

(1988) 04 CAL CK 0011
In the Calcutta High Court

In Re: Mohit Sengupta and Others

Date of Decision : 15-04-1988

Acts Referred:

Bengal Municipal Act, 1932 — Section 54, 55(1), 55(2), 57, 58

Citation : (1988) 2 CALLT 185 : 92 CWN 1220

Hon'ble Judges : Nirendra Krishna Mitra, J

Bench : Single Bench

Advocate : Bholanath Sen, Maloy Kumar Basu and R.N. Das, Pranab Kumar Chatterjee and Chittaranjan Chakraborty, Samaresh Banerjee and Kamal Bhattacharjee, for the Appellant;

Judgement

Nirendra Krishna Mitra, J.—The petitioners who are some of the elected Commissioners of Raigunj Municipality, District-West Dinajpur, moved the present Writ application against the resolution, dated 10th March, 1988 adopted by the Board of Commissioners of the said Municipality electing Shri Hari Narayan Roy as Chairman of the Municipality during the absence of the original Chairman, Shri Mukul Bikash Sen.

2. It is submitted by Mr. Basu, learned Advocate appearing on behalf of the petitioners that Mukul Bikash Sen was duly elected as Chairman of the said Municipality by the Commissioners of the said Municipality as per the provisions of Section 45 of the Bengal Municipal Act, 1932 and the Vice-Chairman of the said Municipality was also duly elected by the Commissioners in terms of Section 48 of the said Act and the tenure of the offices of the Chairman and "Vice Chairman will be for 4 years from the date of their respective election as per the provisions of Section 56 of the said Act. Mr. Basu then refers to the provisions of Section 55 of the said Act and submits that the Commissioners of the Municipality at a meeting may grant leave of absence to their Chairman or "Vice Chairman for any period not exceeding three months in any one year and if the Chairman is absent from his duties during any one year for more than the three months allowable by way of leave under sub-section (1) of the said Section 55, he shall be declared by the State Government to have vacated his office unless such absence is sanctioned by the Commissioners at a meeting for reasons to be

recorded in writing. Mr. Basu then refers to the provisions of Section 54 of the said Act and submits that the "Vice Chairman shall during, the vacancy in the office of the Chairman or the incapacity or temporary absence of the Chairman, perform any duty and, when occasion arises, exercise any power of the Chairman. Lastly, Mr. Basu refers to the provisions of subsection (2) of Section 58 of the said Act and contends that if any Commissioner, Chairman or "Vice Chairman by reason of his death, resignation or removal or by reason of his seat becoming vacant under the provisions of Section 55 or Section 57 of the said Act is unable to complete his full term of office or if a Chairman or "Vice Chairman is granted leave u/s 55 of the said Act, the vacancy so caused shall be filled up by appointment or election as the case may be, by another person and Mr. Basu submits that during the leave granted to the Chairman by the Commissioners, the Commissioners cannot appoint a person as an ad hoc Chairman by-passing the "Vice Chairman thereby making the said Section 54 nugatory and as such the resolutions adopted at the impugned meeting are wholly illegal and should be quashed. Mr. Basu refers also to the Memo. No. J-042/3-81, dated March 11, 1988 - addressed to the Director of Local Bodies, Government of West Bengal, by the Deputy Director of Local Bodies, Jalpaiguri Division wherein the said Deputy Director had said inter alia that the whole development electing a chairman during the absence of the regular/original Chairman seemed to be completely paradoxical and not in conformity with the relevant provisions of the Bengal Municipal Act.

3. Mr. Banerjee, learned Advocate appearing on behalf of the Raigunj Municipality, however, submits that under the provisions of sub-section (2) of Section 58 of the Bengal Municipal Act, the Commissioners of a Municipality have the power to elect or appoint any person from amongst them as a Chairman to act as such even during the leave granted to the Chairman inspite of the fact that there is a vice-Chairman and when legislature has conferred such special power upon the Commissioners it can not be said that such provision of law has made the provisions of Section 54 of the Act nugatory or that the said special power is in conflict with the powers of the vice-Chairman as given to him u/s 54.

4. Having heard the learned Advocates for the parties and going through the resolution adopted at the impugned meeting and also the provisions of the Bengal Municipal Act, 1932. I find there is much substance in the contentions raised by Mr. Banerjee. Section 54 of the Bengal Municipal Act, 1932 which speaks of the duty of the vice-Chairman of a Municipality, runs as follows :-

"54(a) The vice-Chairman shall, during a vacancy in the office of Chairman or the incapacity or temporary absence of the Chairman, perform any duty and, when occasion arises, exercise any power of the Chairman;

(b) shall, at any time, perform any duty and exercise, when occasion arises, any power delegated to him u/s 52."

5. Sub-section (1) of Section 55 of the said Act gives power to the

Commissioners of a Municipality to grant leave of absence to the Chairman or vice-Chairman of the Municipality and subsection ((2) of the said Section 55 speaks of the effects of the absence on the part of the Chairman beyond the period mentioned in sub-section (1) of the said Section or the grant of leave of absence. The said Section 55 is quoted below :

"55. Grant of leave to Chairman and Vice-Chairman (1) The Commissioners at a meeting may grant leave of absence to their Chairman or Vice-Chairman for any period not exceeding three months in any one year.

(2) If the Chairman is absent from his duties during any one year for more than the three months allowable by way of leave under this Section, he shall be declared by the State Government to have vacated his office unless such absence is sanctioned by the Commissioners at a meeting for reasons to be recorded in writing."

6. At the same time sub-section (2) of Section 58 of the Bengal Municipal Act, 1932 gives power to the Commissioners to appoint or elect any person as a Chairman during the vacancy caused due to the absence of the Chairman as provided under the above sub-section (2) of Section 55 or Section 57 of the said Act and also during the leave granted to him under sub-section (1) of Section 55 and sub-section (3) of the said Section 58 states that the person so appointed under sub-section (2) of the said Section should continue his office during such absence or leave as the case may be. The said Section 58 is quoted below :

"58. Filling of vacancies and tenure of office of person filling vacancy.-(1) If the election of any Commissioner is set aside under the provisions of Section 38 and the Judge does not declare that person to be disqualified for the purpose of such fresh election as may be held u/s 42, the said person shall be eligible for re-election in the vacancy so caused.

(2) If the election of any Commissioner is set aside under the provisions of Section 38 and the Judge declares that person to be disqualified for the purpose of such fresh election as may be held u/s 42, or if any Commissioner, Chairman or Vice-Chairman is by reason of his death, resignation or removal or by reason of his seat becoming vacant under the provisions of Section 55 or Section 57 unable to complete his full term of office, or if a Chairman or Vice Chairman is granted leave u/s 55 the vacancy so caused shall be filled by the appointment or election, as the case may be, of another person.

(3) The person elected or appointed to vacancy referred to in sub-section (1) or sub-section (2) shall fill vacancy for the unexpired remainder of the term for which such Commissioner, Chairman or Vice-Chairman would otherwise have continued in Office or during his absence on leave, as the case may be."

7. On a conspectus of the above provisions of law it is abundantly clear that even during the leave granted to the Chairman by the Commissioners under sub-section (1) of Section 55 or when the seat of the Chairman falls vacant under

sub-section (2) of Section 55 or Section 57 of the Bengal Municipal Act, 1932, the Commissioners of a Municipality have the power to appoint another person from amongst themselves as a Chairman to act as such during such vacancy or absence of leave under the provisions of Section 58 of the said Act which is, however, purely discretionary in nature. If the Commissioners appoint or elect a person from amongst themselves as a Chairman under subsection (2) of Section 58 of the Act he will act as such during the period as mentioned in sub-section (3) of the said Section 58 but if the Commissioners do not appoint or elect any such person as the Chairman during such period as a temporary and/or stop-gap measure, the Vice-Chairman of the Municipality u/s 54 of the Act will perform and exercise the duty and powers of the Chairman originally appointed, during such vacancy or leave as the case may be sub-section (2) of Section 58 of the Bengal Municipal Act, 1932 in no way clashes or is in conflict with the provisions of Section 54 of the said Act neither the provisions of the said sub-section (2) of Section 58 make the provisions of Section 54 nugatory in any way if any person is elected or appointed as a Chairman of a Municipality by its Commissioners in terms of sub-section (2) of Section 58. The Commissioners of a Municipality is the highest body having overall control over the powers and functions of the Chairman or the Vice-Chairman of the Municipality, under the Bengal Municipal Act, 1932 including their election and removal and also including the election of a Chairman as a temporary and/or stop-gap measure even during the continuance of the office by a regular Chairman, under special circumstances. The provisions of the Sections 54 and 58 of the Bengal Municipal Act, 1932 are quite distinct and separate and one does not overlap or control the other and each holds its field independently of the other. In such view of the matter it cannot be held that the impugned resolutions adopted by the Commissioners of the Raigunj Municipality at its meeting held on March 10, 1988 are illegal. Moreover, the Memo. No. J-402/3-81, dated March 11, 1988 addressed to the Director of Local Bodies Government of West Bengal by the Deputy Director of Local Bodies, Jalpaiguri Division as referred to by Mr. Basu also can not be of any help to Mr. Basu as the same was written without looking into the statutory provisions of law and also upon a clear misconception of law and this Court is, therefore, not to consider the said Memo, at all. Mr. Chatterjee, who appears on behalf of the State also submits that the said Memo, should not be looked into by this Court because it has got no legal value.

8. The Writ application, therefore, is dismissed being devoid of any merit, but without any order as to costs. The prayer for stay of operation of this order as made orally before me by Mr. Das, however, is refused.