
(2008) 02 CAL CK 0048
In the Calcutta High Court
Case No : Writ Petition No. 2349 (W) of 2008

Pemba Tshering

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

West Bengal Municipal Act, 1993 — Section 14(2), 17(3), 26, 378(3), 378(4)
West Bengal Municipal Election Act, 1994 — Section 83
West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995 — Rule 10, 6, 6(1)

Citation : (2008) 2 CALLT 555 : (2008) 1 ILR (Cal) 335

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Abhijit Basu, Subhrajit Basu and Sk Masud, L.C. Bihani and N.C. Bihani, for the Appellant; K.M. Subba, for the Respondent

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this writ petition dated February 4, 2008 is seeking orders: (i) quashing the order of the State Government dated January 21, 2008 made u/s 442 of the West Bengal Municipal Act, 1993 that the vice-chairman of Darjeeling municipality shall convene meeting of the board of councillors of the municipality within one month for electing a new chairman; and (ii) directing the respondents to hold election for the purpose of filling the three casual vacancies for councillors in the municipality before holding any meeting for electing new chairman.

2. The relevant facts are these. The thirty-fifth and thirty-sixth respondents were councillors of the municipality and they resigned on June 15, 2007. The existing chairman of the municipality, also an elected councilor, died on January 1, 2008. The new chairman was to be elected in terms of the provisions in Section 17(3) of the West Bengal Municipal Act, 1993. Section 17(3) provides that in the case of any casual vacancy in the office of the chairman caused by death, resignation, removal or otherwise, the board of councillors shall, in accordance with such

procedure as may be prescribed, elect one of the councillors to fill up the vacancy. The procedure for election of chairman in terms of Section 17(3) has been prescribed by the West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995. The provisions in Rule 6(1)(a) of those rules are relevant for the present purpose, and they provide that in the case of any vacancy caused by death of the chairman, within seven days or as soon thereafter as may be but not later than fifteen days after the death of the elected chairman, the vice-chairman shall convene a meeting of the board of councillors exclusively for the purpose of election of the chairman. In the present case the vice-chairman convened the meeting that was to be held on January 14, 2008. The meeting could not be held, because on that day the political party to which the petitioner belongs organized an agitation. The political agitation organized by that party continued till January 18, 2008. Under the circumstances, the vice-chairman adjourned the meeting to a future date until restoration of normalcy, as will appear from his memo dated January 14/21, 2008. In such situation the State Government issued the order dated January 21, 2008.

3. The order was issued in exercise of power conferred on the State Government by the West Bengal Municipal Act, 1993, Section 442 that says that if any difficulty arises in giving effect to the provisions of the Act, the State Government may, as occasion may require, by order, not inconsistent with the provisions of the Act, do or cause to be done anything which may be necessary for removing the difficulty. The State Government has exercised the power on the ground that the provisions in Rule 6 of the West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995 are silent about the actions to be taken if the meeting cannot be held within the prescribed time limit of fifteen days after the death of the chairman, and that this was causing difficulty in giving effect to the provisions of Section 17(3) for the purpose of election of new chairman of the municipality. On such ground and in order to remove the said difficulty, the State Government exercised its power available u/s 442 and directed the vice-chairman of the municipality to convene the meeting of the board of councillors within one month from January 21, 2008 for electing the new chairman.

4. The order of the State Government made u/s 442 has been questioned on the ground that though in reality there was no difficulty as contemplated in Section 442, the State Government decided to exercise its power. It has been argued that there was no difficulty as stated by the State Government, because the meeting convened by the vice-chairman in terms of the provisions in Rule 6, once was adjourned by the vice-chairman, was to be held in terms of the provisions in Rule 10 of the West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995. Rule 10 provides that if, at the time appointed for a meeting or within an hour thereafter there is no quorum, the meeting shall stand adjourned to some future date to be appointed by the chairman or, in his absence, by the vice-chairman, and three days" notice of such adjourned meeting shall be given to the members. It further says that the members

present at such adjourned meeting shall form a quorum, whatever their number may be provided that a requisitioned meeting shall fail automatically if there is no quorum at the meeting. The question therefore is whether in view of the provisions in Rule 10 and the decision of the vice-chairman dated January 14, 2008 adjourning the scheduled meeting on the ground that there was no quorum, there was any reason for the State Government to see any such difficulty in the matter as is contemplated by the provisions in Section 442.

5. In my view, the State Government has rightly seen the difficulty existing in the matter. In terms of Rule 6(1)(a) within fifteen days from January 1, 2008 the vice-chairman was to convene the meeting for election of the new chairman. Strictly speaking he complied with that requirement by convening a meeting fixed for January 14, 2008. The meeting was adjourned, since there was no quorum. Hence even assuming that the adjourned meeting was to be held by him in terms of the provisions in Rule 10, he was not free to remain inactive till January 21, 2008, till which date in reality, he did not give any notice of the adjourned meeting to the members. By deciding to remain inactive he virtually made the provisions in Rule 6(1)(a) nugatory. In terms of Rule 6(1)(a) the new chairman was to be elected within fifteen days from January 1, 2008. Since there was no quorum on January 14, 2008, the vice-chairman ought to have issued notice of the adjourned meeting either on January 14, 2008 itself or immediately thereafter. It is apparent that taking advantage of the provisions in Rule 10 that did not say that the notice of the adjourned meeting was to be issued by him at once, he decided to become inactive. This situation, visualized by the State Government as one giving rise to a difficulty in the matter of due implementation of the provisions in Section 17(3) and Rule 6(1)(a), in my view, cannot be said to be an outcome of an illegal or arbitrary appreciation of a situation. In my opinion, the State Government was fully justified in considering the situation to be one creating a difficulty and sufficient to be treated as a warrant for exercising its powers available u/s 442. Hence I do not find any reason to interfere with the order of the State Government dated January 21, 2008.

6. As to the question of holding election for filling the three casual vacancies, I do not see how it can be related to the question of election of the new chairman in terms of the provisions in Section 17(3) read with Rule 6(1)(a) of the aforesaid rules. I am unable to agree with counsel for the petitioner that so long as election for filling the three casual vacancies is not held, steps for electing the new chairman in terms of Section 17(3) cannot be taken. Such a restriction has not been put by the provisions in Section 17(3) or by any other provision. Only because the petitioner is expecting that once election is held for filling the three casual vacancies, his political party would win the seats and thus would gain sufficient strength to elect a chairman of its choice, there is no reason to hold that election of the new chairman in terms of Section 17(3) should be deferred till the election for filling the casual vacancies is held and the councillors for them are elected. I do not find any merit either in the argument that in view of the provisions in Section 26 of the West Bengal Municipal Act, 1993, the commission

was under an obligation to take steps in terms of the provisions in Section 83 of the West Bengal Municipal Elections Act, 1994 for filling the three casual vacancies within six months from the respective dates they occurred. Section 26 provides that the first general election of the board of councillors of a municipal area newly constituted shall be held within a period of six months from the date of the notification u/s 6 or Sub-section (3) or Sub-section (4) of Section 378, as the case may be. It further provides that the general election in a municipal area to constitute the board of councillors shall be held before the expiration of the term of office of the existing board of councillors on such date not earlier than six months prior to the date on which duration of its term of office would expire under Sub-section (2) of Section 14 as the State Government may fix for the purpose.

7. I am unable to see how these provisions can apply to an election to be held in terms of Section 83 of the West Bengal Municipal Elections Act, 1994. Section 83 provides that when the seat of a member elected to a municipality becomes vacant or is declared vacant or his election to the municipality is declared void, the commission shall, by notification, call upon the constituency concerned to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification, and the provisions of the Act and the rules and the orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy. It further provides that a member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office. It is evident from the provisions in Section 83 that no time limit has been fixed for issuing the notification by the commission for holding election for filling the casual vacancies. The six-month period mentioned in Section 26 of the West Bengal Municipal Act, 1993 has no manner of application to a case governed by the provisions in Section 83 of the West Bengal Municipal Elections Act, 1994. Counsel for the commission has said that steps cannot be taken for holding election only for filling the casual vacancies of the present municipality. He says that the commission will take necessary steps for issuing the notification only after ascertaining when it will be appropriate to hold the election. I think he is justified in saying that in the absence of any period fixed by the provisions in Section 83, there is no reason for the writ Court to direct the commission to hold election for filling the casual vacancies in the municipality within any particular time. In my view, an order to that effect, if made, will just amount to rewriting the provisions in Section 83; this is simply not permissible.

8. For these reasons, I hold that there is no merit in the writ petition. It is accordingly dismissed. There shall be no order for costs.

9. Urgent certified xerox copy of this order shall be supplied to the parties, if applied for, within three days from the date of receipt of the file by the section concerned.