

(2010) 02 CAL CK 0012

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction Appellate Side M.A.T. No. 71 of 2010 and
C.A.N. No. 476 of 2010

Jethulal Mahato

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

West Bengal Panchayat Act, 1973 — Section 12, 16

Citation : (2010) 3 CALLT 384

Hon'ble Judges : Mohit S. Shah, C.J; Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : Bidyut Kumar Banerjee and Shila Sarkar, for the Appellant; Fazlul Haque and Supriyo Roy Choudhury for the Respondent Nos. 1 to 5 Lalit Mohan Mahato and Monoranjan Mahato for the Respondent Nos. 8 to 14, for the Respondent

Final Decision : Dismissed

Judgement

Mohit S. Shah, CJ and Pinaki Chandra Ghose, J.—This appeal is directed against an order and judgment dated 13th January, 2010 passed by the learned single Judge dismissing the writ petition so filed by the appellant herein challenging the removal of the petitioner as Pradhan of the Mukundapur Gram Panchayat H within the Police Station of Joypur in the District of Purulia.

2. The petitioner filed the writ application challenging the notice dated 1 21st December, 2009 issued by the requisitionists for removal of the petitioner.

3. Mr. Bidyut Kumar Banerjee, learned counsel appearing on behalf of the petitioner contended that a notice u/s 12 of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the "1973 Act") was issued on 28th October, 2009. As the writ petitioner failed to convene the meeting, the requisitionists u/s 16 of the 1973 Act called a meeting on 27th November, 2009. The meeting could not be held on 27th November, 2009, instead a notice was issued u/s 12 of the 1973 Act on 4th December, 2009. The writ petitioner did not convene the said meeting, as

a result whereof a notice dated 21st December, 2009 was issued by the requisitionists for holding the meeting on 29th December, 2009. At the said meeting, by a resolution passed by the requisite majority, the writ petitioner was removed for no confidence.

4. According to Mr. Banerjee, the said notice dated 21st December, 2009 cannot be treated as a notice since the initial requisitionists in the notice dated 4th December, 2009 were eight in number while the requisitionists in the Section 16 notice were seven in number. Therefore, it cannot be treated as notice for removal of the Pradhan and the same should be liable to be quashed.

5. It is further submitted that in view of the bar imposed by the third proviso to Section 12, no notice u/s 12 of the Act of 1973 could have been issued on 4th December, 2009 and further contended that the second proviso to Section 16 of the 1973 Act provides that in case of failure of the Pradhan to call a meeting, the members, namely, the requisitionists, u/s 12 of the 1973 Act have a right to issue notice u/s 16 of the said Act.

6. According to Mr. Banerjee, the resolution dated 29th December, 2009 passed in the meeting cannot be sustained and is liable to be set aside. According to him, the notice issued u/s 12 of the Act of 1973 issued by the requisitionists is not in accordance with the provisions of law and, therefore, the said notice dated 21st December, 2009 and the meeting held in terms thereof and the resolution passed in the said meeting also cannot be sustained in the eve of law.

7. On the other hand, Mr. Mahato, learned counsel appearing on behalf of the requisitionists, submitted that on 28th October, 2009, a notice was issued u/s 12 of the 1973 Act, as the Pradhan failed to convene a meeting, a notice was issued on 18th November, 2009 u/s 16. By an order dated 26th November, 2009 the prescribed authority given liberty the requisitionists to start the entire process afresh in view of the procedural lapse regarding requisition of the meeting. In view of that a notice u/s 12 was issued on 4th December, 2009 for removal of the Pradhan of the said Gram Panchayat. The Pradhan once again failed to convene the meeting. On 21st December, 2009, the requisitionists issued notice u/s 16 of the 1973 Act. On 29th December, 2009 the meeting was held in terms of the said notice and a resolution was passed.

8. He further pointed out that in the facts and circumstances of the case, the bar imposed by the third proviso to Section 12 is not applicable and, therefore, the notice u/s 12 and Section 16 issued on 4th December, 2009 and 21st December, 2009 are valid.

9. Having considered the submissions made by the appellant as well as the respondents, it appears to us that although the requests were placed by the requisitionists for convening a meeting, no meeting was convened by the Pradhan. Therefore, the bar of six months cannot have any role in the facts and circumstances of this case.

10. In fact, it is made very clear that when a meeting was held for removal of Pradhan or Upa-Pradhan of the Gram Panchayat then it is not permissible under the provisions of the Act for convening of the second meeting for the identical purpose within six months from the date of the first meeting (See: *Aleya Sk. v. The State of West Bengal and Ors.*, (2003) 1 Cal LJ 677).

11. We further make it clear that the requisition in writing to convene a meeting cannot be construed at all as a notice of a meeting because of the fact that by such requisition it is not known to the requisitionists whether Pradhan will call the meeting or the members will have to call the meeting on the failure of the Pradhan. On the general principle of law such requisition in writing merely brings into the knowledge of the statutory authority the intention of the majority members to call a meeting of the Gram Panchayat either for the purpose of Section 12 of the Act of 1973 or for any other purposes.

12. The object of the notice is only to make the person aware of the intent and the purport of the notice. The object of the third proviso to Section 12 of the said Act is nothing but to prevent repeated meetings of the Gram Panchayat for removal of the Pradhan and Upa-Pradhan. It must be held that it could not have been the intention of the Legislature to include meetings for the aforesaid purpose which could not be held beyond the control of the concerned parties, i.e., the requisitionists.

13. Therefore, in our considered opinion, the third proviso to Section 12 of the Act of 1973 cannot be a help to the appellant. Therefore, the requisitionists were entitled to issue the notice dated 4th December 2009. It is also clear from the second proviso to Section 16 of the Act that the requisition u/s 12 is to be in writing by 1/3rd members of the Gram Panchayat subject to a minimum of three members. Therefore, the point tried to be urged before us by Mr. Banerjee with regard to the number of requisitionists cannot be a help to the appellant.

14. Therefore, we do not find any merit in the appeal so filed by the 1 Appellant challenging the impugned order dated 13th January, 2010. Hence we dismiss this appeal.

Xerox certified copy of this order, if applied for, be given to the learned counsel for the parties on usual undertaking.