra, the impugned notice of meeting on motion dated September 9, 2014 was also ambiguous for containing agenda of lack of confidence or for removal of the petitioner from the office of Prodhan of the above Gram Panchayat. Attention of the Court is drawn towards the proforma prescribed in FORM-1E under the provisions of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975 (hereinafter referred to as the said Rules, 1975) as also its foot note.

6. It is submitted by Mr. Moitra that the respondent No. 4 arrived at satisfaction ignoring the above ambiguity. The attention of this Court is drawn towards orders dated September 5 and 11, 2014 respectively to submit on behalf of the petitioner that the impugned notice of meeting on motion dated September 9, 2014 was issued by the respondent No. 4 prior to his satisfaction of compliance of the provisions of sub-Sections (1) and (2) of Section 12 of the said Act, 1973 by the requisitionists.

7. It is also submitted by Mr. Moitra that the respondent No. 4 issued two notices of meeting on motion in the matter under Memo. No. 3050 (as evident from the records of the respondent No. 4) and under Memo. No. 3051 (Annexure R-1 at page 10 of the affidavit-in-reply filed by the petitioner.)

8. Reliance is place by Mr. Moitra on an unreported judgment dated October 29, 2014, delivered in the matter of Chanchal Kumar Ray Vs. State of West Bengal and Ors. (in re: W.P. No. 27758 (W) of 2014) as also unreported judgment dated November 19, 2014 delivered in an appeal in the matter of Santana Barman and Ors. Vs. Chanchal Kumar Ray (in re: MAT 1983 of 2014 and CAN No. 10797 of 2014).

9. It is submitted by Mr. Bikash Ranjan Bhattacharjee, learned Senior Advocate appearing on behalf of the respondent Nos. 7 to 16 (requisitionists) of the first

writ application that the impugned motion was initiated by the requisitionists for removal of the petitioner from the office of Prodhan of the above Gram Panchayat on the ground of their "lack of confidence" on the petitioner. According to Mr. Bhattacharjee, the impugned motion was initiated in compliance of the provisions of sub-Sections (1) and (2) of Section 12 of the said Act, 1975.

10. It is submitted by Mr. Bhattacharjee that in view of the forwarding letter dated September 9, 2014 (at page 54 of this writ application) issued by the respondent No. 4 as also the head note of the notice of meeting on motion dated September 9, 2014 (at page 55 of this writ application) issued by the above respondent, there was no ambiguity that a special general meeting of the Gram Panchayat under reference was fixed for consideration of a motion for removal of the petitioner from the office of Prodhan of the above Gram Panchayat. According to him, the above notice was issued in proforma prescribed in "FORM-1E" under the provisions of sub-Rule (2) of Rule 5B of the said Rules, 1975 and failure to stuck off a word from the body of the impugned notice in course of discharging ministerial work cannot be a ground for declaring that the impugned motion or the impugned notice bad in law.

11. According to him, the respondent No. 4 recorded an order dated September 5, 2014 with regard to compliance of the provisions of sub-section (2) of Section 12 of the said Act, 1973 so far as the impugned motion was concerned. It is submitted by him that the order dated September 11, 2014, was recorded in the order-sheet in respect of compliance of the provisions of sub-Rule (2) of Rule 5B read with "FORM-1E" of the said Rules, 1975.

12. With regard to the alleged two notices issued by the respondent No. 4 under Memo Nos. 3050 dated September 9, 2014 and 3051 dated September 9, 2014, it is submitted that considering the contents of the same there was no doubt that it was a mere typographical error.

13. Mr. Bhattacharjee relies upon the decisions of *Amulya Mondal Vs. State Of West Bengal and Others*, and *Resida Khatoon Vs. Block Development Officer and Ors.*, reported in 2000 (1) CLJ 293.

14. Mr. Biswajit De, learned junior Government Advocate, repeated and reiterated the aforesaid submissions of Mr. Bikash Ranjan Bhattacharjee, learned Senior Advocate.

15. It is also submitted by Mr. De that judgment dated October 28, 2014 delivered in the matter of *Chanchal Kumar Ray Vs. State of West Bengal* (in re: W.P. No. 27758 (W) of 2014) as also that of dated November 19, 2014 passed in an appeal the matter of *Santana Barman Vs. Chanchal Kumar Ray* (in re: MAT 1983 of 2014 and CAN No. 10797 of 2014) do not help the petitioner in view of the distinguished facts and circumstances.

16. Having heard the learned counsels appearing for the respective parties as also considering the facts and circumstances of this case, the provisions of sub-

Sections (1), (2) and (3) of Section 12 of the said Act, 1973 are quoted below:

"12. Motion of no confidence or removal of Prodhan or Upa-Prodhan.-

(1) Subject to other provisions of this section, the Prodhan or the Upa-Prodhan of a Gram Panchayat may, at any time, be removed from his office by the majority of the existing members of the Gram Panchayat, referred to in clause (i) of sub-section (2A) of section 4, expressing their lack of confidence against the Prodhan or the Upa-Prodhan or recording their decision to remove the Prodhan or the Upa-Prodhan, at a meeting specially convened for the purpose.

(2) For the purpose of removal of the Prodhan or the Upa-Prodhan, one-third of the existing members referred to in sub-section (1) subject to a minimum of three members shall sign a motion in writing expressing their lack of confidence against the Prodhan or the Upa-Prodhan or recording intention to remove the Prodhan or the Upa-Prodhan, indicating party affiliation or independent status of each of such members and either deliver the motion in person through any of the members or send it by registered post to the prescribed authority; one copy of the motion shall be delivered to the concerned office bearer either by hand or by registered post at the Gram Panchayat office and another copy shall be sent by registered post at his residential address.

(3) The prescribed authority on receipt of the motion shall satisfy himself that it conforms to the requirements of sub-section (2) and on his satisfaction shall specially convene, by issue of notice, within five working days of the receipt of the motion, a meeting of the Gram Panchayat to be held in its office fixing date and hour of the meeting and sending such notice at least before clear seven days to each of its existing members for consideration of the motion and for taking a decision on it.... 4, 5, 6, ...12."

17. The proforma of notice of meeting on motion for removal of Prodhan/Upa-Prodhan of Gram Panchayat, Sabhapati/Sahakari Sabhapati of Panchayat Samiti, Sabhadhipati/Sahakari Sabhadhipati of Mahakuma/Zilla Parishad prescribed in Rule 5B read with Form-IE of the said Rules, 1975 is also quoted below:

"Form of notice of meeting on motion for removal of Prodhan/Upa-Prodhan of Gram Panchayat, Sabhapati/Sahakari Sabhapati of Panchayat Samiti, Sabhadhipati/Sahakari Sabhadhipati of Mahakuma/Zilla Parishad.

To, Sri/Smt.....

In pursuance of provisions under sub-rule (2) of rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975, as subsequently amended, notice is hereby given for a meeting of theGram Panchayat/Panchayat Samiti/Mahakuma Parishad/Zilla Parishad to be held at the hour, place and on the date shown below for consideration of the motion for removal of/lack of confidence against Prodhan/Upa-Prodhan/Sabhapati/Sahakari Sabhapati, Sabhadhipati/Sahakari Sabhadhipati, and for taking decision on it.

You are requested to attend at the appointed date and hour.

Agenda: As stated above

Prescribed authority and Block Development Officer/Sub-divisional Officer/
Divisional Commissioner.

Date:

Place:

*Name of GP/PS/ZP to be inserted here.

**Strike off the words and figures which are not applicable."

18. For the purpose of examining the validity and/or legality of the impugned motion dated September 5, 2014 initiated by the requisitioner, the interpretation of the provisions of sub-Section (1) of Section 12 of the said Act, 1973 is required. It is the settled proposition of law that the rule of "plain meaning" or "literal" interpretation is the primary rule of interpretation of the statutory provisions. Addition or modification of the words not used in statutory provisions is not generally permissible in law unless it is required to avoid a patent absurdity. Reference may be made to the decision of G. Narayanaswami Vs. G. Pannerselvam and Others, and the relevant portion of the above decision is quoted below:

"4. Authority are certainly not wanting which indicate that Courts should interpret in a broad and generous spirit the document which contains the fundamental law of the land or the basic principles of its Government. Nevertheless, the rule of "plain meaning" or "literal" interpretation, described in Maxwell's Interpretation of Statutes as "the primary rule", could not be altogether abandoned today in interpreting any document. Indeed, we find Lord Evershed, M.R., saying: "The length and detail of modern legislation, has undoubtedly reinforced the claim of literal construction as the only safe rule". (See: Maxwell on "Interpretation of Statutes", 12th Edition, p. 28). It may be that the great mass of modern legislation, a large part of which consists of statutory rules, makes some departure from the literal rule of interpretation more easily justifiable today than it was in the past. But, the object of interpretation and of "construction" (which may be broader than "interpretation") is to discover the intention of the law-makers in every case (See: Crawford on "Statutory Construction", 1940 Ed., para 157, pp. 240-242). This object can, obviously, be best achieved by first looking at the language used in the relevant provisions. Other methods of extracting the meaning can be resorted to only if the language used is contradictory, ambiguous, or leads really to absurd results. This is an elementary and basic rule of interpretation as well as of construction processes which, from the point of view of principles applied, coalesce and converge towards the common purpose of both which is to get at the real sense and meaning, so far as it may be reasonably possible to do this, of what is found laid down. The provisions whose meaning is under consideration have, therefore

to be examined before applying any method of construction at all. To these provisions we may now turn." 19. The above settled proposition has been repeated and reiterated time and again by the Hon"ble Supreme Court. Reliance may be made to the decision of Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, and the relevant portions of the above decision are quoted below:-

"7. Now, if there is one principle of interpretation more well settled than any other, it is that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. This rule of literal construction is firmly established and it has received judicial recognition in numerous cases...." 20. After considering the impugned motion dated September 5, 2014, I find that ten (10) elected members (requisitionists) out of total eighteen (18) member of the Gram Panchayat under reference intended to remove the petitioner from the office of the Prodhan expressing their lack of confidence against the petitioner. Considering the plain and simple meaning of the provisions of sub-Section (1) of Section 12 of the said Act, 1973, I do not find any departure from the aforesaid provisions in the impugned motion.

21. For the purpose of examining the validity of the impugned notice dated September 9, 2014 issued by the respondent No. 4, the proforma of notice of meeting on motion for removal of Prodhan/Upa-Prodhan of Gram Panchayat, Sabhapati/Sahakari Sabhapati of Panchayat Samity, Sabhadhipati/Sahakari Sabhadhipati of Mahakuma/Zilla Parisad prescribed in Rule 5B read with FORM-1E of the said Rules, 1975 is taken into consideration. It is not in dispute that according to heading of the above notice, the purpose of the above notice, inter alia, was to call a special meeting of Gram Panchayat for removal of a Prodhan from the office. The function of the prescribed authority in issuing the above notice is a ministerial task. The duty of the Prescribed Authority is to see that the requirements indicated in the check list in accordance with the provisions of sub-Section (2) of Section 12 of the said Act, 1973 have been complied with. Failure to strike off the word "removal of" or "lack of confidence" against the Prodhan in the body of the notice in terms of the foot note of the prescribed proforma does not make the same bad in law.

22. That apart the impugned actions were related to procedural law to be followed under the provisions of the said Act, 1973. Those procedural laws cannot be allowed to be interpreted with too much rigidity and by indulging in hair-splitting. Reference may be made to the decision of Rupadhar Pujari Vs. Gangadhar Bhatra, and the relevant protions of the above decision are quoted below:

"8. True it is that the relief clause in the election petition in the present case is not very happily worded. The election petitioner would have been better advised

to specifically seek a declaration to the effect that he was elected. However, we cannot be oblivious of the fact that panchayat elections are part of Gram Swaraj system. Most of the provisions relating to election and election petitions in the laws governing Panchayats are in pari materia with the provisions contained in the Representation of the People Act, 1951. Yet the procedural laws relating to panchayat elections and election petitions cannot be allowed to be interpreted with too much of rigidity and by indulging in hairsplitting. A recent decision by a Constitution Bench in *Sardar Amarjit Singh Kalra v. Pramod Gupta* once again reminds us to remember that laws of procedure are meant to regulate effectively, assist and aid the object of doing substantive and real justice. Procedural laws must be liberally construed to really serve as handmaid of justice, make them workable and advance the ends of justice. Technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of the law inevitably necessitates it." 23. It will not be out of context to observe that the question as to whether the motion of "no confidence" and that of "removal" of a Prodhan or Upa-Prodhan of a Gram Panchayat, Sabhapati/Sahakari Sabhapati of Panchayat Samity, Sabhadhipati/Sahakari Sabhadhipati of Mahakuma/Zilla Parisad are two different things, is no longer res integra. While considering the writ petition of *Dabir Mondal vs. State of West Bengal* (in re: W.P. No. 7307 (W) of 2007) reported in *Sri Dabir Mondal Vs. State of West Bengal and Others*, , a Single Bench of this Court referred the following issues to a Division Bench of this Court for decision in respect of three questions as under:

A. Whether a notice of a requisition meeting by the requisitionists themselves, under third part of the second proviso to Section 16(1) of the West Bengal Panchayat Act, 1973 which emanates from the failure of the Prodhan to convene a meeting under second part of the second proviso to Section 16(1) must restrict it's agenda to the precise agenda that was indicated in the first requisition made in writing to the Prodhan by the requisitionists themselves?

B. When the notice of a requisition meeting by the requisitionists themselves under third part of the second proviso to Section 16(1) has been issued in compliance with the provision thereof with the specific agenda for removal of Prodhan and/or Upa-Prodhan, as the case may be, and all concerned have the clear, unambiguous information about the matter/business to be discussed in such a meeting and where such, matter or business is an obvious corollary to the business for which a requisition was made in writing by the requisitionists to the Prodhan to call a meeting and such Prodhan failed to convene a meeting in accordance with the second part of second proviso to Section 16(1) of the Act whether such a notice would be an invalid notice in law?

C. What would be the effect of a resolution if passed for removal of Prodhan and Upa-Prodhan, as the case may be, in such a requisitioned meeting called by the requisitionists themselves under third part of second proviso to Section 16(1) of

the Act?

24. A Division Bench of this High Court comprising of the Hon"ble Ashoke Kumar Mathur, Chief Justice (as His Lordship then was) and Hon"ble Justice Subhro Kamal Mukherjee, answered the above reference by a judgment dated March 19, 2002 as follows:

"****In short, the controversy which was sought to be raised was that the requisitionists convened the meeting for passing a resolution of no confidence against the Prodhana whereas on 30th May, 2000 the agenda was for removal of the Prodhana. This could not be done and a support was sought from a decision of this Court in the Case of Menoka Halder and Ors. vs. The State and Ors. reported in Calcutta Weekly Notes, Volume 99 at Page 427. The Learned Single Judge observed that this decision requires reconsideration by the Division Bench. Therefore, he has referred three questions for answer before this Court.

In the case of Menoka Halder and Ors. vs. The State and Ors. (Supra) the Learned Single Judge held that a requisition meeting on the basis of earlier notice was not a meeting in the eye of law because the Prodhana did not give a 7 days clear notice. It was held that as per Section 16(1) of the Act the agenda for the purpose of calling a meeting has to be stated. On the failure of the Prodhana to call a meeting under second part of the proviso the requisitionists can convene a meeting under the third part of the said proviso. But whereas in the instant case the only agenda was the proposal of no confidence against the Prodhana and there was no notice of his removal. In annexure "A" there was no mention about removal of the Prodhana within the four corners of the said Notice but it appears from the annexure "G" that the main agenda of the requisition meeting is the proposal for removal of Prodhana from his post. Therefore the learned Judge observed that the question is whether annexure "G" which is in continuation of annexure "A" can contain something which was not there in annexure "A". The learned Judge relying on the earlier decision of this Court in the Case of Royhan and Ors. vs. Chamatkar Malitya and Ors. (FMAT No. 3683 of 1984) reported in Calcutta Weekly Notes, Volume 89, Page 1044 held that the Prodhana was not liable to be removed from his post against resolution of no confidence, whereof there was no mention of any agenda for removal of the Prodhana.

The question is, whether the motion of no confidence and the motion of removal are two different things, or they are synonymous with each other. When a motion for no confidence is moved and if it is carried out, the effect is the same. In matters of elected offices certain procedure is laid down for removal of such elected persons. The only way to remove a Prodhana or a Upa-Prodhana is by way of a Motion of No Confidence against such incumbent. When the agenda is for the removal of Prodhana, the Prodhana can only be removed when the House passes a Resolution by a majority of no confidence in the Prodhana. If the Resolution is of no confidence against the Prodhana and if it is passed, the result will be removal of Prodhana. Therefore, the word "removal" or "lack of confidence" are, synonymous with each other in the present context. The view

taken by the learned Single Judge in Menoka Halder's case (Supra) does not appear to be laying down the correct law on this subject. A Division Bench of this Court in F.M.A.T. No. 214/95 has taken the same view and observed: "In our view the notice of removal and no-confidence is the same".

In this connection our attention was also invited to a decision of the Case of Soleman Shah and Others Vs. Director of Panchayat, Burdwan and Others, . In that Case it was observed that removal is a serious charge and it has to be specifically mentioned. A notice which does not mention removal is a misleading notice. It was observed that a resolution of removal without specific notice of removal is bad in law and therefore His Lordship had held that such resolution is bad on that count. So far as the proposition that there is no notice far removal of the Prodhan and a resolution is passed to that effect that would certainly be serious lapse because the party will be taken by a surprise and such serious lapse cannot validate an illegal resolution.

In the Case of Royhan and Ors. vs. Chamatkar Malitya and Ors. (Supra) Their Lordships observed that in case there is no notice for removal or No Confidence Motion against the Prodhan or Upa-Prodhan, no Resolution can be passed far removal of or lack of confidence in the Prodhan or Upa-Prodhan, as the case may be. This was the, ratio laid down in Soleman Shah's Case and the same was followed in this case.

After reviewing the aforesaid Cases, we are of the opinion that the wording of the Resolution, like removal or no confidence, amounts to the same and simply because when a Meeting is sought to be requisitioned for passing Resolution for Non Confidence and a Notice for calling the meeting for removal of the Prodhan amounts to same, the use of two different phraseology like "removal" or "no confidence", will not invalidate the notice or resolution.

Therefore, we answer all the three questions, by holding that the wording of the Notice calling the meeting for "removal" and "no confidence", is not contradictory; they are synonymous with each other and the effect is the same. In case the Motion of "No Confidence" is passed, the result would be the removal of Prodhan or Upa-Prodhan, as the case may be *****

25. Upon consideration of the amended provision of Section 12 of the said Act, 1973, I am of the opinion that though the above judgment had been delivered while considering the unamended provision of Section 16 of the said Act, 1973, it was applicable for interpretation of the aforesaid amended provision of Section 12 of the said Act, 1973, so far as the point of law is concerned. Therefore, applying the law laid down in this regard I am of the opinion that the notice calling meeting for "removal" and "no confidence" are not contradictory and they are synonymous with each other and the effect is the same.

26. With regard to the next ground for challenge of alleged illegality of the orders dated September 5 and 11, 2014 respectively, I find that the former one was passed in view of the provisions of sub-Section (2) of Section 12 of the said Act,

1973. The order dated September 11, 2014 was passed in connection with compliance of the provisions of Rule 5B read with FORM-1E of the said Rules, 1975.

27. With regard to the allegation of issuing two notices dated September 9, 2014 by the respondent No. 4 under two Memo. Nos. 3050 and 3051, I find substance in the submissions of the respondents that it is a mere mistake.

28. In the matter of Chanchal Kumar Ray vs. State of West Bengal and Ors. (in re: W.P. No. 27758 (W) of 2014) a notice dated September 19, 2014 relating to another Gram Panchayat of the same District was under challenge. It was set aside by an order dated October 28, 2014 due to failure on the part of the respondents to give satisfactory explanation of the ground for challenging the impugned notice. Considering the above fact, a Division Bench of the Court did not interfere with the above order in connection with an appeal bearing MAT No. 1983 of 2014 on the above ground. Considering the distinguished features of the cases in hand, I am of the opinion the above decisions do not help the petitioners of these writ applications to get any relief.

29. In view of the discussions and observations made hereinabove, these writ applications are dismissed.

30. There will be, however, no order as to costs.

31. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.