

(2023) 09 CAL CK 0058

In the Calcutta High Court

Case No : WPA No. 16094, 16627, 18443 Of 2023

Lalita Das Nandi

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 12-09-2023

Acts Referred:

West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995 — Rule 9, 9(3)(b), 9(3)(b)(ii), 9(3)(b)(iii)
West Bengal Municipal Act, 1993 — Section 18, 18(3)

Citation : (2023) 09 CAL CK 0058

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Kishore Dutta, Biswarup Biswas, L.R. Mondal, Nemai Ch. Saha, Probal Sarkar, Kishore Dutta, Biswarup Biswas, L.R. Mondal, Nemai Ch. Saha, Probal Sarkar

Final Decision : Allowed

Judgement

Amrita Sinha, J

Lalita Das Nandi claiming herself to be the Chairman of the Murshidabad Municipality filed writ petition being WPA No. 16094 of 2023 praying for setting aside the notice dated 14th June, 2023 signed by nine councillors of the Municipality calling special meeting under Section 18(3) of the West Bengal Municipal Act, 1993 ('the said Act' for short) for removal of the Chairman.

The ground seeking setting aside of the impugned notice is that the same suffers inherent lacunae as copy of the said notice was neither served upon the Sub-Divisional Officer, Lalbagh, Murshidabad nor a copy of the same was served upon the Vice Chairman of the Municipality.

As the legal obligation of serving copy of the aforesaid notice upon the Sub-Divisional Officer and the Vice Chairman of the Municipality was not complied with by the requisitionists, accordingly the petitioner, being the Chairman of the

Municipality, did not convene the special meeting.

During the pendency of the aforesaid writ petition the requisitionists proceeded with the matter and adopted resolution for removal of Chairman in the meeting held on 11th July, 2023, as such, Lalita Das Nandi filed the second writ petition being WPA No. 16627 of 2023 praying for setting aside the impugned resolution dated 11th July, 2023 and the subsequent impugned letter dated 12th July, 2023 issued by the Vice Chairman of the Municipality. Prayer was made for restraining the requisitionists from disturbing the petitioner from discharging her duties as the Chairman of the Municipality.

The ground for filing the second writ petition was that as the initial step for convening the meeting for removal of Chairman was not in accordance with the provisions of the said Act, accordingly, the subsequent steps taken ought to fail and the petitioner is liable to continue in the position of the Chairman of the Municipality.

As the erstwhile Chairman failed to hand over charge despite resolution adopted for her removal, a third writ petition being WPA No.18443 of 2023 was filed by one of the councillors of the Municipality. Prayer was made for directing the respondent authority to take step for handing over charge from the erstwhile Chairman and further directing the erstwhile Chairman to hand over charge to the Executive Officer of the Municipality.

Relevant provisions of the said Act and the Rules have been relied upon. Specific contention of Lalita Das Nandi is that the initial notice for removal of Chairman though addressed to the Chairman, but copy thereof was not served either upon the Vice President or upon the Sub-Divisional Officer. As the same was not served upon the Vice Chairman, accordingly, the same cannot be treated as a valid notice for removal of the Chairman.

It has been contended that, on the failure of the Chairman to convene the meeting within the time prescribed in law, it is the duty and responsibility of the Vice Chairman to convene the meeting. Time to convene the meeting by the Vice Chairman starts ticking immediately after the time to convene the meeting by the Chairman expires. Till the Vice Chairman is made aware about the timeline in accordance with which the meeting is required to be convened, the initial notice is bound to fail.

It has been submitted that for all practical purposes, the second notice dated 30th June, 2023, which is a photocopy of the earlier notice dated 14th June, 2023 barring the memo number and the signature of the Vice Chairman at the bottom, has to be treated as the very first notice requesting the Chairman to convene the meeting. If the notice dated 30th June, 2023 is treated as the first notice to convene the meeting, then the subsequent notice dated 7th July, 2023 by three elected members of the Board of Councillors of the Municipality does not follow the prescribed timeline and, accordingly, resolution adopted in the special meeting scheduled on 11th July, 2023 does not have any legal validity and ought

not to be acted upon.

It has been submitted that the notice dated 7th July, 2023 does not mention about the earlier notice dated 30th June, 2023, but mentions about the preceding notice dated 14th June, 2023. It has been submitted it was not proper for the three members of the Municipality to use the official letterhead of the Municipality to issue the notice of special meeting. The members of the Municipality lacked the legal authority to issue the notice for conducting special meeting for removal of Chairman.

The petitioner Indrajit Dhar contends that as the Chairman and subsequently the Vice Chairman failed to convene the meeting within the time as stipulated in the said Rules, accordingly, the meeting was convened on the notice of the three elected members of the Board of Councillors. On 11th July, 2023 resolution was adopted for removal of Chairman by the majority members of the Municipality in presence of the Executive Officer and the Finance Officer.

The resolution of the special meeting was duly communicated by the Vice Chairman of the Municipality to the District Magistrate and the Sub-Divisional Officer, Lalbagh. Request was made to the District Magistrate for taking steps for making over of charge.

It has been submitted that the procedure as laid down in the said Act and the said Rules for removal of the Chairman was scrupulously followed and there is no infraction of the legal provision. Indrajit Dhar prays for permitting the newly elected Chairman to take over charge for the proper and smooth functioning of the affairs of the Municipality.

I have heard and considered the rival submissions made on behalf of all the parties. For the sake of convenience and for proper adjudication of the issues raised, all the three writ petitions are heard and taken up for consideration analogously and are being disposed of by this common judgment.

Section 18 of the said Act lays down the term of office of the Chairman of the Municipality.

Section 18(3) mentions that the Chairman may be removed from office by a resolution carried by a majority of the total number of elected members of the Board of Councillors holding office for the time being present and voting by them at a special meeting to be called for this purpose in the manner prescribed upon a requisition made in writing by not less than one-third of the total number of elected members of the Board of Councillors, and the procedure for the conduct of business in the special meeting shall be such as may be prescribed.

Rule 9 of the West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995 ('the said Rules' for short) speaks about special meeting.

Rule 9(3)(b) of the said Rules mentions that a special meeting may be convened after giving not less than three days' notice to the members, on a requisition

containing specifically the agenda and signed by not less than 1/3rd of the total number of councillors of the Municipality, by - (i) the Chairman, within fifteen days from the date of receipt of such requisition or, on his failure to do so, (ii) the Vice Chairman within seven days thereafter or, on his failure to do so, (iii) any three of the councillors of the Municipality within further seven days thereafter.

Law prescribes that the Chairman may be removed in a special meeting to be called for that purpose by a resolution carried by a majority of the total number of the elected members, present and voting. A requisition for conducting the special meeting is to be made in writing by not less than one-third of the total number of the elected members of the Board of Councillors.

There is total sixteen members in the Municipality. Nine of them submitted requisition to the Chairman for conducting meeting for removal on 14th June, 2023. On receipt of the said requisition the Chairman was obliged to convene the meeting within fifteen days i.e. the meeting ought to have been convened by 29th June, 2023. As the meeting was not convened within the aforesaid time period, requisition was submitted before the Vice Chairman of the Municipality to convene the meeting.

It appears that the wordings of the requisition notices dated 14th June, 2023 and 30th June, 2023 are same. The first notice, however, does not bear the endorsement of the Vice Chairman of the Municipality. The second notice dated 30th June, 2023 clearly mentions the provision of Rule 9(3)(b)(ii). However, it appears that, though the specific Rule has been set out, but the nomenclature of the Rule was wrongly mentioned. Instead of the Rules, the name of the Act has been indicated.

The third notice of requisition dated 7th July, 2023 was on the letterhead of the Municipality. It has been pointed out that the notice dated 7th July, 2023 does not mention about the second notice dated 30th June, 2023. Though using the letterhead of the Municipality by the three members of the Municipality does not appear to be proper, but the same cannot be held to be fatal so as to dislodge the resolution of the special meeting.

Though it appears that, there is no mention of the second requisition notice dated 30th June, 2023 in the third requisition notice dated 7th July, 2023, but admittedly, the fact that both the Chairman and the Vice Chairman failed to take steps pursuant to the requisition notices served upon them, was clearly mentioned therein.

From the sequence of the three requisition notices it appears that, the timeline matches the provisions of Rule 9(3)(b). On the failure of the Chairman to act in response to the requisition notice dated 14th June, 2023, the second requisition notice dated 30th June, 2023 was issued and on the failure of the Vice Chairman to convene the meeting within the following seven days, the third requisition notice dated 7th July, 2023 was issued. The meeting was ultimately convened on

11th July, 2023 and resolution was adopted by as many as ten elected members of the Board of Councillors to remove Lalita Das Nandi from the post of Chairman of the Municipality. The resolution was duly communicated to the District Magistrate and other officers.

The submission that the first requisition notice was not marked to the Vice Chairman and as such the said notice cannot be treated as valid one, cannot be accepted by the Court. The Rule prescribes that special meeting may be convened on a requisition notice signed by not less than one-third of the total number of the councillors of the Municipality, which appears to have been done in this case. There is no specific provision which requires marking of the first requisition notice upon the Vice Chairman.

The second requisition notice, though bears similar wordings as the first one, but the same was specifically marked to the Vice Chairman with request to convene the meeting as the Chairman failed to do so. Non-marking of the first requisition notice to the Vice Chairman is not fatal. The first notice is specifically meant for the Chairman. Only if the Chairman fails to act in response to the said notice, the role of the Vice Chairman comes to play. Till the fifteen days' time period within which the Chairman ought to convene the meeting does not expire, the Vice Chairman does not have any function. The legal duty to convene the meeting is of the Chairman till the fifteenth day. The Vice Chairman is required to act only if the requisitionists file fresh requisition for removal of the Chairman on expiry of the fifteen days' notice period.

Here, the Vice Chairman also failed to act in response to the requisition notice dated 30th June, 2023 and, accordingly, the third and last step of Rule 9(3)(b) (iii) was invoked by three of the councillors of the Municipality.

A coordinate Bench of this Court in *Sankar Mondal vs. State of West Bengal and Ors.* reported in 2017 SCC Online Cal 4208 held that it is not necessary to serve fresh requisition notice upon the Vice Chairman on failure to convene the meeting within the statutory time by the Chairman. The moment the Chairman fails to convene the meeting within the stipulated time, such requisition would invite the Vice Chairman to convene the meeting.

Parimal Sarkar vs. State of West Bengal and Ors. reported in 2017 SCC Online Cal 7899 laid down that the relevant Rule does not contemplate of a fresh requisition notice to be issued directly to the Vice Chairman for the purpose of convening the special meeting after the Chairman fails to convene such meeting within the statutory time frame of fifteen days.

In the present case, the Vice Chairman was made aware of the inaction on the part of the Chairman to convene the meeting within the stipulated time and, accordingly, all the three requisition notices have to be taken as valid in the eye of law.

In view of the discussions made herein above, it does not appear that there was

any infraction of the provisions of the Act and the Rules in removing the Chairman of the Murshidabad Municipality.

Accordingly, the writ petitions filed by Lalita Das Nandi fails and are hereby dismissed. The writ petition filed by Indrajit Dhar is allowed and disposed of. The newly elected Chairman was rightly entitled to take charge of the Municipality and charge has already been handed over.

There will be no order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.