

(2006) 09 CAL CK 0015
In the Calcutta High Court
Case No : W. P. No. 20116 (W) of 2006

Lutfa Begum and Another	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:

West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 — Rule 6(1), 7
West Bengal Panchayat Act, 1973 — Section 12, 16, 16(1)

Citation : (2007) 2 CHN 57

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Debabrata Roy and Kuiuaresh Dalai, for the Appellant; Kalyan Bandopadhyay, P. S. Deb Barman, Farhan Ghaffar and Safiur Rahaman for Respondent No. 6 to 15 and Sumitro Dasgupta and Prafulla Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J.—Two members of No. 5 Bangalbari Gram Panchayat who did not participate in the requisitioned meeting held for removal of the Pradhan, have filed this writ petition, challenging the propriety of the order passed by the prescribed authority on 24th August, 2006, whereby the members of the said Gram Panchayat were requested to take necessary action as per Act and rules as the resolution which was adopted in the meeting held on 21st August, 2006 was not approved as the notice of the requisition meeting was not served upon all the members as per Rule 6(1) of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.

2. The legality and/or validity of the subsequent notice by which ten members of the said Gram Panchayat requisitioned a meeting for the very same purpose to be held on 5th September, 2006, has also been challenged in this writ petition.

3. Let me give the short background of this case which is necessary for appreciation of the dispute involved in this writ petition.

4. Ten members out of 19, by their notice dated 7th August, 2006 requested the Pradhan of the said Gram Panchayat to convene a requisition meeting for transacting the business on the agenda of removal of Pradhan. On receipt of the said notice, the Pradhan, by his notice dated 11th August, 2006 convened a requisition meeting for the said purpose to be held at the office of the said Gram Panchayat at 1 p.m. on 21st August, 2006.

5. A meeting was held on the said date in the presence of the observer sent by the prescribed authority. Ten members supported the said motion. Six members did not support the said motion. Other three members remained absent in the said meeting. Thus, the agenda regarding removal of Pradhan was passed by the majority members.

6. The said resolution, however, was not approved by the prescribed authority as he found that the notice of the requisitioned meeting was not served upon all the members in accordance with the provision as contained in Section 16(1) of the West Bengal Panchayat Act, 1973. As such, the members were requested to take further steps as per Act and the rules framed thereunder.

7. Immediately thereafter, ten members of the said Gram Panchayat again issued another notice dated 28th August, 2006 convening a meeting for the aforesaid purpose to be held at the office of the said Gram Panchayat at 11-30 a.m. on 5th September, 2006.

8. The order of the prescribed authority and the notice issued for the second time for holding the requisition meeting, are under challenge in this writ petition.

9. Mr. Roy, learned Advocate, appearing for the petitioners, submitted that the notice which was served upon the Pradhan on 7th August, 2006 by which the Pradhan was requested to convene a requisition meeting for the aforesaid purpose was illegal and inoperative as the said notice was issued within one year from the date of election of the Pradhan. The Pradhan was elected on 9th August, 2005 and as such, the said notice which was issued on 7th August, 2006 by the requisitionists, was illegal, as the same was issued in violation of provision of Section 12 of the said Act.

10. This submission of Mr. Roy does not appeal to this Court at all for two-fold reasons which are as follows:

Firstly, the Pradhan, instead of challenging the legality of such notice on the aforesaid ground, acted upon the said notice by calling a requisition meeting vide his notice dated 11th August, 2006 by which he convened a meeting to be held on 21st August, 2006. Thus, when the Pradhan acted upon the said notice, the Pradhan cannot challenge the legality of the said notice. In fact, the Pradhan has not challenged the legality of the said notice. It is only the petitioners who are the members of the Gram Panchayat have challenged the legality of the said notice on the aforesaid ground.

11. Now a question may crop up in this connection that there cannot be any

waiver against statute. Still then, this Court does not find any illegality in the said notice for the other reason given below which in my view, is the second reason for which Mr. Roy's contention cannot be accepted.

12. The second proviso to Section 12 which imposes a restriction in calling a meeting for removal of Pradhan within a period of one year from the date of election of the Pradhan, is as follows:

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.

13. The said proviso makes it clear that convening of such meeting within one year from the date of election of the Pradhan is prohibited. Service of notice for requisitioning a meeting upon the Pradhan within one year from the date of election of Pradhan, is not prohibited.

14. There are three stages in a requisition meeting. The first stage starts with service of notice by the requisite number of members upon the Pradhan requesting him to call a meeting. The second stage deals with the procedure for calling and/or convening a meeting. Section 16 of the said Act provides that the Pradhan, within 15 days from the receipt of such notice from the requisite members, may call a meeting in the manner as prescribed in Section 16 thereof. If the Pradhan fails to convene the meeting within the said period then, Section 16 of the said Act authorises the requisitionists to convene a meeting in the manner and within the time as prescribed therein. This part of Section 16 really deals with calling and/ or convening of a meeting. The second stage comes to an end when a meeting is convened for the said purpose as per Section 16 of the said Act. The third stage starts with holding of the meeting, i.e., when the members get together as per the schedule to take a decision on the specific agenda regarding removal of Pradhan.

15. The second proviso to Section 12 of the said Act prohibits convening a meeting within a period of one year from the date of election. This restriction, in my considered view, relates to the second stage of the meeting as the prohibition is on convening of the meeting within one year from the date of election of the Pradhan.

16. Here in the instant case, I find that pursuant to the request made by the ten members vide their notice dated 7th August, 2006, the Pradhan by his notice dated 11th August, 2006 convened a meeting to be held on 21st August, 2006. Thus, it cannot be said that the meeting was convened within one year from the date of election of the Pradhan as the meeting was convened by the notice dated 11th August, 2006 which is beyond one year from the date of election of the Pradhan which was admittedly held on 9th August, 2005.

17. Thus, this Court does not find any substance in this submission of Mr. Roy.

18. Mr. Roy further submitted that Rule 7 of the West Bengal Panchayat (Gram

Panchayat Administration) Rules, 2004 imposes a duty upon the Pradhan, Upa-Pradhan or the Presiding Member, as the case may be, to verify the service return of the notice containing the list of business in the office copy on the date of holding the meeting and on being satisfied that the notice has been duly served on all the members, the business shall be taken up by him for discussion. It is also provided in the said Rule that if the notice is not served on any of the members, the meeting may be postponed and the Pradhan or the Upa-Pradhan may fix another date by giving fresh notice of seven days on all the members in Form 3.

19. Mr. Roy, thus, contended that when the meeting was held on the said date, it should be presumed that the Presiding Officer was satisfied with regard to the service of such notice upon all the members of the Gram Panchayat.

20. Mr. Roy further submitted that the said Rule does not authorise the prescribed authority to verify the service return for examining as to whether service of the notice of the requisitioned meeting was duly effected upon all the members or not. According to Mr. Roy, the prescribed authority, thus, exceeded its jurisdiction by passing the impugned order on 24th August, 2006 by examining the service return and also by holding that the notice of the said meeting was not served upon all the members of the said Grain Panchayat.

21. Mr. Roy further submitted that the subsequent notice which was issued by the requisitionists for holding another meeting for the said purpose on 5th September, 2006 is equally bad as the right to convene a meeting by the requisitionists for the said purpose matures only if the Pradhan fails to convene such a meeting within the prescribed period.

22. Mr. Roy, thus, submitted that when the Pradhan convened such a meeting within the prescribed period, the requisitionists cannot convene any meeting. As such, the impugned notice should be set aside and all steps taken pursuant to the said notice should be quashed.

23. In reply to the said submission of Mr. Roy, Mr. Bandopadhyay, learned senior Advocate, appearing for the private respondents, submitted that since the prescribed authority held that the requisition meeting was not convened by the Pradhan upon service of notice upon all the members of the said Gram Panchayat, it should be presumed that the Pradhan failed to convene the meeting in accordance with the provision contained in Section 16 of the said Act within the prescribed period. According to Mr. Bandopadhyay, under such circumstances, the right to convene the meeting by the requisitionists matured.

24. Mr. Bandopadhyay, thus, submitted that when such a meeting was convened by the requisitionists and the meeting was in fact held pursuant thereto and a resolution having been adopted by the majority members for removal of the Pradhan, this Court should not interfere either with the impugned order passed by the prescribed authority or with the impugned notice issued by the requisitionists by which the requisition meeting was convened.

25. Let me now consider the respective submissions of the learned Counsel appearing for the parties on the aforesaid issue.

26. It is no doubt true that Rule 7 of the said rules imposes a duty upon the Pradhan, Upa-Pradhan or the Presiding Member, as the case may be, to examine the service report for ascertaining as to whether the notice of the requisition meeting has been served upon all the members or not. The said Rule deals with the obligation on the part of the Pradhan, Upa-Pradhan or the Presiding Member, as the case may be, for verification of the service report prior to holding of the meeting.

27. On perusal of the said Rule, this Court finds that the said Rule does not impose any obligation on the prescribed authority to verify the service report prior to holding of the meeting. Section 16 of the said Act prescribes that after the holding of the meeting, the observer will submit a report in writing duly signed by him to the prescribed authority within one week from the date of holding such meeting and the prescribed authority, on receipt of such report, is required to take action thereon, as it may deem fit. The submission of the report by the observer to the prescribed authority and the steps which are required to be taken thereon by the prescribed authority are not an empty formality.

28. The expression, viz., "as it may deem fit" appearing in the said provision is very significant as by using the said expression, an unrestricted jurisdiction was given to the prescribed authority either to approve the said resolution or to disapprove the said resolution and also to pass any necessary order which the prescribed authority deems fit in a given situation.

29. In my considered view, on receipt of the report from the observer, the prescribed authority is required to verify the entire proceeding to find out as to whether the resolution adopted in the requisitioned meeting, was adopted by following the provisions as contained in Sections 12 and 16 of the said Act or not. Thus, the prescribed authority at that stage is required to verify the entire proceeding including the service report for coming to the ultimate conclusion as to whether the removal was done by following the extant provision or not. The Pradhan can be removed only when the prescribed authority approves the legality of the resolution and the legality of the resolution can only be approved only when it is declared by the prescribed authority that such resolution was adopted by following the provisions as contained in Sections 12 and 16 of the said Act.

30. As such, this Court cannot hold that on receipt of the report from the observer, the prescribed authority while taking a decision, cannot examine the service report for ascertaining the fate of service of notice upon all the members.

31. This Court, however, does not find any practical approach in the aforesaid submission of Mr. Roy inasmuch as even if the impugned order passed by the prescribed authority is set aside by accepting the submission of Mr. Roy, still then the petitioners will not be benefited as the resolution which was adopted by the

majority members for removal of the Pradhan in the meeting held on 21st August, 2006 will automatically come into play immediately on setting aside of the impugned order passed by the prescribed authority. In that case, the Pradhan will have no other alternative but to vacate his office to respect the majority decision taken in the said meeting held on 21st August, 2006. This conclusion is arrived at by this Court, as the legality and/or validity of the meeting held on 21st August, 2006 and the resolution adopted therein remain unchallenged in the writ petition.

32. Thus, if the said resolution is allowed to operate, then further meeting need not be requisitioned and as such, the meeting which was requisitioned by the impugned notice issued by the requisitionists on 28th August, 2006 may be treated as abandoned.

33. If on the other hand, this Court holds that the decision taken by the prescribed authority on 24th August, 2006, is legal and justified, then again this Court will have no other alternative but to hold that the Pradhan, having been failed to convene the meeting as per Section 16 of the said Act within the time as prescribed thereunder, the right to convene the meeting by the requisitionists matured. This Court, thus, holds that there was no illegality in the notice issued by the requisitionists on 28th August, 2006. This Court is also informed that even in the meeting which was held on 5th September, 2006 pursuant to the said notice dated 28th August, 2006, a resolution for removal of the Pradhan was adopted by ten out of nineteen members.

34. Since the Pradhan is an elected post, the Pradhan has to accept the majority decision which was adopted in a democratic process for his removal. In democracy the voice of the majority should be honoured, otherwise the entire foundation of democracy will collapse.

35. Here of course, Pradhan has not come forward to challenge his removal. Thus, this Court can safely presume that Pradhan has accepted the majority decision regarding his removal.

36. Since none of the petitioners is the Pradhan of the said Gram Panchayat, they cannot be affected by the majority decision which was taken for removal of the Pradhan. The petitioners being the members of the said Gram Panchayat can neither be affected by the removal of the Pradhan nor can they be aggrieved by the removal of the Pradhan and as such, the petitioners do not have any locus to challenge the majority decision taken regarding removal of the Pradhan.

37. This Court, thus, does not find any justification to interfere with the impugned order of the prescribed authority and/or the impugned notice issued by the requisitionists for the reasons as above.

38. The writ petition, thus, stands rejected. The interim order which was passed earlier, thus, stands vacated. The prescribed authority is thus directed to take the ultimate decision on the resolution adopted in the meeting held on 5th

September, 2006 in accordance with law positively within a week from the date of communication of this order.

39. The prescribed authority is also directed to keep constant watch and/ or supervision over the activities of the said Gram Panchayat until such decision is taken by the prescribed authority, so that the normal activities of the said Gram Panchayat is not affected during the period of this turmoil.

40. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.