

(1996) 08 CAL CK 0004
In the Calcutta High Court
Case No : F.M.A.T. No. 1351 of 1996

Nirmal Das

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 24-08-1996

Acts Referred:

West Bengal Panchayat (Amendment) Act, 1994 — Section 27
West Bengal Panchayat (Amendment) Act, 1995 — Section 12
West Bengal Panchayat (Panchayat Samiti Administration) Rules, 1984 — Rule 19, 3
West Bengal Panchayat Act, 1973 — Section 101, 101(1), 224, 94, 94(2)

Citation : (1998) 1 ILR (Cal) 143

Hon'ble Judges : Satyanarayan Chakrabarty, J; Satyabrata Sinha, J

Bench : Division Bench

Advocate : Gopal Chandra Mukherjee, for the Appellant; Asok Kumar Janah and Shyamal Kumar Das for Respondent Nos. 7 to 22, Gautam Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—This appeal raises an interesting question as regards the interpretation of Section 101 of the West Bengal Panchayat Act (hereinafter referred to as the said Act).

2. The fact of the matter is not at all in dispute.

3. The Appellant filed a writ application questioning, inter alia, a requisition served upon him for holding a meeting on April 9, 1996 for his removal.

4. The writ Petitioner/Appellant was elected as the Sabhapati on Moyna Panchayat Samiti consisting of 48 members. On or about December 26, 1995, the Respondent Nos. 7 to 17 issued a notice which is contained in Annex. "A" to the writ application, whereby and whereunder a meeting was to be convened on January 3, 1996 at 12 noon in the office of the said Samiti to consider the agenda which states: "To decide no confidence motion against the Sabhapati of Moyha Panchayat Samiti".

5. The said meeting was held on January 3, 1996, wherein a resolution of removal of the writ Petitioner was passed, besides a resolution of no confidence. Admittedly, the matter went before the prescribed authority, who, upon taking into consideration the said resolution and further upon consideration of the provisions of the West Bengal Panchayat Act, 1973, and the Rules framed thereunder, held that the said resolution was illegal. Thereafter, the impugned notice dated March 19, 1996 had been issued requesting the Appellant to convene a requisitioned meeting for his removal from the said post of Sabhapati. Before the learned trial Judge, two questions had been raised on behalf of the Petitioner:

(1) In view of the Section 101 of the West Bengal Panchayat Act, 1973, as amended by the West Bengal Panchayat (Amendment) Act, 1995, no meeting for the removal of the Appellant from the post of Sabhapati could be convened in view of the earlier meeting which was held on January 3, 1996 wherein the resolution in the manner as stated hereinbefore was passed; (2) The impugned notice for convening the said requisitioned meeting for removal of the Appellant is ex facie illegal as the same does not disclose the agenda for removal of the Sabhapati.

6. The learned trial Judge in terms of his judgment and order dated April 30, 1996 rejected the aforementioned contentions of the Appellant and held that the said requisition was not illegal.

Mr. Mukherjee, learned Counsel appearing on behalf of the Appellant, has raised two contentions in support of this appeal. The learned Counsel has submitted that the learned Trial Judge erred in not taking into consideration the spirit of Section 101 of the said Act. It was submitted that the second notice was issued only in view of the decision of the prescribed authority wherein it was categorically held that the first meeting was invalid. The learned Counsel contends that keeping in view the phraseology used in the third proviso appended to Section 101 of the said Act, there cannot be any doubt whatsoever that no such meeting could be held. The learned Counsel in support of his aforementioned contention, has relied upon a Division Bench decision of Orissa High Court in Shyam Kumar Meher Vs. Collector, Bargarh and Others,

7. Mr. Goutam Mukherjee, learned Counsel appearing on behalf of the State has supported the contentions of Mr. Mukherjee.

Mr. Janah, the learned Counsel appearing on behalf of the contesting Respondents, submits that in terms of an interim order passed by this Court, a meeting was directed to be held but no effect thereto was to be given and thus the resolution had no been given effect to. It was further submitted that in para. 14 of the writ application, the writ Petitioner had accepted the fact that there had been no resolution in respect of removal of the intended office bearer and as such there is no legal bar to issue further notice for removing the said office bearer.

8. The only question which, therefore, arises for our consideration, is, whether in the facts and circumstances of this case, the impugned notice is valid in law. Section 101 of the said Act provides that subject to the other provisions of the said section, a Sabhapati or a Sahakari Sabhapati of a Panchayat Samiti, may at any time be removed from the office by a resolution carried by the majority of the existing members referred to in Clause II of Sub-section (2) of Section 94 at a meeting specially convened for the purpose. A notice of such a meeting has to be given to the prescribed authority. By reason of Section 27 of West Bengal Act No. XVIII of 1994, the following two provisos were added:

c) after the proviso, the following provisos shall be inserted:

Provided further that no meeting for removal of the Sabhapati or the Sahakari Sabhapati under this section shall be convened within a period of one year from the date of election of the Sabhapati or the Sahakari Sabhapati:

Provided also that there shall not be more than one resolution for the removal of the Sabhapati or the Sahakari Sabhapati within a period of six months.

However, the said provisos had undergone another amendment by reason of Section 12 of the West Bengal Act No. II of 1995 which reads thus:

12. Amendment of Section 101. - In Section 101 of the principal Act, for the third proviso, the following proviso shall be substituted;

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.

9. It is now well known that the provision of the statute has to be read keeping in view the intention of the legislature. The said Act provides for constitution of Gram Panchayat, Panchayat Samiti etc. Part III of the said Act provides for constitution of Panchayat Samities. Panchayat Samiti is to be constituted as laid down u/s 94 of the said Act. Sub-section (2) of Section 96 of the said Act provides for, holding a general election for the constitution of Panchayat Samiti within a period not exceeding five years from the date of previous general election held for the Panchayat Samiti. Section 97 of the said Act provides for the disqualification of the members of the Panchayat Samiti. Section 98 of the said Act provides that every Panchayat Samiti shall at its first meeting at which a quorum is present, elect, in the prescribed manner, one of its members to be its Sabhapati and another member to be Sahakari Sabhapati to the Panchayat Samiti. Thus Sabhapati and Sahakari Sabhapati are to be elected by taking recourse to the democratic process. Section 101 of the said Act which provides for the removal of the Sabhapati or Sahakari Sabhapati, thus must be construed in a manner so as to give effect to the wisdom of the majority of the members namely, if majority of members can elect a Sabhapati or a Sahakari Sabhapati, they in terms of the provisions of the said Act can also remove them.

10. It is not in dispute that in the meeting dated December 26, 1995, the only agenda was a no confidence motion against Sabhapati. This Court in a number of decisions have clearly held that two phraseologies namely "no confidence" and "removal" are different and when the provision speaks for removal of Pradban or Sabhapati, a resolution of no confidence shall not serve the purpose. Reference in this connection, may be made to the decisions reported in Kitabuddin Sheikh v. Daud Hossain 1995 (1) C.L.J. 198, Alope Pramanik v. State of West Bengal 1996 (1) C.L.J. 434. It stands admitted that the prescribed authority, namely Sub-Divisional Officer, Tamluk, by reason of an order dated January 22, 1996 as contained in annex. "C" to the writ application, clearly held that the resolution adopted in the meeting held on January 3, 1996 was absolutely illegal. It appears that in connection with the said matter, three writ applications being C.O. 19581 (W) of 1994, C.O. 373 (W) of 1996 and C.O. 1108 (W) of 1996 are pending decision before this Court. Allegedly the said order dated January 22, 1996 was passed during the pendency of the writ application. However, in para. 14 of the writ application the writ-Petitioner stated thus:

14. That the said prescribed authority declared invalid the alleged resolution dated January 3, 1996 (Annexure "C" herein) after considering the facts and circumstances and the law involved therein. The requisitionists have not challenged the validity and legality of the said order of the prescribed authority dated January 22, 1996. In view of this there is no resolution in respect of the removal of the intended office bearer and as such there is a legal bar to issue further notice for removing the said office bearer within six months from the date appointed for such meeting, and the concerned Government authorities is to take necessary steps as per law.

11. The learned Trial Judge, in our opinion, has rightly held that a requisition having been made only for the purpose of passing a resolution of no confidence as against the writ-Petitioner-Appellant, the resolution dated January 3, 1996 in terms whereof not only a resolution of no confidence was passed but also a resolution of removal was passed, cannot but be said to be illegal. The question, which therefore arises for our consideration is as to whether in view of the amendment carried out in the third proviso to Section 101 of the said Act by reason of Section 12 of the West Bengal Act No. II of 1995; the impugned requisition dated December 26, 1995 as contained in annex. "A" to the writ application in terms whereof the meeting was to be held on April 19, 1996 is valid or not.

12. It is now well settled principle of law that a proviso has to be read along with the main section inasmuch as in terms thereof merely an exception has been carved out. A proviso, as is well known, has many functions and thus while construing a proviso it should not be read in isolation and must be read together with the main provision. Section 101 of the said Act provides for removal of Sabhapati in the manner as laid down therein. The second proviso appended to Section 101 provides that no meeting can be convened within a period of one

year of the election of a Sabhapati or Sahakari Sabhapati. It is not the case of either of the parties that the second proviso is attracted in the instant case. We are, therefore, concerned with the third proviso. By reason of 1994 amendment, there could not be more than one resolution for removal of Sabhapati or Sahakari Sabhapati within six months. However, the said proviso has been substituted by reason of Section 12 of 1995 amendment Act which was given a retrospective effect and retroactive operation with effect from December 28, 1994. The said provisions are in two parts, namely, (1) if no meeting is held or (2) no resolution removing its office bearer is adopted. It is not a case where no meeting was held. However, in terms of the resolution dated January 3, 1996 not only resolution of no confidence motion was adopted but also resolution of his removal was adopted.

13. Having considered the said provision and keeping in view the fact that the said proviso has to be considered in the light of the democratic set up of a Panchayat Samiti, we are of the view that the second part of the third proviso appended to Section 101 of the said Act, shall be attracted when no resolution was adopted in a valid meeting. As noticed hereinbefore, the said meeting dated January 3, 1996, was invalid, inter alia, on two grounds, namely, (1) Section 101 of the said Act does not contemplate a resolution of no confidence (2) in the meeting dated January 3, 1996, not only a resolution of no confidence was adopted but also a resolution of removal was adopted which was beyond the purview of the agenda.

14. Rule 3 of the West Bengal Panchayat (Panchayat Samiti Administration) Rules, 1984, which has come into force with effect from February 2, 1984 made u/s 224 of the West Bengal Panchayat Act, 1973, inter alia, provides that a requisition meeting shall be in form 1B. Rule 19 of the said Rules also provides that at least seven clear days" notice of all meetings shall be given for a requisition meeting in Form 1B. The said notice was, therefore, required to be given in form 1B. The material portion of the said form clearly states that a notice shall be given in respect of business which was to be transacted. In a requisition meeting, no business could be transacted wherefor no notice had been served.

15. Thus in the said requisition meeting dated January 3, 1996, the business as regards removal of the Sabhapati could not be transacted at all. Such a notice and consequently, the meeting dated January 3, 1996 was thus clearly illegal. In that view of the matter, the requisition which was made subsequently fixing the meeting on April 19, 1996, in our opinion, cannot be said to be wholly illegal and without jurisdiction. An exception to a provision has to be construed strictly. Provision of Section 101 read in its entirety cannot be leave any manner of doubt whatsoever that the meeting contemplated therein must be a meeting for removal of Sabhadhipati and no other meeting as the meeting dated December 26, 1995 was not a meeting of removal of Sabhapati.

16. The said requisition cannot be said to be a requisition in terms of Section 101

of the said Act. Thus, the second part of the third proviso appended to Section 101 must be construed so as to mean that no resolution removing the office bearer is adopted in a meeting called for validly in terms of the provisions of Sub-section (1) of Section 101 read with the Rules made therein. As there had been no valid meeting in terms of Section 101 read with Rule 3 and Rule 19 of the said Rules; which having been validly framed under the Act, must be held to form part of the Act, we have no other option but to hold that the said purported resolution being dated January 3, 1996 being not a resolution in terms of Section 101 of the said Act, the impugned notice was not illegal as has been rightly held by the learned Trial Judge.

17. The decision of a Division Bench of Orissa High Court in Shyam Kumar Meher's case Supra did not advert itself to this aspect of the matter nor was there any occasion therefor inasmuch as in that case, the meeting could not be held for absence of the ward members. In that case the notice of the meeting itself was not contrary to the provision of the said Act, nor any resolution was passed contrary to the provision of the law. In terms of the provision of the said Act the authorities as also the members being creature of the statute must act within the four corners of the statute. Any action taken by them beyond the provision of the statute is a nullity and thus nonest in the eye of law. If the resolution dated January 3, 1996 is nonest in the eye of law, the question of its being taken cognizance of by the members of the Samiti would not arise particularly in view of the fact that the prescribed authority whose competence to pass such order had not been questioned before us, had clearly held that the said meeting held on January 3, 1996 was wholly illegal and without jurisdiction.

18. The right of members to remove the Sabhapati cannot be taken away. Such a right if denied on hypertechnical grounds would shake the basic concept of democracy. We may further notice that Mr. Mukherjee did not address us on the second question which was raised before the learned Trial Judge.

19. For the reasons aforementioned, we are of the considered view that no case has been made out for interference with the impugned judgment and order passed by the learned Trial Judge.

20. The appeal is consequently dismissed; but in the facts and circumstances of this case, there will be no order as to costs.

Satyanarayan Chakrabarty, J.

21. I agree.