

(1990) 03 CAL CK 0045
In the Calcutta High Court
Case No : F.M.A.T. No. 86 of 1990

Mahindi Kumar and others

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 02-03-1990

Acts Referred:

West Bengal Panchayat Act, 1973 — Section 210

Citation : AIR 1991 Cal 27 : 94 CWN 633

Hon'ble Judges : S.K. Hazari, J;G.N. Ray, J

Bench : Division Bench

Advocate : Milan Chandra Bhattacharya and G.S. Dey, for the Appellant; S.M. Panda and L.M. Mahata, for the Respondent

Judgement

G.N. Ray, J.—In this appeal an application for interim order has been made by the writ petitioners appellants. The appellants moved a writ petition for the approval of the names of nominees in Sarengdih Gram Panchayat under S. 210 of the West Bengal Panchayat Act on the basis of the resolution of the Gram Panchayat dated 29th December, 1988. It may be mentioned here that if there is no elected female member and/or member from the scheduled caste or scheduled tribe in Gram Panchayat then under S. 210 of the Panchayat Act, the members of the Gram Panchayat can make a resolution for nomination of such female member and/or member from scheduled caste and scheduled tribe in the Gram Panchayat. On the basis of such resolution the Government on approving the names gives a publication nominating such members in the Gram Panchayat. The appellants stated that although some names were recommended by the resolution of the Gram Panchayat dated 29th December, 1988 while the final approval of such names and consequential publication by the Government was awaiting, another meeting of the Gram Panchayat had taken place. On 23rd May, 1989, and a resolution was taken by the majority members of the Panchayat by which some names other than the names recommended in the first resolution were recommended under S. 210 of the Panchayat Act and such resolution taken on 23rd May, 1989 was also forwarded to the Block Development Officer for

appropriate action to be taken by the District Magistrate and the District Panchayat Officer.

2. It is contended by the appellants that when the resolution dated 23rd May, 1989 was passed recommending some names for nomination under S. 210 there is no occasion on the part of the District Panchayat Officer to accord approval of the names contained in the first resolution dated 29th December, 1988 and to give a publication of such names for being nominated to the said Gram Panchayat. The writ petitioners appellants have contended that such action is wholly illegal and improper. The appellants, therefore, prayed for an appropriate direction for according approval to the names contained in the second resolution of the Gram Panchayat by cancelling the nomination sought to be made on the basis of the first resolution. Such writ application was contested on behalf of some of the members of the Gram Panchayat and also on behalf of the nominees in whose favour the recommendation was made by the first resolution dated the 29th December, 1988 and in whose favour the publication had been made by the Government on approval of the said names. It was contended by the said respondents that the Gram Panchayat having exercised the power under S. 210 was not competent to exercise the same power for the self-same reason at a later date and in any event the first resolution not having been cancelled, the same remained operative and when the State Government under the provisions of the Panchayat Act had accepted the recommendation made by the Gram Panchayat and approved the names and made publication of such names such action is absolutely legal and just and no interference by the writ court was called for. The learned trial Judge accepted the said contention and dismissed the writ application.

3. The instant appeal has been preferred by the eight members of the said Gram Panchayat who passed the second resolution by recommending some other names for being nominated in the said Gram Panchayat under S. 210 of the Panchayat Act.

4. Mr. Bhattacharya, learned counsel for the appellants has very strongly contended that the exercise of the power under S. 210 by the members of the Gram Panchayat is an executive function and the Gram Panchayat was quite competent to recall the earlier resolution before the same was acted upon by the District Panchayat Officer. It has been submitted by Mr. Bhattacharya that initially a resolution was passed by the majority members of the said Gram Panchayat but there had been change of grouping amongst elected members and later on the majority of such members on regrouping considered the question of recommending the names under S. 210 of the Panchayat Act and on such consideration the majority of the members thought it fit that some other names should be recommended in the interest of the Gram Panchayat and precisely for the said purpose the meeting was convened and the second resolution was adopted on the 23rd May, 1989 recommending some other names. Mr. Bhattacharya has contended that as in the said second resolution containing the

names different from the names contained in the first resolution was recommended the first resolution must be held to have been cancelled. Since the factum of withdrawal of the names contained in the first resolution and recommendation of other names as contained in the second resolution were made known to the concerned authorities, there was no scope on the part of the District Panchayat Officer to give effect to the first resolution which stood revoked and cancelled and to a publication. Mr. Bhattacharya has submitted that it is the Gram Panchayat which has been empowered to recommend the names for being nominated in the Gram Panchayat under S. 210. Unless for valid and cogent reasons, such names cannot be accepted, the concerned authority is bound to accept such recommendation and accord approval to the recommendations by publishing the names contained in the recommendation for nominating in the Gram Panchayat. Mr. Bhattacharya has contended that unfortunately the learned trial Judge failed to take note of the fact that the second resolution had been validly passed by which the first resolution stood rejected and/or cancelled and as such there was no occasion to consider such resolution which, at the relevant time, was non est. The learned counsel therefore has submitted that the order passed by the learned trial Judge should be stayed and the respondents who sought to be nominated in the said Gram Panchayat under S. 210 of the Panchayat Act should be restrained from acting as members of the Gram Panchayat. S. Mr. De, the learned counsel appearing for some of the members of the Gram Panchayat has, however, submitted that the first resolution was validly passed under S. 210 recommending the names for being nominated in the said Gram Panchayat. None of the persons whose names were recommended were ineligible to be nominated in the said Gram Panchayat under S. 210. In the aforesaid circumstances, there was no occasion for taking any further resolution for recommending some other names for nomination under S. 210. Mr. De has contended that it is not the case that due to any misrepresentation made or fraud practised on the members of the Gram Panchayat the first resolution was passed and in the interest of the Gram Panchayat, the said resolution was required to be revoked or recalled. The first resolution having been validly passed could not be revoked on the ipse dixit of some of the members of the Gram Panchayat even if they belong to the majority group at the time of passing the subsequent resolution. Mr. De has also contended that in any event, the first resolution not having been cancelled in accordance with law the same remains operative and the second resolution containing the recommendations of some names under S. 210 cannot be looked into in view of the fact that a valid resolution has already been passed and the same remains operative. The District Panchayat Officer has, therefore, had rightly accepted the first resolution and the nomination of the members on the basis of the first resolution is quite legal and valid and the learned trial Judge has rightly rejected the writ application. Hence, no interference is called for in this appeal and the application for interim order should also be dismissed for the self-same reason.

6. Mr. Panda, the learned counsel, appearing for those respondents whose names were recommended by the first resolution and who had been ultimately nominated by the State Government under S. 210 has also supported Mr. De. Mr. Panda has contended that the Gram Panchayat has been given a statutory duty and power to recommend the names for being nominated in the Gram Panchayat under S. 210. Once such statutory power is properly exercised by the Gram Panchayat, it ceases to have any further power to make recommendation for the self-same purpose. Mr. Panda has also contended supporting Mr. De that if a resolution is passed on a misrepresentation and/or on the basis of any fraudulent information, in an appropriate case, there may be occasion to revoke such resolution by expressly taking a resolution to that effect but when a resolution was validly passed in exercise of power under S. 210, there will be no occasion to take another resolution in exercise of power under S. 210. There is no allegation of any fraud or misrepresentation vitiating the first resolution. Hence, second resolution is illegal and of no consequence. In the instant case, it is quite evident that simply on regrouping of the members of the Gram Panchayat, an attempt was made to recommend some names different from the names contained in the first resolution. As the second resolution is wholly illegal and inoperative, there was no occasion for the District Panchayat Officer to take note of the second resolution and if nomination on the basis of the first resolution had been made, no exception can be taken and precisely for the said resolution the learned trial Judge dismissed the writ application. Mr. Panda has also supported Mr. De in his contention that in the instant case the first resolution has not been purported to be cancelled by the second resolution. Therefore, in any event, the first resolution remains operative and valid resolution warranting consequential action. Mr. Panda also submitted that since on the basis of the valid resolution made in December, 1988 the nomination has been made in favour of the said nominees, such nominated members cannot be deprived of from taking part as members of the Gram Panchayat.

7. After hearing the learned counsels for the parties and considering the facts of the case it appears to us that the exercise of the power under S. 210 of the Panchayat Act by the members of the Gram Panchayat is not a judicial or quasi judicial function but an administrative function. It therefore cannot be contended that in no case the resolution for nomination of members taken in exercise of the power under S. 210 of the Panchayat Act can be reconsidered and recalled or revoked by a subsequent resolution unless a specific provision for recalling and reconsideration is made. There may be genuine occasion to reconsider the recommendation and to revoke the resolution containing a recommendation. For example, if after passing the resolution recommending some names for being nominated u/s 210, the members of the Gram Panchayat come to know that the person recommended for nomination are not at all worthy to be nominated as members in the Gram Panchayat for their antecedents and/or antisocial activities and the earlier recommendation was made for want of proper information, we do not think that the Gram Panchayat will be powerless to reconsider the resolution

passed earlier and to recall the same at a subsequent date. But it must be noted that if on the basis of the earlier resolution, the nomination has been given by approving the same, then the action under S. 210 of the Gram Panchayat Act becomes final and there will be no occasion to make any further nomination under S. 210 even if there may be good reasons to hold that the names which had been recommended and ultimately nominated should not have been recommended and/ or nominated. In the instant case, there is no material to show that the persons recommended in the first resolution were ineligible to be nominated and/or were otherwise unworthy and their names were commended on any misrepresentation or for want of proper information. On perusal of the second resolution, it appears that, without any reference to the first resolution, the majority members recommended some names for being nominated in the Gram Panchayat in the purported exercise of the power under S. 210. It appears to us that the first resolution was not revoked and/or cancelled. Simply because some names were recommended later on without reference to the first resolution, the Court cannot proceed on the footing that the first resolution stands revoked by necessary implication. It Appears to us that despite a valid resolution taken under S. 210 some of the members purported to exercise a power under S. 210 de novo without getting the earlier resolution cancelled or revoked. It, therefore, appears to us that on the basis of the first resolution which was validly passed under S. 210, the names recommended in such resolution were approved and the said names were published by the State Government. In the aforesaid facts there is no occasion to hold that the said nomination was bad only because the second resolution was made by recommending some other names for being nominated under S. 210 of the Panchayat Act. The second resolution must be held to be invalid and of no consequence. We, therefore, find no reason to interfere with the decision made by the learned trial Judge. The application for interim order, therefore, fails and is dismissed. In that view of the matter, the appeal also fails and dismissed treating the same as on day's list by consent of the parties.

Sachi Kanta Hazari, J.

8. I agree.

9. Appeal dismissed.