
(2007) 02 CAL CK 0045
In the Calcutta High Court
Case No : Writ Petition No. 23927 (W) of 2005

Sahanaj Bibi

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-02-2007

Acts Referred:

West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 — Rule 5, 6, 6(1), 6(2)
West Bengal Panchayat Act, 1973 — Section 12, 16

Citation : (2007) 3 CHN 208

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Malay Kumar Basu, K.K. Bandyopadhyay and Mintu Kumar Goswami, in W.P. 18169W of 2006 and Amal Baran Chatterjee and Kalyan Kumar Panda, in W.P. 23927W of 2005, for the Appellant; Malay Kumar Basu, K.K. Bandyopadhyay and Mintu Kumar Goswami for respondent Nos. 3 to 15 in W.P. 23927(W) of 2005, Amal Baran Chatterjee and Kalyan Kumar Panda for respondent No. 4, P.S. Deb Barman and Tarun Kumar Das for State in W.P. 18169(W) of 2006 and Bharati Mutsuddi and Nilima Das for State, for the Respondent

Final Decision : Allowed

Judgement

Jyotirmay Bhattacharya, J.—Two writ petitioners have been filed by two different petitioners. The first writ petition being W.P. No. 23927(W) of 2005 was filed by Mr: Chatterjee's client who is the Pradhan of Shirakole Gram Panchayat. The other writ petition being W.P. No. 18169(W) of 2006 was filed by Mr. Basu's client who are the members of the said Gram Panchayat.

2. In the first writ petition, the legality and/or validity of the notice dated 8th December, 2005 by which requisition meeting was convened by Mr. Basu's client was challenged by Mr. Chatterjee's client. In the other writ petition, the legality and/or validity of the order dated 22nd February, 2006 passed by the prescribed authority being the respondent No. 2 disapproving the resolution adopted by the majority members for removal of the Pradhan was challenged by Mr. Basu's

client who convened the said requisition meeting.

3. Since the dispute in both the aforesaid writ petitions are interrelated with each other, this Court proposes to dispose of both the said writ petitions by a common order for avoiding conflict of decisions.

4. Let me now give short background of the dispute between the parties.

5. Thirteen out of nineteen members of the said Gram Panchayat, by their notice dated 21st November, 2005 requested the Pradhan of the said Gram Panchayat to convene a meeting for transacting an agenda regarding removal of the Pradhan. Pursuant to the said notice, the Pradhan issued a notice dated 28th November, 2005 convening a requisition meeting to be held at 10 a.m. on 5th December, 2005 at the office of the said Gram Panchayat for transacting the business on the agenda of removal of Pradhan. The Pradhan claims that notice of the said meeting was served upon all the members of the said Gram Panchayat. But since none of the members except the Pradhan attended the said meeting, the meeting could not be held due to want of quorum.

6. Subsequently the said thirteen members, by their notice dated 8th December, 2005 convened a requisition meeting to be held on 19th December, 2005 at 11.30 a.m. for transacting the very same agenda regarding removal of Pradhan. The validity and/or legality of the said notice was challenged by the Pradhan in the first writ petition on the ground that holding of such meeting is prohibited under the 3rd proviso to Section 12 of the West Bengal Panchayat Act, 1973 which provides 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.

7. The Pradhan claims that since no meeting could be held due to want of quorum on 5th December, 2005, no further meeting could be held for the very same purpose within six months from the date when the earlier meeting was scheduled to be held in view of the embargo as imposed under the 3rd proviso to Section 12 of the said Act.

8. Fact remains that the meeting was in fact held on 19th December, 2005 in terms of the notice dated 8th December, 2005 issued by the requisitionists. A resolution was also adopted by thirteen out of nineteen members supporting the motion. Thereafter, the said resolution along with the other relevant papers were forwarded to the prescribed authority for its decision. The prescribed authority, after holding an enquiry, held in its order dated 22nd February, 2006 that the resolution adopted in the said meeting remains invalid, as the meeting in which such resolution was adopted, was held in contravention of the 3rd proviso to Section 12 of the said Act.

9. The said decision of the prescribed authority is under challenge in the subsequent writ petition at the instance of the requisitionists who claimed that

the restriction on calling the meeting for the subsequent period for removal of the Pradhan within six months from the date of holding the earlier meeting as contained in 3rd proviso to Section 12 of the said Act cannot be attracted in the instant case, as no meeting was convened by the Pradhan for the said purpose in the manner as prescribed u/s 16 of the said Act. The petitioner therein alleges that since the notice of the said meeting was not served upon all the members of the said Gram Panchayat in the manner as prescribed under Rule 6 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004, it cannot be held that a valid meeting was convened by the Pradhan earlier by his notice dated 28th November, 2005 for the very same purpose.

10. Thus, it appears that the resolution of the entire dispute primarily depends upon the fate of the service of the notice of the meeting, issued by the Pradhan on 28th November, 2005 which was allegedly served by the Pradhan upon all the members of the said Gram Panchayat.

11. It appears from the returned acknowledgement cards regarding postal service which was sought to be effected upon the requisitionists by registered post that the said notices were served upon the requisitionists after the date which was scheduled for holding the said meeting. The said notice was also served upon the members of the said Gram Panchayat by personal service through a Panchayat employee who submitted a report regarding such service wherefrom it appears that those notices were affixed on the respective addresses of the requisitionists as they refused to accept such service. It appears from the said service report that all those notices were served by affixation at the respective addresses of the requisitionists before the date which was scheduled for holding of the said meeting.

12. Now a question has arisen as to whether such service is valid and legal in terms of Rule 6 of the said rules. In the event it is found that such service was effected in conformity with the said rules, then the restriction in calling the subsequent meeting for the very same purpose as provided under the 3rd proviso to Section 12 will be attracted. If on the contrary it is found that such service was not effected in conformity with Rule 6 then restriction in calling the subsequent meeting by the requisitionists will not be attracted.

13. Rule 6 of the said rules is set out hereunder for proper appreciation of the dispute regarding validity of such service:

Rule 6. Procedure of delivery of notice to members.-(1) The notice of the list of business to be transacted at a meeting, an emergent meeting or a requisitioned meeting of a Gram Panchayat in Form 1, 1A or 1B as the case may be shall be sent through the Secretary of the Gram Panchayat to each member of the Gram Panchayat by a messenger. The messenger shall deliver the notice to the member to whom it is addressed. In the absence of the member, the notice may be delivered to an adult member of his family residing with him. The messenger shall obtain the signature of the member or the adult member, as the case may

be, of his family residing with him, in the office copy of the notice as a receipt thereof. If the member is absent and there is no other adult member of his family to whom the notice may be delivered or a member or any adult member of his family refuses to receive the notice, it may be served by affixing on the outer door or some other conspicuous part of the house of the member in presence of not less than two witnesses. The service-return containing the signature of witnesses during such service shall be attached to the office copy of the notice along with a brief note of the entire procedure by the Secretary or in his absence by any other Panchayat employee, other than Gram Panchayat Karmee, duly authorised by the Pradhan of the Gram Panchayat.

(2) Every notice under Rule 5 shall be displayed on the notice board of the Gram Panchayat at least seven days before the time fixed for a meeting other than an emergent meeting. In case of an emergent meeting, such notice shall be displayed three days before the time fixed for such meeting.

(3) When notices convening any meeting have been put to service, such meeting shall not be cancelled by the Pradhan or the Upa-Pradhan.

14. On perusal of the said rules, this Court finds that service of such notice by registered post is not prescribed under the said rules. The said rules prescribes the procedure for delivery of notice to the members by personal service by messenger. The step which the messenger is required to take before affixing the copy of the said notice on the outer door or some other conspicuous part of the house of the member, has been also prescribed in the said rules. Those steps are as follows:

(1) Firstly the messenger is required to deliver the said notice to the member to whom it is addressed.

(2) In the absence of the member, such notice may be delivered to an adult member of his family residing with him.

If such service is accepted by such member of the Member's family, the messenger is required to obtain his signature in a copy of the said notice, as an acknowledgement of such service.

(3) If the member is absent and there is no other adult member of his family to whom notice may be delivered or the member or any adult member of his family refuses to receive such notice, then only notice may be served by affixation on the outer door or some other conspicuous part of the house of the member in the presence of not less than two witnesses.

15. The said rules also provides that the notice containing the list of business to be transacted at a requisition meeting of the Gram Panchayat in Form 1B shall be sent through the Secretary of the Gram Panchayat to each member of the Gram Panchayat by a messenger. The said rules further provides that the service return containing the signature of the witnesses shall be attached to the office copy of the notice along with a brief note of the entire procedure by the Secretary or in

his absence of any other Panchayat employee, other than Gram Panchayat Karmees duly authorised by the Pradhan of the Gram Panchayat.

16. It appears from the service report annexed to the writ petition being W.P. No. 23927(W) of 2005 that notices were served by affixation as the members concerned refused to accept such service on personal tender.

17. It is true that the requisitionists have not challenged the service of such notice upon them effectively. Tender of such notice to them by the messenger has not been denied by them. But at the same time this Court cannot be unmindful about the challenge with regard to the validity and/or legality of such service on the ground of non-compliance of the provisions contained in Rule 6 of the said rules. The requisitionists complain that such notices were not sent by the secretary of the said Gram Panchayat. The requisitionists further complain that no such notice was displayed in the notice board at any point of time. Even the brief note regarding the procedure followed for such service has neither been recorded by the Secretary nor by any other authorised office bearer.

18. Let me now consider the substance of such challenge with reference to the materials on record.

19. In this regard reference may be made to the minutes of the proceeding held before the prescribed authority on 9th December, 2005 being Annexure P-4 to this writ petition at page 46 wherefrom it appears that the Pradhan himself admitted that said notices were not sent through the Secretary. The Pradhan also admitted that the said notices were sent by the Pradhan himself. Sending of such notices by the Pradhan himself is not consistent with the provision of Rule 6 of the said rules. That apart, a brief note of the entire procedure regarding such service of notice by the Secretary or in his absence by any other Panchayat employee authorised by the Secretary, has not been submitted though submission of such brief note is a requirement under Rule 6(1) of the said rules.

20. That apart, Sub-rule (2) of Rule 6 of the said rules also provides that every such notice shall be displayed on the notice board of the Gram Panchayat at least 7 days before the time fixed for meeting other than the emergent meeting and in case of an emergent meeting such notice shall be displayed 3 days before the time fixed for such meeting.

21. The Pradhan himself admitted before the prescribed authority in the proceeding held on 9th December, 2005 that no such notice was displayed in the notice board of the said Gram Panchayat from the date of issuance of such notice upto the date which was scheduled for holding such meeting. The messenger who allegedly served such notice has not been examined.

22. Thus procedure for delivery of notice to the member as laid down in the Rule 6 of the said rules has not been followed in the instant case as admittedly such notice was not sent through the Secretary of the said Gram Panchayat which is a requirement under the said rules. Even the brief note of the entire procedure

regarding service of such notice has not been submitted before this Court for its scrutiny.

23. Presumption regarding service of such notice can be drawn only in a case where it is found that the procedure laid down in the concerned Rule regarding service of such notice has been followed strictly in toto.

24. Here, in the instant case this Court finds that the procedure for delivery of such notice as prescribed under Rule 6 of the said rules has not been followed by the concerned authority. In the absence of strict observance of the said rules this Court cannot hold that service of such notice was duly effected upon the said requisitionists. That apart, the acknowledgement cards relating to the postal service also show that such notices were served upon the requisitionists after the meeting was held.

25. In such view of the matter this Court holds that the meeting was not validly convened by the Pradhan by his notice dated 28th December, 2005 for holding such meeting on 5th December, 2005. Thus relying upon the decision of this Court in the case of *Shri Mangal Burman v. State of West Bengal and Ors.* reported in 2005(2) WBLR (Cal) 540, this Court holds that if the calling of the meeting by the Pradhan is held to be not in conformity with the provision as contained in the second proviso to Section 16 of the said Act read with Rules 5 and 6 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004, this Court has no hesitation to hold that the restriction on calling the meeting by the requisitionists for the very same purpose within six months from the date appointed for holding such meeting earlier as contemplated in the 3rd proviso to Section 12 of the said Act, does not come into operation.

26. The prescribed authority, while passing the impugned order arrived at its conclusion mechanically with regard to the application of the restriction provided in the 3rd Proviso to Section 12 of the said Act in the present case.

27. Accordingly the impugned order passed by the prescribed authority on 22nd December, 2006 stands quashed. Consequently this Court holds that the notice dated 8th December, 2005 by which requisition meeting was convened by the requisitionists for transacting the business on the agenda regarding removal of Pradhan on 19th December, 2005 being Annexure P- 5 to the first writ petition at page 48 thereof cannot be held to be illegal as convening of the meeting by the Pradhan vide its notice dated 28th November, 2005 has not been made in conformity with the provision of Section 16 of the said Act read with Rules 5 and 6 of the rules framed thereunder.

28. Besides all these, this Court cannot be unmindful of the decision of Hon''ble Supreme Court in the case of *Jai Charan Lal Vs. State of U.P. and Others*, wherein it was held that even if there are some irregularities in calling of the meeting, the resolution for removal of Pradhan, having been passed by the necessary majority, the decision of the majority cannot be disturbed in exercise of its discretionary power. After all the majority members i.e., 13 out of 19

members have lost their confidence in the Pradhan. The very foundation on democracy rests on showing respect to the majority decision. If the majority decision is not respected and if the Pradhan who has lost the confidence of the majority is allowed to continue on account of such feeble challenge, this Court holds that the entire foundation of democracy will collapse.

29. Under such circumstances, this Court does not feel it necessary to interfere with the notice which is impugned in the first writ petition. The writ petition being W.P. No. 23927(W) of 2005, thus, stands rejected. Similarly in view of the discussion made hereinabove, this Court is unable to retain the decision of the prescribed authority which is impugned in the subsequent writ petition being W.P. No. 18169(W) of 2006, on record. The impugned order of the prescribed authority, thus, stands quashed. The said writ petition thus stands allowed.

30. The prescribed authority is thus directed to take immediate steps to implement the resolution regarding removal of Pradhan adopted by the majority members of 19th December, 2005 in the light of the observation made hereinabove.

31. Urgent xerox certified copies, if applied for, by the parties be supplied to the same as expeditiously as possible.