
(2016) 06 CAL CK 0010
In the Calcutta High Court
Case No : W.P. No. 11305 (W) of 2016

Himani Roy

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 28-06-2016

Acts Referred:

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

Citation : (2016) 4 CalHCN 452

Hon'ble Judges : I.P. Mukerji, J.

Bench : Single Bench

Advocate : Mr. Lokenath Chatterjee and Mr. Anshuman Gupta, Advocates, for the Petitioner; Mr. Subhabrata Datta and Mr. Benazir Ahmed, Advocates, for the State

Final Decision : Dismissed

Judgement

I.P. Mukerji, J.—This writ challenges a notice dated 16th June, 2016 issued by the Prescribed Authority calling a meeting of the members of Moulani Gram Panchayat on 28th June, 2016. The agenda of the meeting is to elect a Upa-Pradhan for the Panchayat.

2. One day before the meeting this writ is moved on behalf of the Upa-Pradhan challenging the entire process.

3. Mr. Chatterjee for the writ petitioner submits that the first notice dated 2nd June, 2016 calling a meeting of the Panchayat on 9th June, 2016 to express no confidence in the Upa-Pradhan was not in order. The requisition for calling this meeting had to be served on the Prescribed Authority and on his client in the manner provided in Section 12(2) of the West Bengal Panchayat Act, 1973. It was not served in that manner. Hence, the meeting held on 9th June, 2016 was illegally convened and held.

4. As far as this point is concerned in order that this court takes notice of this allegation, in the exercise of its jurisdiction to issue high prerogative writs, some

evidence had to be adduced before the court. Only then the court would think it expedient to ask the Prescribed Authority to produce its records and to take further action in the matter. This court does not take notice of wild and unsubstantiated allegations as the present one. So this point is rejected.

5. The second point of Mr. Chatterjee is that the resolution taken on 9th June, 2016 was for expression of no confidence in the Pradhan. He made a distinction between expression of no confidence and removal. He submitted that since there was no resolution to remove the Upa-Pradhan, the meeting to elect a new Upa-Pradhan did not arise. The present Upa-Pradhan had to be removed first. His argument was based on an unreported Division Bench judgment of our court in F.M.A.T. No. 1249 of 1994 (Kitabuddin Seikh v. Daud Hossain and others) decided on 25th November, 1994 which drew a distinction between expression of no confidence and a resolution of removal. Mr. Justice P.K. Majumdar opined that if a resolution had been taken expressing no confidence in the Pradhan he was not deemed to be removed. Another meeting had to be called for his removal. Only when such a resolution was taken the Pradhan would be removed. The same opinion was expressed by Mr. Justice P.K. Deb in another unreported decision in W.P. No. 12820 (W) of 2009 (Rahamat Sanpui v. The State of West Bengal and others) decided by this court on 10th August, 2009.

6. The governance through the Panchayat system is an introduction of parliamentary democracy at the lowest level in a micro form in rural areas. The expression of no confidence in the Upa-Pradhan was made on 9th June, 2016. It is true, following the aforesaid decisions, the expression of no confidence does not amount to removal of the person against whom it is expressed.

7. But, after no confidence was expressed against the Upa- Pradhan, he had the duty to resign forthwith. He had no authority to hang on to his office. This is what the ministers at the Centre and the State are supposed to do when a no confidence motion is successfully moved against them.

8. Therefore, the Prescribed Authority acted absolutely in order by waiting till 16th June, 2016. Even by then, the Upa- Pradhan did not resign. Then he issued the impugned notice on 16th June, 2016 calling another meeting on 28th June, 2016 to elect a new Upa-Pradhan.

9. In my opinion, the agenda of formally removing the Upa- Pradhan, who in spite of the no confidence resolution tried to retain his office, is to be read into this notice. A new Upa- Pradhan can only be elected by express or implied removal of the Upa-Pradhan. In my opinion, a hyper legalistic and technical interpretation of the above judgments will only cause trouble in our democratic system.

10. This writ application has no merits and is accordingly, dismissed.

11. Urgent certified photo copy of this order, if applied for, be given to learned advocates for the parties upon compliance of all requisite formalities.