

(2000) 01 CAL CK 0008
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 20697 (W) of 1999

Mohinuddin Biswas

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 28-01-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 26
West Bengal (Panchayat Samiti Administrative) Rules, 1984 — Rule 19, 3
West Bengal Gram Panchayat Act, 1973 — Section 105, 11, 14, 16(2)

Citation : (2000) 2 CALLT 347

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Advocate : Mr. K.K. Moitra and Mr. Harun Al Rashid, for the Appellant; Mr. Mrinal Kanti Das and Mr. Bidyut Baran Biswas, Mr. Sumitra Dasgupta and Mr. Saibal Kr. Acharya, for the Respondent

Judgement

1. This case has been filed for issuance of a writ of mandamus to cancel, withdraw and rescind the notice dated 02-12-1999 whereby the date of requisition meeting was fixed on 09-12-1999 being annexure "B" to the writ petition and allow the petitioner to perform the duties and functions of the Pradhan of Kapasdanga Gram Panchayat within P.S. Beldanga, district Murshidabad.

2. The factual matrix leading to this case is as follows :

The petitioner and the respondents 7 to 22 were elected as members of Kapasdanga Gram Panchayat in the election held on 28th May. 1999. The petitioner was then elected as Pradhan by securing the majority votes of 13 members out of 17 members of the said Panchayat. From the date of his election as Pradhan he was smoothly performing the functions and duties as such. But unfortunately he came to learn from his secretary on 12-11-1999 that a notice had been issued by 9 members of the Gram Panchayat to him requesting for convening a meeting of no confidence. It has been, however, strongly pleaded

that the notice was never served upon the Pradhan for the aforesaid purpose. It has also been submitted that the said notice dated 08-11-1999 was highly illegal, mala fide and not in accordance with law as there was no agenda and or any allegation of no confidence against the petitioner.

3. The petitioner was also asked by another notice on 02-12-1999 sent by 8 members asking him to hold a meeting on 09-12-1999 for removal of the Pradhan. The second notice was also not in accordance with the provisions of the West Bengal Gram Panchayat Act, 1973, so also the rules framed thereunder. There was no 7 clear day notice from the date of issue till the date of meeting which is highly illegal, improper, mala fide and unconstitutional.

4. The petitioner filed this case on 07-12-1999. The date of the requisition meeting was fixed to 9th December, 1999. This Court passed an order that even though the meeting shall be held on the appointed day. the resolution taken thereof should not be given effect to till 22nd December, 1999. On 21st December, 1999 there was an order passed by the Court directing the parties to maintain the status quo as of previous day but the petitioner shall not incur any major expenditure more than Rs. 1,000.

5. The private respondents have filed an affidavit-in-opposition by denying all the material allegations stated in the writ petition. It has been inter alia, stated that when the petitioner failed to hold a meeting for removal of the Pradhan of the said Panchayat, the private respondents accordingly convened a meeting whereby a resolution of vote of no confidence was passed against the petitioner by majority on 09-12-1999. Another ground has been stated in the affidavit-in-opposition that in the notice dated 02-12-1999 the majority members called requisition meeting for the removal of Pradhan to be held on 09-12-1999. The petitioner received such notice on 06-12-1999 by putting the signature in the acknowledgment card.

6. The petitioner was holding the post of Pradhan in a democratic process. Once he lost the confidence of the majority members he should step down from the office with a view to give way to other member who could be democratically elected by majority, since the majority members already passed a resolution, the Pradhan who was removed by the vote of no confidence has had no right again to approach the Court. With these averments they have pleaded for dismissal of the writ petition.

7. Mr. Kashikanta Maitra, the learned senior Advocate were ingenuously advanced his contention by stating that in a democratic set up, the procedure for holding a meeting as per statute must be maintained and followed once there was departure from the procedure then, even assuming any such meeting was held the outcome of such meeting shall turn out nothing but illegality. In this particular case help of some hard core goons had been obtained, therefore, such resolution even if it was adopted will not take away the democratic right of the petitioner. It has been further stated that the subject matter noted in both the

notices being distinguished and separate, the resolution which was adopted on the basis of such notice should also equally be held invalid. There was No 7 clear day notice as has been noted u/s 16(2) of the West Bengal Gram Panchayat Act. The expression "shall" is to be regarded a mandatory but not directory. The notice was immediately challenged for want of 7 clear day"s notice. The object of notice is not an empty formality but it requires as reasonable. He has also relied upon a judgment of this Court reported in 1992 (2) CHN 229 para 22 in the case of Asraf Ali Mondal v. Block Development Officer. Again he has placed reliance in the reported decision in 1986 SCC (L&S) 49 in the case of K. Pravakar Rao and Ors. v. State of Andhra Pradesh. But on a plain reading of the Judgment I found that the facts of the above case are entirely different than the facts of the present case. In such situation the principle enunciated by the Apex Court can have hardly any application to the present case.

8. The sole question which has been pressed into service is that whether the notice vis-a-vis the resolution can be characterised bad in law only on account of service of notice for a period of less than 7 days. There was divergent opinion on this point. Therefore, the single Judge of this Court to resolve such inconsistent view referred the matter to a Division Bench of this Court which discussed the point at great length and held that the 7 clear days notice is not mandatory but it was only a directory. In the case of Aloke Pramanik v. State of West Bengal & Ors. reported in 1996 (1) CLJ 434 where it is held that:

"Rules 3 and 19 of the West Bengal (Panchayat Samiti Administration) Rules, 1984 provided for such notice is to be served, by sending the same by registered post with acknowledgment due. The said rules, therefore, do not state that such notices must be personally served. It appears that the notices were sent under registered post on 18-1-95 and the meeting was to be held on 27.1.95. Thus, in view of the fact that the manner of the notice has been categorically stated, sending the same by registered post shall serve the purpose keeping in view the provisions of section 27 of the General Clauses Act.

So far as the question as to whether a seven day"s notice is mandatory or not, in our opinion, the matter is no longer res integra. In our opinion even if a notice of less than seven day"s is given, the same would serve the purpose. Despite the fact that a requisition to the Sabhapall to call a meeting by the requisition 1st is required to be sent in prescribed form, but in our considered opinion reasons for calling such a meeting must be stated in clear terms inasmuch as the first part of the second proviso appended in section 105 of the Panchayat Act casts a duty upon the Sabhapati to call such a meeting. While discharging the function the Sabhapall is required to send notice in Form 1B and there cannot be any doubt in terms thereof the business for which the meeting is called is required to be specifically stated. The said provision is clearly mandatory in nature inasmuch as it has In no uncertain terms been stated that no business shall be brought before or transacted at any meeting other than the business of which notice has been so given.

Notice of a meeting by the Sabhapati and/or requisitionists. In terms of Form 1B is in continuation of the notice of requisition sent by the requisitionist to the Sabhapati to call a meeting and in that view of the matter, we have no doubt in our mind that it was obligatory on the part of the requisition 1st to state specifically as to for what purpose such a meeting is to be called."

9. So, following the above Division Bench judgment I am also of the opinion that some of the members received less than seven day's clear notice of the meeting did not by itself make the proceeding of the meeting or resolution passed thereupon invalid. The meeting held on 09-12-1999 clearly established that the petitioner lost majority of the members of the Panchayat. Therefore, in such democratic process his right to continue as Pradhan has seriously impaired on account of losing majority of the members. The object of giving notice was to enable the petitioner to attend the meeting. Therefore, it cannot be said that the object was not achieved as service was admittedly effected on the petitioner within seven day's of holding the meeting. Therefore, in this case admittedly the petitioner received the notice. Even if there was an irregular notice such irregularity cannot however, render invalid the meeting since the petitioner has not suffered any prejudice thereby. The shortage of seven day's time cannot be said to have caused serious prejudice to the petitioner or materially affected the outcome of the proceeding. No other member complained of prejudice due to the shortness of time of service of notice.

10. The Hon'ble Supreme Court in a recent case reported in Ram Beti Vs. District Panchayat Raj Adhikari and Others, has passed a land mark judgment which has been quoted as follows :

"Section 14 in so far as It empowers the members of the Gram Panchayat to remove the Pradhan of a Gram Sabha by moving a motion of no-confidence, is not unconstitutional and void being violative of the concept of democracy or is not arbitrary and unreasonable so as to be hit by Article 14 of the Constitution. Although u/s 14 of the Act the power of removal of a Pradhan is conferred on the members of the Gram Panchayat, which is a smaller body than the Gram Sabha, but the members of the Gram Panchayat, having been elected the members of the Gram Sabha, represent the same electorate which has elected the Pradhan. The removal of a Pradhan by two-thirds members of the Gram Panchayat only and, in the circumstances, it is but proper that the members of the Gram Panchayat empowered to take action for removal of the Pradhan, if necessary. It is no doubt true that section 11 of the Act provision is made for holding two general meetings of the Gram Sabha in each year and for requisitioning of a meeting of the Gram Sabha by one fifth of its members. But the same time one cannot lose sight of the fact that the number of members of the Gram Sabha is also fairly large. It would range from one thousand to more than three thousand. Election to public officers even at village level give rise to sharp polarisation of the electorate on caste or communal basis. The possibility of law and order in a meeting of the Gram Sabha called for considering a motion for removal of the

Pradhan cannot be excluded. Moreover, there cannot also be due deliberation of a serious matter as no confidence motion by a very large body of persons. While amending section 14 of the Act so as to confer the power to remove the Pradhan of a Gram Sabha on the members of the Gram Panchayat the legislature must have taken into consideration the prevailing social environment. Moreover, by way of a safeguard against an arbitrary exercise of the power of the removal it is necessary that the motion must be passed by a majority of two-thirds of the members present and voting."

11. No other point has been canvassed by the learned Advocate appearing for the petitioner. Therefore, on considering the facts and circumstances of the case and looking to the totality of the circumstances I find the petitioner has lost his right to continue in the post of Pradhan after he having lost the support of the majority of members in the Panchayat. Accordingly, the writ petition is dismissed but in the circumstances without costs.

12. Petition dismissed