
(2007) 08 CAL CK 0064

In the Calcutta High Court

Case No : M.A.T. No. 2351 of 2007 with CAN No. 5250 of 2007

Md. Safiquel Islam

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

West Bengal Panchayat Act, 1973 — Section 12, 16, 213B, 4

Citation : 112 CWN 153

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

Bench : Division Bench

Advocate : Asish Sanyal and Pratip Chatterjee, for the Appellant; Amitava Mukherjee and Debabrata Karan, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—This mandamus-appeal is at the instance of a removed Pradhan of a Gram Panchayat and is directed against the order dated 8th June 2007, passed by a learned Single Judge of this Court by which His Lordship dismissed the writ-application filed by the appellant. In the writ-application, the appellant alleged that his removal was bad in law inasmuch as, the requisition meeting was held beyond the period prescribed in second proviso to Section 16 of the West Bengal Panchayat Act. The other point raised by the appellant was that two of the members requisitioning the meeting were not entitled to participate as complaints against them u/s 213B of the Act had already been filed before the prescribed authority and in such a situation, they could not be permitted to cast their vote in the meeting concerned.

2. The learned Single Judge overruled both the previously mentioned contentions advanced by the appellant and consequently, the writ-application was dismissed.

3. Being dissatisfied, the writ-petitioner has come up with the present mandamus-appeal.

The following facts are not in dispute:

(a) Initially, 4 out of 23 members of the concerned Gram Panchayat served a notice dated 23rd December, 2005 upon the Pradhan requesting him to convene a requisition meeting for transacting an agenda of his removal. The said notice, however, was abandoned as neither the Pradhan nor the said four members convened any meeting for the said purpose within the period as prescribed u/s 16 of the Act.

(b) Subsequently, 9 out of 23 members of the said Gram Panchayat again by their notice dated 6th March, 2007 requested the Pradhan to convene a requisition meeting for the very same purpose. The Pradhan received the said notice through post on 13th March, 2007 and the copy of the notice dated 6th March, 2007 which was forwarded to the concerned Block-Development Officer being the prescribed authority and was received by such prescribed authority on 7th March, 2007.

(c) Since the Pradhan, in spite of receipt of the said notice, did not convene any requisition meeting for the said purpose within the time prescribed in second proviso to Section 16 of the said Act, the requisitionists themselves by their notice dated 3rd April, 2007 convened a meeting for transacting the said agenda on 12th April 2007 at 11 a.m. at the office of the Gram Panchayat.

4. The legality of the said notice was under challenge in the writ-application at the instance of the Pradhan of the Gram Panchayat.

5. According to the appellant, the period of limitation should start from the date on which the proceeding was initiated i.e. when the notice to convene such a requisition meeting was sent for service upon Pradhan and accordingly, in this case, the limitation should be counted from 6th March, 2007 when such notice was issued by the requisitionists. According to the appellant, the ultimate date of holding such meeting would have expired on 9th April, 2007 but as the requisitionists by their impugned notice dated 3rd April, 2007 held a meeting on 12th April, 2007, no effect should be given to the impugned notice having been held beyond 35 days from March 6, 2007.

6. As pointed out earlier, the learned Single Judge has overruled the said contention.

6. To appreciate the aforesaid contention advanced by the appellant, it will be profitable to refer to the provision contained in Section 16 of the West Bengal Panchayat Act, 1973 which is quoted below:

"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 farther 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 converting 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 a Pradhan or on Upa-Pradhan u/s 12, the person presiding shall have no second or casting vote."

7. After hearing the learned counsel for the parties and after going through the aforesaid provisions contained in the Act, we find that once a notice is given asking the Pradhan to call a meeting for his removal, a duty is cast upon him to

call such meeting within 15 days from the receipt of such notice after giving intimation to the prescribed authority and giving 7 days notice to the members of the Gram Panchayat failing which, the members who requisitioned such meeting, may themselves hold a meeting within 35 days after giving intimation to the prescribed authority and in the process 7 clear days" notice to be given to the Pradhan or other members of the Gram Panchayat. The period of 35 days mentioned in second proviso to Section 16, in our view, should start on the failure of the Pradhan to call a meeting within the time fixed in the second proviso and for that purpose, the requisitionists are not required to wait for the expiry of 15 days from the date of due service of notice upon the Pradhan. If the requisitionists find that the Pradhan has given no intimation to the prescribed authority even after 8 days of due service of notice upon him, it can be safely concluded that there is no possibility of complying with the requirement of the second proviso by giving 7 days" notice and therefore, the 35 days" time, would start on the expiry of 8 days from the due service of notice upon the Pradhan. We are not at all impressed by the submission of Mr. Sanyal, the learned advocate appearing on behalf of the petitioner that the period should be counted from the date of issue of such notice.

8. In our view, the date of issue of such notice is immaterial for the above purpose. In a given situation, a Pradhan, by not accepting the notice for 21 days from the date Of issue of such notice, may frustrate the provisions of Section 16 of the Act. If, in a given situation, 21 days after the issue of such notice days after receipt of notice of further 7 days as required under the proviso, the persons who requisitioned the meeting will be in a precarious condition because by that time, $21 + 8 = 29$ days will be over and there will be no scope of giving any further notice of clear 7 for calling a meeting.

9. Therefore, the reasonable interpretation of that proviso will be that the time should run from the expiry of 8 days from date of due service of the notice upon the Pradhan. If the members requisitioning the meeting find that within 8 days after the due service of such notice, the Pradhan had not called any meeting by giving intimation to the prescribed authority, they can presume refusal on the part of the Prodhan to call a meeting in accordance with law and in such a situation, the right to call a meeting for removal accrues on their favour and they must exercise their right by giving a notice of clear 7 days to all concerned so that the meeting is held within 35 days from the date of accrual of their right as provided in the second proviso to Section 16.

10. Therefore, we are unable to agree with the learned Single Judge that the time should run from the date of due service of the notice on the Pradhan because on that day, the right to call fresh meeting did not accrue in favour of the requisitionists. The law has given the requisitionists time to hold meeting within 35 days from the failure of the Pradhan to call a meeting after complying with the other formalities mentioned above and the failure of the Pradhan can be ascertained only on the expiry of 8 days of due service by enquiring from the

office of the prescribed authority and not earlier.

11. As regards the other point, whether merely because a complaint has been lodged against a member u/s 213B of the Act, he should be precluded from taking part in the proceeding for removal, we are of the view that so long he is not actually removed or not suspended by the appropriate authority in terms of Section 213B of the Act he should be permitted to continue as member and cast his vote.

12. However, we find substance in the contention of Mr. Sanyal, the learned advocate for the appellant that once a proceeding has been initiated in terms of Section 213B of the Act, the prescribed authority cannot remain idle and permit the concerned member to participate in the proceeding unless in the meantime, he had taken the decision not to suspend on the basis of prima facie materials in exercise of power u/s 213B of the Act.

13. We, therefore, hold that on a complaint in terms of Section 213B of the Act being made, it is the duty of the prescribed authority to consider the case of suspension within a reasonable period and at least, before the start of next meeting of the Panchayat. However, so long he is not suspended, he is free to attend the meeting and participate in the proceeding with the right to cast vote.

14. We, thus, find that there is no merit in this appeal and the same is dismissed accordingly as we approve the ultimate conclusion of the learned Single Judge that the meeting removing the appellant was made within 35 days as mentioned in the second proviso to Section 16 of the Act. In the facts and circumstances, there will be, however, no order as to costs.

Bhaskar Bhattacharya, J.

I agree.

Rudrendra Nath Banerjee, J.