

(2012) 08 CAL CK 0019
In the Calcutta High Court
Case No : Writ Petition No. 16128 (W) of 2010

Biswajit Sarkar

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

West Bengal Panchayat Act, 1973 — Section 10(3)(a), 12

Citation : (2012) 4 CALLT 530

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Pradip Roy and Ms. Arpita Roy, for the Appellant; Joyotosh Majumder, Manas Kumar Sadhu, Chittaranjan Chakraborty, Parvej Anam and Mr. Haider Ali S.K. for the Respondent No. 8, for the Respondent

Judgement

Biswanath Somadder, J.—When the writ petition was initially moved before this Court, upon hearing the learned advocates for the petitioner and the State, the following order was passed on 6th October, 2010:-

Prima facie, the Memo dated 23rd June, 2010 cannot be supported as the meeting was to be held on 4th June, 2010 at 11.30 a.m. as a requisitioned meeting. On a query raised by the prescribed authority with the Secretary In-Charge of the concerned Gram Panchayat the Secretary In-Charge reported that the observer attended the said meeting at 12.30 p.m. As the meeting was to be held at 11.30 a.m., the late coming of the observer cannot regularize his presence at the said meeting. It is on the basis of the resolution taken at the meeting held on 4th June, 2010 that the Memo. Dated 23rd June, 2010 which had been issued for the reasons set out above cannot be supported prima facie. Accordingly, the Memo. Dated 23rd June, 2010 is stayed till six weeks after the long vacation.

Direction is given for filing affidavits by the parties.

Let affidavit-in-opposition be filed within two weeks after the long vacation; reply

thereto, if any, be filed within a week thereafter. Matter to appear in the list four weeks after the long vacation.

At that point of time, admittedly, the private respondent no. 8 was not served. Subsequently an application, being CAN 9557 of 2010, was moved by the private respondent No. 8 seeking vacation of the ad interim order dated 6th October, 2010, and an order was passed on 24th December, 2010, in connection with the said application. However, the order dated 6th October, 2010, was not vacated by the Court. Aggrieved, the private respondent No. 8 preferred an appeal before a Division Bench of this Court. The Division Bench, however, did not intervene and remanded the matter before the First Court.

2. The writ petition now comes up for final disposal.

3. It is the specific contention of the learned Advocate for the petitioner that the memo dated 23rd June, 2010, issued by the Prescribed Authority, whereby and whereunder his client was sought to be removed as Pradhan of Paharpur Gram Panchayat, is unsustainable in law. He further submits that the subsequent memo dated 12th July, 2010, issued by the Prescribed Authority for election of a new Pradhan is also bad in law.

4. It is the case of the writ petitioner that initially a requisition meeting was called by seven members of the Gram Panchayat to remove him as the Pradhan, based on which the Prescribed Authority had fixed 4th June, 2010, as the date for holding such meeting. However, he had submitted his resignation as Pradhan on 3rd June, 2010. As a result, on 4th June, 2010, a directive was issued by the Prescribed Authority, vide memo No. 1773(5)/XIX, not to hold the requisition meeting on 4th June, 2010. This memo No. 1773(5)/XIX, was, however, subsequently cancelled on that very day itself by another memo bearing No. 1779/XIX, in view of withdrawal of resignation by the Pradhan on 3rd June, 2010. It was followed by another memo bearing No. 1780/XIX issued by the Prescribed Authority on 4th June, 2010, whereby the Upa-Pradhan of the concerned Gram Panchayat was requested to convene a General Body Meeting for acceptance of the writ petitioner's resignation, on basis whereof, on 8th June, 2010, a notice was issued by the Secretary of the concerned Gram Panchayat for convening a meeting on 18th June, 2010, for the purpose of taking a decision on the resignation letter tendered by the writ petitioner as Pradhan of the concerned Gram Panchayat. This notice was challenged in an earlier writ petition, being W.P. 12615 (W) of 2010, wherein an order was passed on 12th July, 2010, relevant portion whereof is quoted hereinbelow:-

...Having considered the submissions of the parties, the withdrawal of resignation by the petitioner-Pradhan was on 3rd June, 2010 and on receipt of such letter of withdrawal the earlier Memo, issued being Memo. No. 1773 (5)/XIX was cancelled by the prescribed authority by Memo. No. 1779/XIX. On cancellation of Memo. No. 1773 (5) XIX the petitioner could have functioned as a Pradhan. Therefore, Memo. No. 1780/XIX dated 4th June, 2010 in view of the cancellation

cannot be regarded as justified as unless the Pradhan is removed in accordance with law, the question of convening a General Body Meeting for appointment of a new Pradhan cannot arise. Accordingly, the Memo. No. 1780/XIX and the subsequent notice issued thereunder are bad and accordingly set aside.

5. According to the learned advocate for the petitioner, no appeal has been preferred by any of the parties against the aforesaid order dated 12th July, 2010, which has assumed finality. He submits that in the backdrop of the aforesaid order dated 12th July 2010, the impugned memo dated 12th July, 2010, could not have been issued.

6. The learned advocate appearing on behalf of the State, on the other hand, relies on the affidavit in opposition used by his client and submits that the Prescribed Authority, being the Block Development Officer, Sadar Block, Jalpaiguri, had no authority to accept the resignation letter of the Pradhan and as such, the subsequent letter of acceptance was void abinitio. He submits that even assuming, but not admitting, that the resignation letter of the Pradhan was accepted and withdrawn on the same day, that by itself did not make the removal meeting void as twelve members out of twenty had participated in the meeting and a no confidence motion against the Pradhan had been passed. Learned advocate for the State refers to the affidavit in opposition and further submits that the meeting took place for removal of the Pradhan and the resignation letter to the Block Development Officer, Sadar Block, Jalpaiguri, had no bearing as the resignation had already been withdrawn by the Pradhan. The Block Development Officer had issued an order to convene a meeting as per provisions of section 10(3)(a) of the West Bengal Panchayat Act, 1973, as once the resignation has been tendered it was for the concerned Gram Panchayat Body to decide on the same. The writ petitioner, being the Pradhan, could not by his own whims, tender and withdraw his resignation letter. In the affidavit in opposition it has been stated that the Gram Panchayat Body is the proper authority to accept or reject a resignation letter issued by the Pradhan of a Gram Panchayat. As such, the direction to call the meeting was not at all contrary to law as was canvassed by the writ petitioner and as such, the meeting was valid and proper. It has, also been stated in the affidavit in opposition that once a resignation has been tendered by the Pradhan before the Prescribed Authority and the Upa-Pradhan, it was not open to him under any provisions of the West Bengal Panchayat Act, 1973, to withdraw the same on his own whims. The acceptance of resignation and subsequent cancellation of the same on the basis of withdrawal of resignation by the Prescribed Authority was of no meaning as under the law, the Prescribed Authority was not entitled to accept or reject the resignation letter. According to the learned advocate for the State, on correction of the earlier orders passed by the concerned Block Development Officer, he had issued the order for holding the meeting of the Gram Panchayat and as such, the order did not suffer from any illegality. One cannot take advantage of any mistake made by a public authority and such mistake did not confer any right on the petitioner. The State has also specifically stated in its affidavit in opposition

that acceptance of resignation letter and cancellation of acceptance of the resignation letter by the concerned Block Development Officer, has no bearing, as under the West Bengal Panchayat Act, 1973, the Block Development Officer, Sadar Block, Jalpaiguri, had to direct the Upa-Pradhan to call a general meeting u/s 10(3)(a) of the West Bengal Panchayat Act. 1973, which cannot be vitiated in any manner by the earlier wrong orders passed in this respect by the Block Development Officer. It has been contended by the State that the concerned Block Development Officer had rightly given order to convene a general meeting as per provisions of section 10(3)(a) of the West Bengal Panchayat Act. 1973. As such, it is submitted by the learned advocate for the State that Writ Petition No. 12615 (W) of 2010, which was moved by the writ petitioner, was devoid of any merit. He also referred to paragraphs 18, 19 and 21 of the affidavit in opposition and submitted that the requisition meeting was validly held and the petitioner had been validly removed from the post of the Pradhan. He also referred to the enquiry report dated 18th June, 2010, and submitted that the report reflected the facts based on which the concerned Block Development Officer took a decision that the meeting was validly held and accordingly issued the order of removal of Pradhan.

7. The learned advocate representing the private respondent No. 8 adopted the stand taken by the State. He also submitted that the memo dated 23rd June, 2010, issued by the Prescribed Authority cannot be held to be bad in law, since the same was based on the decision taken by the members of the concerned Gram Panchayat on the basis of the requisition meeting held on 4th June, 2010, at the office of the Gram Panchayat.

8. Having regard to the facts and circumstances of the instant case as stated above, it appears that the writ petitioner had been initially granted relief by this Court in terms of the order dated 12th July, 2010, passed in W.P. 12615 (W) of 2010. The very foundation of the order dated 12th July, 2010, was based on the fact of withdrawal of the resignation letter tendered by the writ petitioner on 3rd June, 2010. While passing the order dated 12th July, 2010, the Court observed, inter alia, that the memo bearing no. 1780/XIX dated 4th June, 2010 - whereby the Upa-Pradhan was requested to convene a general body meeting of the Gram Panchayat as per provision of section 10(3)(a) of the West Bengal Panchayat Act, 1973, - could not be regarded as justified, as unless the Pradhan was removed in accordance with law, the question of convening a general body meeting of a new Pradhan could not arise. In such circumstances, the Court was placed to set aside the memo no. 1780/XIX dated 4th June, 2010 and the subsequent notice thereunder.

9. The effect of the order dated 12th July, 2012, as it appears, rendered the memo bearing No. 1780/XIX dated 4th June, 2010, as also the subsequent notice issued thereunder bad in law. In such circumstances, the question of holding a meeting as per provision of section 10(3)(a) of the West Bengal Panchayat Act. 1973, could not have arisen at all. The substratum of the

impugned memo dated 23rd June, 2010, was based on a requisition made by members of the Gram Panchayat, which culminated upon issuance of the memo bearing No. 1773 (5)/XIX dated 4th June, 2010, which had been subsequently cancelled vide memo No. 1779/XIX, dated 4th June, 2010. As observed in the order dated 12th July, 2010, on cancellation of the memo No. 1773 (5)/XIX, the writ petitioner could have functioned as the Pradhan. It was under such circumstances that the Court had set aside memo bearing No. 1780/XIX and the subsequent notice issued thereunder. Therefore, the impugned memo dated 23rd June, 2010, issued by the Prescribed Authority declaring removal of the writ petitioner as the Pradhan of Paharpur Gram Panchayat, with effect from 4th June, 2010, as per provision of section 12 of the West Bengal Panchayat Act, 1973, based on the requisition meeting convened by some members of the Gram Panchayat, is bad in law and is liable to be set aside. Consequentially, the memo bearing No. 2178 (20)/XIX dated 12th July, 2010, whereby the Prescribed Authority issued notice for a meeting of the Gram Panchayat for electing a new Pradhan is also bad in law and is liable to be set aside. For reason stated above, both the impugned memos dated 23rd June, 2010, and 12th July, 2010, are set aside and the writ petition is disposed of with a direction upon the Prescribed Authority to proceed further in accordance with law.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.