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In the Calcutta High Court

Case No : M.A.T. No. 2652 of 2007

Md. Emamul Haque and Others — APPELLANT

Vs

State of West Bengal and Others — RESPONDENT

Date of Decision : 12-10-2007

Acts Referred:
West Bengal Panchayat Act, 1973 — Section 12, 16, 16(2), 213B, 4(2A)

Citation : (2007) 4 CHN 772

Hon'ble Judges : Bhaskar Bhattacharya, Acting C.J.;Rudrendra Nath Banerjee, J

Bench : Division Bench

Advocate : Asoke Do and Hafizul Haque, for the Appellant;Asish Sanyal and Pratip Kr. Chatterjee for respondent Nos. 5 to 14 and Subir Bhattacharya, for the Respondent

Judgement

Bhaskar Bhattacharya, A.C.J.

1. This mandamus appeal is at the instance of unsuccessful writ petitioners and is directed against the order dated September 10, 2007 passed by a learned Single Judge of this Court by which His Lordship dismissed the writ application filed by the appellants in which the appellants challenged a notice of requisition of the removal of a Pradhan of a Gram Panchayat by relying upon the second proviso to Section 12 of the West Bengal Panchayat Act, 1973 on the ground that such requisition having been initiated within one year from his election, the same was invalid.

2. The learned Single Judge by the order impugned herein refused to accept the contention of the appellants in view of the two decisions of a Division Bench of this Court, one, in the case of Eunas Ali Molla v. State of West Bengal and Ors. reported in 1997 WBLR (Cal) 275 and the other, in the case of Muslakim Hossain v. State of West Bengal and Ors. reported in 1997(2) CHN 180. In the said decision of Eunas Ali Molla (supra), a Division Bench of this Court after considering the provision u/s 12 of the Act came to the conclusion that the added proviso to Section 12 should be ignored being inconsistent with the main

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provision of the section. The said Division Bench took the same view in the other case mentioned above.

3. There learned Single Judge although did not agree in principle with the reason given by the Division Bench in the case of Eunas Ali Molla (supra), yet followed the same for maintaining the judicial propriety and discipline.

4. Being dissatisfied, the writ petitioners have come up with the present mandamus appeal.

5. Mr. De, the learned Senior Advocate appearing on behalf of the appellants strenuously contended before us that those two decisions of the Division Bench should be ignored as the "decisions per incuriam" on the ground that those decisions did not follow the various earlier decisions of the Supreme Court regarding interpretation of statute where the construction of a proviso is the subject-matter of dispute. According to Mr. De, the second proviso to Section 12 of the Act was introduced along with the amendment of the main Section 12 by incorporating the phrase "subject to any other provision of this section" and therefore, once the main section is also amended, the second proviso cannot be said to be inconsistent with the main section. Mr. De, therefore, submits that we should disagree with the view taken by the said Division Bench in those decisions.

6. Mr. Sanyal, the learned Advocate appearing on behalf of the private-respondent, however, has opposed the aforesaid contention of Mr. De and has contended that the principle laid down in those two decisions of the Division Bench and the conclusion arrived therein are all correct and therefore, this Court should follow those two decisions. According to Mr. Sanyal, a legislature by amendment cannot destroy the object of an enactment by adding a proviso thereto. Mr. Sanyal further contends that Section 16 of the Act specifically provides that requisition meeting can be called at any point of time after complying with the provisions contained therein and the said provisions are in conformity with the unamended provisions of Section 12 and therefore, in case of conflict between the second proviso to Section 12 and the provisions of Section 16 of the Act, the latter should prevail being a substantive provision in the statute.

7. Therefore, the only question that arises for determination in this mandamus appeal is whether the notice of requisition issued by the private-respondents can be said to be incompetent in view of second proviso to Section 12 of the Act.

In order to consider those questions, it will be profitable to refer to the provisions contained in Section 12 and Section 16 of the West Bengal Panchayat Act, 1973 which are quoted below:

12. Removal of Pradhan and Upa-Pradhan.- Subject to the other provisions of this section, a Pradhan or an Upa-Padhan of a Gram Panchayat may, at any time, he removed from office by a resolution carried by the majority of the existing members referred to in Clause (i) of Sub-section (2A) of Section 4 at a meeting

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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 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 clear 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 such 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

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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,] of 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 a Pradhan or an Upa-Pradhan u/s 12, the person presiding shall have no second or casting vote.

8. After going through the aforesaid provisions, we find that by the amendment of the year 1994, the legislature not only amended the main Section 12 by adding the phrase "Subject to the other provisions of this section" at the beginning of the section but also added two additional provisos and the third proviso was further amended by W.B. Act 2 of 1995. After the said amendment in the Section 12 with the added provisos as it stand, we do not find any ambiguity or inconsistency. The language is clear that a Pradhan or Upa-Pradhan can be removed from their post at any time except in the circumstance mentioned in the last two provisos. If the phrase "Subject to the other previsions of this section" was not incorporated, there was ample scope of argument that the added provisos were inconsistent with the mandate of the main section.

9. In the case of Mustakim Hossain v. State of West Bengal and Ors. (supra), Division Bench, as it appears from the judgement, did not at all notice the incorporation of the phrase "subject to the other provisions of this section" in the section by way of amendment and was of the opinion that "the proviso cannot raise its head to tumble the section". The other factor which weighed with the Division Bench in totally ignoring the added provisos was that even if the Pradhan or the Upa-Pradhan commits any misfeasance or malfeasance or misconduct and becomes the slave of adverse activities of the Panchayat, they would still continue and would not be liable to be removed in the circumstances covered by the added provisos. The Division Bench, however, did not take into consideration, the provisions contained in Section 213B of the Panchayat Act, which provides for disqualification of the members including the Pradhan and

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Upa-Pradhan, and in such cases, without taking recourse to Section 12, Pradhan or Upa-Pradhan will be compelled to vacate their respective office.

10. The same Division Bench in the subsequent case of Eunns Ali Molla v. State of West Bengal (supra) had further occasion to deal with the same question and the Bench repeated the view earlier expressed in the case of Mustakim Hossain (supra). In the latter one, the Division Bench, however, took note of the phrase "subject to the other provisions of this section" but decided to pay no importance to the same by making the following observations:

More so, the Preamble is clear that it says ''whereas it is expedient to reorganise Panchayat in rural areas in West Bengal and to provide matters connected therewith" which prominently shows that Section 12 has no independent meaning. If the welfare of the Panchayat is affected by the action of the Upa-Pradhan or Pradhan in course of one year from the date of their Election, it will be illogical to contend that the members of the Gram Panchayat are divested of their right to take any requisition in the meeting of removal of Pradhan or Upa-Pradhan. The right of removal cannot be snapped of by the term of office as laid down in Section 12. If we interpret Section 12 in the way as interpreted by the learned Counsel for the petitioner, it will be a confusion worse confounded. The Panchayat is a rolling stone that gathers no moss. It will be a clean state which must not be lashed by the terms of the office as the Panchayat strives for the welfare of the village where the term of one year is not tune with the statute.

With great respect to the said Division Bench, we are unable to convince ourselves to concur with the views taken by Their Lordships for the following reasons.

11. The Section 12 of the Act as it originally stood authorised the members to remove a Pradhan or an Upa-Pradhan at any time by a majority but the legislature in its wisdom decided to put some embargo on such provisions by amending the said section by way of incorporation of two additional provisos. The legislature was conscious that the proposed provisos would be to some extent inconsistent with the main section and for that reason, it decided to amend the main provision of the section simultaneously by adding the phrase "Subject to the other provision of this section" at the beginning of the section as a result there was no inconsistency between the main section and the provisos sought to be added. Therefore, the intention of the legislature to give effect to the added provisos was apparent and there is no necessity of searching for other provisions of the statute to find out the reason for enacting the provision. It is now a settled law that when a statutory provision is plain and unambiguous, the Court while interpreting such provision should give effect to such provision without trying to find out the intention of the legislature behind enacting the said provision nor should the Court add or omit any word from the statute. At this stage it will be profitable to refer to the following observations of the Supreme Court in the case of Grasim Industries Ltd. Vs. Collector of Customs, Bombay, :

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No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in Crawford v. Spooner 1846(6) Moore PC 1, ''we cannot aid the Legislature''s defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there''. In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well-settled and reference to few decisions of this Court would suffice. [See: Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. Vs. Custodian of Vested Forests, Palghat and another, ; Union of India and Anr. v. Deoki Nandan Aggarwal AIR 1992 SC 96; Institute of Chartered Accountants of India Vs. Price Waterhouse and Another, ; and Harbhajan Singh Vs. Press Council of India and Others,]

12. The Division Bench in the cases of Eunas Ali Molla and Mustakim Hossain (supra) has refused to give effect to the added provisos on the ground that those provisos are inconsistent with the main section. We have already pointed out that there is no inconsistency between the main section and the provisos in this case after the simultaneous amendment of the Section 12 both by way of addition of the provisos and the opening phrase in the section. In this connection, we propose to rely upon the following observations of the Constitutional Bench of the Supreme Court in the case of The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc., , where the Apex Court in details discussed the relation between the proviso and the main section of a statute:

Generally speaking, it is true that the proviso is an exception to the main part of the section; but it is recognised that in exceptional cases a proviso may be substantive proviso itself. We may in this connection refer to Rhondda Urban District Council v. Taff Vale Railway Co. 1909 AC 253, where Section 51 of the Act thereunder consideration was framed as a proviso to preceding sections. The Lord Chancellor however pointed out that ''though Section 51 was framed as a proviso upon preceding sections, but it is true that the latter half of it, though in form a proviso, is in substance a fresh enactment, adding to and not merely

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qualifying that which goes before.

Again in COMMISSIONER OF Income Tax, MADHYA PRADESH Vs. NANDLAL BHANDARI and SONS (PRIVATE) LTD., , it was observed that ''though ordinarily a proviso restricts rather than enlarges the meaning of the provision to which it is appended, at times the legislature embodies a substantive provision in a proviso. The question whether a proviso is by way of an exception or a condition to the substantive provision, or whether it is in itself a substantive provision, must be determined on the substance of the proviso and not its form.

Finally, in State of Rajasthan Vs. Leela Jain, , the question arose whether the proviso in the Act under consideration there was a limiting provision to the main provision or was a substantive provision in itself. This Court observed that ''so far as general principal of construction of a proviso is concerned, it has been broadly stated that the function of a prviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part.'' But it was further observed that the proviso in that particular case was really not a proviso in the accepted sense but an independent legislative provision by which to a remedy which was prohibited by the main part of the section, an alternative was provided.

These three cases show that in exceptional circumstances a proviso may not be really a proviso in the accepted sense but may be a substantive provision. It seems to us that the proviso under consideration now is of this exceptional nature.

13. In the case before us, if we consider the provisos as the exception to the main section, the view adopted by the Division Bench in those cases cannot be accepted; similarly, if those are taken to be exceptional cases and substantive provisions, even in such cases, there is no scope of omitting the provisos and therefore, the Division Bench in the cases of Eunas Ali Molla and Mustakim Hossain (supra), could not refuse to give effect to the provisos to the Section 12 of the Act. Moreover, the second proviso to Section 16 of the Act is a mere procedural provision and not even mandatory as held by a Division Bench in the case of Aloke Pramanik v. State of West Bengal reported in 1996(1) CLJ 434 and reiterated in several subsequent decisions of the Division Bench of this Court and as such, the said proviso is subject to Section 12 of the Act.

We are, therefore, unable to subscribe to the view taken by the earlier Division Bench in the aforesaid two cases and hold that in view of the second proviso added to Section 12 of the Act, there was no scope of calling a requisition meeting within one year from the election of the appellant as Pradhan.

14. As a Division Bench of this Court has taken a view inconsistent with the one we propose to take, instead of disposal of this appeal, we refer the matter before the Hon''ble Chief Justice of this Court for constituting a Larger Bench for resolving the following dispute:

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Whether the second proviso to Section 12 of the West Bengal Panchayat Act prohibiting removal of a Pradhan or Upa-Pradhan within one year from his election to such office can be ignored by requisitioning a meeting for removal at the instance of the requisite number of members as provided in second proviso to Section 16 of the Act within the prohibited period and whether the consequential removal in such a meeting by majority should be set aside for violation of the said proviso.?

15. Let the matter be placed before the Hon''ble Chief Justice for appropriate order.

Rudrendra Nath Banerjee, J.

16. I agree.

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