

(2006) 03 CAL CK 0053
In the Calcutta High Court
Case No : A.S.T. No. 46 of 2006

Nihar Ranjan Ghosh and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

West Bengal Municipal Act, 1993 — Section 18(3)
West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995 — Rule 6(3), 9(3)

Citation : (2006) 2 CALLT 257 : (2006) 2 CHN 284

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Malay Bose, P.S. Deb Barman and Tarun Kumar Das, for the Appellant; Bharati Mutsuddi and Rina Banerjee, Saktinath Mukherjee, Amalesh Roy, Abhishek Guha for the respondent Nos. 6, 7, 10 and 11, for the Respondent

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J.—The validity and/or legality of the notice dated 16th January, 2006 issued by ten requisitionists for holding a special meeting, on requisition, for adoption of a resolution of no-confidence and/or for removal of the Chairman u/s 18(3) of the West Bengal Municipal Act, 1993, is under challenge in this writ petition.

2. Sub-section (3) of Section 18 of the West Bengal Municipal Act, 1993 deals with removal of the Chairman from the Municipality. Section 18(3) provides that a Chairman may be removed from office by resolution carried on by a majority of the total number of elected members of the Board of Councillors holding office for the time being at a special meeting to be called for this purpose in the manner prescribed, upon a resolution made in writing by not less than 1/3rd of the total number of elected members of the Board of Councillors. Rule 6(3) of the West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995 provides that if there is a requisition for removal of a Chairman under Sub-

section (3) of Section 18, a special meeting for considering the resolution for removal of the Chairman shall be held in a manner as laid down in the said rules.

3. Rule 9(3) of the said rules deals with the procedure for convening this special meeting. The procedure for convening the special meeting is as follows:

Rule 9(3):

(a) A special meeting may be convened by the Chairman or in his absence by the Vice-Chairman, suo motu, after giving not less than three days" notice to the members.

(b) A special meeting may also be convened after giving not less than three days" notice to the members, on a requisition containing specially an agenda and signed by not less than 1/3rd of the total number of Councillors of the municipalities, by --

(i) the Chairman, within fifteen days from the time of receipt of such requisition or, of his failure to do so,

(ii) the Vice-Chairman within seven days thereafter, or on his failure to do so, or

(iii) any three of the Councillors of the Municipality within further seven days thereafter.

4. Thirteen Councillors out of twenty-five Councillors of the English Bazar Municipality, by their notice dated 23rd December, 2005, requested the Chairman of the said Municipality to hold a special meeting on the agenda of removal of the Chairman.

5. Admittedly, the Chairman of the said Municipality did not convene any meeting within the prescribed time pursuant to the said requisition. The Vice-Chairman of the said Municipality also failed to discharge his duties by calling a meeting within the prescribed time in his turn. Under such circumstance, ten requisitionists out of thirteen, by their notice dated 16th January, 2000 being Annexure "P-4" to this writ petition, convened a special meeting to be held on 24th January, 2000 at 2 p.m., in the conference room of the Municipality to discuss "no-confidence" motion against the Chairman and/or for removal of the said Chairman.

6. The legality and validity of the said notice has been challenged by some of the Councillors of the said Municipality on the ground that since the meeting was convened in violation of the provision contained in Rule 9(3) of the said rules, the said notice cannot be given effect to.

7. Mr. Bose, learned Senior Advocate appearing for the petitioner submitted that Rule 9(3) of the said rules prescribes the mode for convening a special meeting. Mr. Bose pointed out that three modes have been prescribed under the said rules. By referring to the said Rule, Mr. Bose pointed out that such a special meeting may be convened, after giving not less than three days" notice to the

members, on a requisition containing specially the agenda and signed by not less than 1/3rd of the total number of Councillors of the Municipality by the Chairman within 15 days from the date of receipt of such requisition. The Chairman of the said Municipality did not convene any meeting within the said statutory period.

8. Mr. Bose submitted that under such situation, the Vice-Chairman was required to call the meeting within seven days thereafter. The Vice-Chairman also failed to discharge his duties in his turn. Under such situation, Mr. Bose submitted that meeting could have been convened by any three of the Councillors of the said Municipality within further seven days thereafter.

9. According to Mr. Basu, the outer limit for holding such meeting as prescribed in the said Rule, is twenty-nine days from the date of receipt of the notice by which the Chairman of the said Municipality was requested by thirteen requisitionists to convene such a meeting. The said twenty-nine days expired on 20th January, 2006. By the impugned notice dated 16th January, 2006, meeting was convened on 24th January, 2006 which is beyond the outer limit as prescribed in the said rules.

10. By relying upon a decision of the Hon"ble Supreme Court, in the case of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, , Mr. Bose submitted that when a particular mode has been prescribed under a statute, the Statutory Authority is required to follow the said mode in its totality. Mr. Bose submitted that any deviation from the prescribed mode, makes the entire action of the Statutory Authority nullity.

11. Mr. Basu, thus, submitted that the said notice cannot be given any effect to, as the said special meeting was called beyond the outer limit prescribed under the rules.

12. Mr. Saktinath Mukherjee, learned Senior Counsel, appearing on behalf of the respondent Nos. 6, 7, 10 and 11, supported the said notice by relying upon a decision of this Court in the case of Anwar Hossain v. State of West Bengal and Ors. reported in 1999 (I) CHN 417, wherein it was held that the time frame specified in such rules, by no stretch of imagination, can be said to be mandatory in character. Mr. Mukherjee, thus, submitted that if the time frame in the said rules is not mandatory, then notice cannot be made ineffective simply because of the fact that the meeting was convened after the expiry of twenty-nine days which is the outer limit prescribed under the said rules.

13. Mr. Mukherjee went a step further by submitting that when the statute does not prescribe any time limit for convening any meeting, the State Government, in exercise of its rule making power, has no authority to prescribe the time limit within which such meeting is to be convened.

14. By referring to Section 18(3) of the said Act, Mr. Mukherjee submitted that the statute does neither prescribe any time limit for the purpose of convening such meeting, nor left the said function to the rule-making authority of the State.

Mr. Mukherjee pointed out from the said provision that only laying down the procedure for conduct of the business in the special meeting, was left in the hands of the State which the State Government could have prescribed by virtue of its rule-making power.

15. Mr. Mukherjee with all emphasis submitted that laying down the procedure for calling the special meeting was not left to the rule-making power of the State. Mr. Mukherjee contended that when the statute itself does not provide any time limit for convening such meeting, the State Government, in exercise of its rule-making power, cannot frame any rules limiting the time for calling such meeting.

16. In support of such submission as to whether the rule-making power can be exercised to prescribe the time limit for convening the meeting, when such time limit was not prescribed under the statute itself, Mr. Mukherjee relied upon the following decisions of the Hon"ble Supreme Court:

(i) AIR 1967 SC 1826 (Director of Supplies and Disposals, Cal. v. Board of Revenue),

(ii) AIR 1972 1935 (SC) .

17. Mr. Mukherjee, thus, contended that when the time limit as framed in Rule 9(3) of the said rules is ultra vires of Section 18(3) of the said Act, the impugned notice cannot be interfered with.

18. Mr. Mukherjee further contended that convening a meeting, moving a resolution in the meeting and passing a resolution in this meeting are three different stages of the meeting which cannot be mixed with each other. According to Mr. Mukherjee, the consequence of not passing a resolution in a meeting is provided in the proviso to the Section 18(3) of the said Act. The said proviso does not deal with the consequence for not convening any meeting as per the rules.

19. Heard the learned Advocates of the parties. Considered the materials on record.

20. The only question which has come up for consideration before this Court is as to whether the notice by which a meeting was convened by the ten requisitionists of the said Municipality for discussion on an agenda of no-confidence and/or for removal of Chairman, on a date which is fixed beyond the time limit of the prescribed rules, is valid or not.

21. On consideration of the decision of this Court in the case of Anwar Hossain v. State of West Bengal and Ors. (supra), this Court finds that the question which has been raised before this Court as mentioned above is no more res integra in view of the said decision of this Court. In the said decision, it was held that the time limit specified in such rules, by no stretch of imagination, can be said to be mandatory in character.

22. It was further held therein that "in any event, it is legally incorrect to say

that only upon expiry of twenty-nine days the period of requisition has come to an end inasmuch as in that regard no such provision has been pointed out before this Court."

23. Mr. Bose, however, submitted that the said decision is per incuriam inasmuch as the said judgment was delivered in ignorance of the proviso which is added to Sub-section (3) of Section 18 of the said Act. Mr. Bose further contended that when the consequence of not convening any meeting is prescribed in the proviso to Section 18(3) of the said Act, the time limit ought to have been held as mandatory.

24. Let me now consider how far such submission is acceptable.

25. On plain reading of the said proviso, it appears to this Court that the said proviso deals with two situations under which such resolution cannot be moved. Firstly, it contemplates that no such resolution can be moved before the expiry of six months from the date of assumption of office by a Chairman. This Court is not concerned with this situation in the present case.

26. The second contemplation is that if such a resolution is not carried by the majority of the total number of elected members, no further resolution of such members shall be moved before expiry of a period of six months from the date on which the former resolution was moved. Thus, moving of a resolution before the expiry of the period of six months from the date on which the former resolution was moved, but unsuccessful, is restricted in the said proviso.

27. In the instant case, it is not the case of the petitioners that the meeting was earlier held for removal of the Chairman, but no resolution was carried by the majority members therein and as such subsequent meeting cannot be held for moving a resolution for the said purpose before expiry of the period of six months from the date on which the former resolution was moved, but failed.

28. In this regard the, different stages of the meeting as pointed out by Mr. Mukherjee, is very relevant. The proviso cannot be attracted unless the third stage of the meeting is reached on the same issue earlier. Thus, the proviso cannot control the calling of the meeting unless the third stage of the meeting is reached.

29. In my view, the said proviso has no relevance with regard to the imposition of time limit for convening the meeting as prescribed under Rule 9(3) of the said rules. As such, this Court does not find any substance in such submission of Mr. Bose. This Court holds that the time limit as prescribed in the said rules is not mandatory. And as such the impugned notice cannot be interfered with.

30. In view of such conclusion arrived at by this Court which is sufficient for the present purpose, this Court does not feel it necessary to enter into the question of vires of the said Rule 9(3) of the said rules without notice to the Learned Advocate General of the State, though this Court finds much substance in the submission of Mr. Mukherjee in this regard.

31. The writ petition, thus, stands dismissed.

32. The requisitionists may now call a meeting for the said purpose within two weeks from date in continuation of the requisition made by the Councillors vide their letter dated 23rd December, 2005 in this regard.

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

Later :

34. After passing of this order, Mr. Deb Barman, learned Advocate appearing for the petitioners, prays for stay of operation of this order for a period of two weeks from date. Such prayer is opposed by Mr. Roy, learned Advocate for the respondents.

35. Having considered the submissions of the learned Advocates for the respective parties, this Court grants stay of operation of this order for a period of two weeks from date as this Court feels, that no litigant should be deprived of availing of the statutory remedy by way of appeal.

36. On the prayer of the learned Advocates for the respective parties, leave is given to them to take down the gist of this order for communication of the respondents and the respondent authorities are directed to act upon such communication without insisting for production of the certified copy of this order.