
(2010) 01 CAL CK 0041
In the Calcutta High Court
Case No : A.S.T. 2 of 2010

Lakhi Bhui Mali

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 12-01-2010

Acts Referred:

West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 — Rule 4, 6, 6(1)
West Bengal Panchayat Act, 1973 — Section 12, 16(2), 4(2A)

Citation : AIR 2010 Cal 69 : (2010) 1 CALLT 614

Hon'ble Judges : Mohit S. Shah, C.J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Tapan Kumar Mukherjee, Ekramul Bari and K.M. Hossain, for the Appellant; Amalesh Roy, Diptanil Chakraborty and S. Dasgupta, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—This. Mandamus-Appeal is at the instance of an unsuccessful writ-petitioner and is directed against an order dated 21st December, 2009 passed by a learned Single Judge of this Court by which His Lordship dismissed the writ-application filed by the appellant in which the appellant challenged the legality of the meeting held on 14th December, 2009 at the instance of the private-respondents for her removal from the post of Pradhan of a Gram Panchayat.

Being dissatisfied, the writ-petitioner, the former Pradhan of the concerned Gram Panchayat, has come up with the present mandamus-appeal.

The following facts are not in dispute:

2. On 14th September, 2009, four members of the Gram Panchayat served a notice upon the appellant, the Pradhan, to hold a meeting in terms of Section 16 of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the Act) so that they could bring "no confidence motion" against the appellant. On 21st

September, 2009, the appellant, consequently, informed the Block Development Officer by a notice that pursuant to the demand of those four members a meeting would be held on 6th October, 2009 for considering "no confidence motion" and she requested the Block Development Officer to take necessary step. However, on 22nd September, 2009, those four members of the concerned Panchayat informed the appellant that they had withdrawn the notice dated 14th September, 2009 of their own volition.

3. Subsequently, on 23rd September, 2009, six members of the said Gram Panchayat served a fresh notice upon the appellant and requested her to hold a meeting for her removal alleging "no confidence" in terms of Section 12 read with Section 16 of the Act. The appellant, however, did not convene any meeting pursuant to the demand by those six members dated 23rd September, 2009 and consequently, those six members issued a notice on 9th October, 2009 for holding a requisitioned meeting on 16th October 2009 for removal of the Pradhan. On that day, a meeting was held where a resolution was adopted by the majority members for the removal of the Pradhan. However, the Block Development Officer and the prescribed authority under the Act, by his order dated 11th November, 2009, declared that the meeting held on 16th October, 2009 including the resolution adopted in the said meeting was not valid. The said decision of the Block Development Officer and the prescribed authority under the Act dated 11th November, 2009 was, however, not challenged by any of the members and became final.

4. Subsequently, on 3rd December, 2009, those six members of the Gram Panchayat again took step for holding a requisitioned meeting on 14th December, 2009 for removal of the Pradhan but the Pradhan having refused to accept the said notice, the same was affixed on the outer door of the house of the Pradhan in the presence of the two witnesses as per Rule 6 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.

5. Ultimately, on 14th December, 2009, the meeting was convened and a resolution was adopted by the majority members in favour of the "no confidence motion" and also for removal of the Pradhan in the presence of the Observer and by order dated 29th December, 2009, the Block Development Officer and the prescribed authority asked the appellant to handover the charge of the Gram Panchayat to the present Upa-Pradhan.

6. Mr. Mukherjee, the learned senior advocate appearing on behalf of the writ-petitioner/appellant, has challenged the legality of the resolution taken in the meeting dated 14th December, 2009 and has contended that in view of the third proviso to Section 12 of the Act, no further meeting could be requisitioned once his client had already convened a meeting on 6th October, 2009 where no resolution was taken for her removal. Mr. Mukherjee contends that the learned Single Judge totally overlooked the aforesaid aspect of the matter. He, therefore, prays for dismissal of the resolution taken in the meeting dated 14th December, 2009.

7. In support of such contention, Mr. Mukherjee relied upon a decision of a Division Bench of this Court in the case of Raghunath Manna and Anr. v. State of West Bengal and Ors. reported in 2001 (1) CLJ 647 and also decisions of two different learned Single Judges of this Court, one in the case of Samsuddin Hossain v. Jakir Hossain and Ors. reported in 2008 (1) CLJ 294 and the other in the case of Aleya Sk. v. The State of West Bengal and Ors. reported in 2003 (1) CLJ 677.

8. Mr. Roy, the learned advocate appearing on behalf of the requisitionists, however, opposed the aforesaid contention of Mr. Mukherjee and has contended that the resolution taken in the earlier requisitioned meeting dated 16th October, 2009 having been declared invalid by the prescribed authority by order dated 11th November, 2009, it should be presumed that there was no earlier meeting held in accordance with law in the past and, therefore, the third proviso to Section 12 of the Act does not come into operation. Mr. Roy points out that the earlier notice of demand dated September 14, 2009 was itself withdrawn by those four members who issued the said notice, and, therefore, the step taken by the appellant pursuant to such notice by calling a meeting on October 6, 2009 should not be taken into consideration. Moreover, by order dated November 11, 2009, the Block Development Officer and the prescribed authority has already declared such meeting to be not in conformity with the Rules framed under the Act.

9. Mr. Dasgupta the learned advocate appearing on behalf of the State-respondents, has supported the contention of Mr. Roy and opposed the contention of Mukherjee.

10. Therefore, the only question that arises for determination in this appeal is whether the resolution taken in the meeting dated 14th December, 2009 should be held to be hit by the third proviso to Section 12 of the Act.

11. In order to appreciate the respective contentions of the learned Counsel for the parties, it will be appropriate to refer to the provisions contained in Sections 12 and 16 of the Act which are quoted below:

12. Removal of Pradhan and Upa-Pradhan.--Subject to the other provisions of this section, a Pradhan or an Upa-Pradhan of a Gram Panchayat may, at any time, be removed from office by a resolution carried by the majority of the existing members referred to in Clause (f) of Sub-section (2A) of Section 4 at a meeting specially convened for the purpose. Notice of such meeting shall be given to the prescribed authority:

Provided that at any such meeting while any resolution for the removal of the Pradhan from his office is under consideration, the Pradhan, or while any resolution for the removal of the Upa-Pradhan from his office is under consideration, the Upa-Pradhan, shall not, though he is present, preside, and the provisions of Sub-section (2) of Section 16 shall apply in relation to every such meeting as they apply in relation to a meeting from which the Pradhan or as the case may be the Upa-Pradhan is absent:

Provided further that no meeting for the removal of the Pradhan or the Upa-Pradhan under this section shall be convened within a period of one year from the date of election of the Pradhan or the Upa-Pradhan:

Provided also that if, at a meeting convened under this section either no meeting is held or no resolution removing an office bearer is adopted, no other meeting shall be convened for the removal of the same office bearer within six months from the date appointed for such meeting.

16. Meetings of Gram Panchayat.--(1) Every Gram Panchayat shall hold a meeting at least once in a month in the office of the Gram Panchayat. Such meeting shall be held on such date and at such hour as the Gram Panchayat may fix at the immediately preceding meeting:

Provided that the first meeting of a newly-constituted Gram Panchayat shall be held on such date and at such hour and at such place within the local limits of the Gram concerned as the prescribed authority may fix:

Provided further that the Pradhan when required in writing by one-third of the members of the Gram Panchayat subject to a minimum of three members to call a meeting shall do so fixing the date and hour of the meeting to be held within fifteen days after giving intimation to the prescribed authority and seven days' notice to the members of the Gram Panchayat, failing which the members aforesaid may call a meeting to be held within thirty-five days after giving intimation to the prescribed authority and seven days notice to the Pradhan and other members of the Gram Panchayat. Such meeting shall be held in the office of the Gram Panchayat on such date and at such hour as the members calling the meeting may decide. The prescribed authority may appoint an observer for such meeting who shall submit to the prescribed authority a report in writing duly signed by him within a week of the meeting on the proceedings of the meeting. The prescribed authority shall, on receipt of the report, take action thereon as it may deem fit.

Provided also that for the purpose of convening a meeting u/s 12, at least one-third of the members referred to in Clause (i) of Sub-section (2A) of Section 4, subject to a minimum of three members, shall require the Pradhan to convene the meeting:

Provided also that if the Gram Panchayat does not fix at any meeting the date and the hour of the next meeting or if any meeting of the Gram Panchayat is not held on the date and the hour fixed at the immediately preceding meeting, the Pradhan shall call a meeting of the Gram Panchayat on such date and at such hour as he thinks fit.

(2) The Pradhan or in his absence, the Upa-Pradhan shall preside at the meeting of the Gram Panchayat; and in the absence of both or on the refusal of any or both to preside at a meeting, the members present shall elect one of them to be the President of the meeting.

(3) One-third of the total number of members subject to a minimum of three members shall form a quorum for a meeting of a Gram Panchayat:

Provided that no quorum shall be necessary for an adjourned meeting.

(4) All questions coming before a Gram Panchayat shall be decided by a majority of votes:

Provided that in case of equality of votes the person presiding shall have a second or casting vote:

Provided further that in case of a requisitioned meeting for the removal of Pradhan or Upa-Pradhan u/s 12, the person presiding shall have no second or casting vote.

12. On a plain reading of the provisions contained in Sections 12 and 16 of the Act, it is apparent that once pursuant to a demand! made by one-third of the members of a Panchayat, if any meeting is held by the Pradhan or for not calling such meeting, the requisitioning members call a requisitioned meeting, and in such meeting so convened, either no meeting is held or no resolution removing the Pradhan is adopted, no further meeting should be convened for the removal of the Pradhan within six months from the date appointed for such meeting.

13. In order to attract the third proviso to Section 12 of the Act, a meeting must be convened in terms of Section 16 of the Act by complying with all the formalities required for calling such meeting as prescribed in the Act and the Rules framed thereunder and if after compliance of all such formalities, the meeting is not held for want of quorum or if in such meeting, the resolution for removal of office bearer is not adopted by the majority, no further meeting can be convened for removal of the selfsame office bearer within six months from the date appointed for such meeting.

14. In the case before us, the first meeting convened by the Pradhan on 6th October, 2009 was declared invalid by the Block Development Officer and the appointed authority by order dated 11th November, 2009 on the ground that the same was convened by not conforming to the procedure laid down in Rule 4 read with Rule 6(1) of the West Bengal (Gram Panchayat Administration) Rules, 2004. Such decision of the prescribed authority has not been challenged by either of the parties and as such, the same has attained finality. Therefore, the meeting apparently held on 6th October, 2009 at the instance of the appellant should be held to be "no meeting" in the eye of law.

15. Similarly, pursuant to the subsequent notice dated 23rd September, 2009 when the private-respondents convened a meeting on 16th October, 2009 consequent to the refusal of the appellant to call any such meeting and a resolution for removal of the appellant was passed therein, the said meeting including the resolution for removal taken therein was declared to be invalid by the concerned Block Development Officer by the selfsame order dated 11th November, 2009 as the same was not preceded by a clear 7 days" notice as

required under the prescribed Rules. Therefore, the said meeting should also be ignored and it should be lawfully presumed that no meeting was at all held on October 16, 2009.

16. If the meetings apparently held on 6th October, 2009 and 16th October, 2009 treated to be "no meeting" in the eye of law, the resolution taken on the subsequent meeting held on 14th December, 2009 cannot be held to be hit by the third proviso to Section 12 of the Act.

17. Therefore, the learned Single Judge rightly dismissed the writ-application filed by the appellant.

18. We now propose to deal with the decisions cited by Mr. Mukherjee, the learned senior advocate appearing on behalf of the appellant.

19. In the case of Raghunath Manna and Anr. v. State of West Bengal and Ors. (supra), a notice was served by the requisitionists addressed to the Pradhan for calling a meeting for his removal in accordance with the provisions of Section 12 read with Section 16 of the Act but no meeting was held in pursuance of this notice and subsequently, the Secretary of the Gram Panchayat called a general meeting which was attended by all the elected members of the Panchayat. Afterwards, in pursuance of the requisitionists notice issued in the month of October, 2000, a meeting was called by the Secretary of the Panchayat on 5th November, 2000 but in the said meeting no member cast vote in favour of the proposal for removal of the Pradhan. Subsequent to this meeting, the requisitionists issued another notice dated 9th November, 2000 fixing 17th November, 2000 as the date of meeting for the removal of the Pradhan and the validity of the said notice calling the meeting on 17th November, 2000 was challenged in a writ-application. In such a case, the Division Bench was of the view that in the earlier meeting held on 5th November, 2000, the proposal for removal having failed, no further meeting could be held on 17th November, 2000.

20. In the case before us, the earlier two meetings were held to be illegal by the competent authority for non-compliance of the provisions of the Rules framed under the Act and as such, those meetings should be treated to be "no meeting" in the eye of law and therefore the said decision of the Division Bench cannot have any application to the facts of the present case.

21. In the case of Samsuddin Hossain v. Jakir Hossain and Ors. (supra), a learned Single Judge was considering a civil revisional application preferred against the appellate order arising out of an application for injunction in connection with suit where the removal of the Pradhan was the subject-matter. In the said case, the defendant Nos. 1 to 12 issued a notice asking the plaintiff to convene a meeting within 15 days to discuss about "no confidence" raised against him and for adopting appropriate resolution. The said notice was not served upon the plaintiff. It was followed by further notice dated 26th September, 2006 which was served upon the plaintiff whereby he was informed that the defendant Nos. 1 to 12 wanted to hold a meeting on 4th October, 2006

for the purpose of removal of the plaintiff from the post of the Pradhan. The plaintiff filed a suit being O. Section No. 57 of 2006 before the learned Civil Judge, Junior Division, challenging the legality and the validity of the notices dated 5th September, 2006 and 26th September, 2006 by which he was asked to convene the meetings. The learned trial Judge by order dated 27th September, 2006 granted injunction restraining the defendants in the said suit from holding a meeting for removal of the plaintiff on 4th October, 2006 or on any other date till 19th October, 2006. The defendants in the said suit appeared on 19th October, 2006 and filed application thereby praying for passing a decree in favour of the plaintiff on admission. They did not oppose the continuation of the injunction order passed on 27th September, 2006 which was again extended till 1st November, 2006 and the said date was fixed for hearing of the defendants' application for passing a decree on admission. Without waiting till 1st November, 2006, the defendants issued a fresh notice dated 20th October, 2006 asking the plaintiff to call a meeting. In view of such fact, the plaintiff filed a second suit being O.S. No. 59 of 2006 praying for declaration that the notice dated 20th October, 2006 was illegal and invalid and in connection with the second unit, the plaintiff prayed for injunction restraining the defendants from holding any meeting pursuant to the notice dated October 20, 2006. The defendants entered appearance and filed written objection contending that since, the earlier notices dated 5th September, 2006 and 26th September 2006 were subsequently found to be strictly not in accordance with law no meeting in pursuance of those notices was held. It was further contended that the order passed by the learned Trial Judge in connection with the earlier suit related to the notices dated 5th September, 2006 and 26th September, 2006 and any order passed in the earlier suit did not bind the defendants in respect of the subsequent notice issued by them. The learned Trial Judge by the order dated 13th November, 2006 dismissed the application for injunction by accepting the contention of the defendants. Being dissatisfied, the plaintiff preferred a miscellaneous appeal and in connection with such appeal, the plaintiff prayed for fresh injunction. The learned Appellate Court by order dated 15th November, 2006 rejected the application for injunction and against such order the revisional application was filed at the instance of the plaintiff. In such a revisional application a learned Single Judge of this Court set aside the order passed by the learned Courts below on the ground that the meeting having been called before the expiry of the period of 6 months from the appointed day of the first meeting, the same was hit by Section 12 of the Act. With great respect to the learned Single Judge, we are unable to appreciate the reason assigned by His Lordship. In our view, injunction should have been refused on the ground that by virtue of the order of injunction granted in the earlier suit pending between the parties no meeting having been held pursuant to the earlier notices, there was no bar in holding a meeting on the basis of a fresh notice which was not the subject-matter of the earlier suit. We, therefore, respectfully disagree with the reason assigned by the learned Single Judge in the case of *Samsuddin Hossain v. Jakir Hossain* (supra), where no meeting was earlier held at all due to the order of injunction granted in the

earlier suit.

22. In the case of *Aleya Sk v. The State of West Bengal and Ors.* (supra), a meeting was held on October 31, 2002 at the instance of the Pradhan on the basis of requisition of the 8 members of the Panchayat for the removal of the Upa-Pradhan of the said Panchayat. However, there was cancellation of the said meeting by a resolution supported by those requisitionists. Thereafter, the 8 requisitionists again convened another meeting on 15th November, 2002 in which a resolution was taken by which the Upa-Pradhan was removed from his office. In such circumstances, it was held that the second meeting could not be held within 6 months of the first meeting held on 31st October, 2002 where in spite of calling the meeting for removal, the Upa-Pradhan could not be removed by way of resolution of the majority of the members. We fail to appreciate how the said decision can be of any help to the writ-petitioner in this case where the earlier two meetings were held to be not in conformity with the Rules framed under the Act by the prescribed authority and the said decision remained unchallenged.

23. We, therefore, find that the decisions cited by Mr. Mukherjee are of no avail to his client in anyway.

24. In view of what have been stated above, we find no merit in this appeal and the same is dismissed.

25. In the facts and circumstances, there will be, however, no order as to costs.

Mohit S. Shah, C.J.

26. I agree.