
(2010) 05 CAL CK 0085
In the Calcutta High Court
Case No : F.M.A. 600 of 2010

Smt. Malati Sarkar

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 14-05-2010

Acts Referred:

Companies Act, 1862 — Section 51

West Bengal Panchayat Act, 1973 — Section 12, 16, 16(1)

Citation : (2010) 05 CAL CK 0085

Hon'ble Judges : Kalidas Mukherjee, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Ashoke De and Bikash Kumar Mukherjee, for the Appellant; Sumitra Dasgupta and Rina Banerjee for Respondents Nos. 1-3, S.K. Mukherjee and Sujit Banerjee for Respondents Nos. 4-5, Debjani Roy and Udayan Bhattacharya for Respondents No. 6, Amal Baran Chatterjee and Ashraf Ali for Respondents Nos. 7-11, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—Several grounds were taken in memorandum of appeal. Mr. Ashoke De, learned senior advocate appearing for the appellant however raised the plea of insufficient notice being his sole contention before us.

2. In Hassan-II Gram Panchayat in the District of Birbhum, Malati Sarkar, the appellant, above named was elected as Pradhan by the members of the said Gram Panchayat being nine in numbers. Out of nine members five members lost confidence on Malati and asked her to convene a meeting of the Gram Panchayat where they would intend to express their no confidence on her. The said notice dated March 3, 2010 appearing at page 41 was duly signed by five members being respondent No. 7 to 11 above named. The other three members being respondent No. 4, 5 and 6 however continued to repose confidence on Malati. The division of the Gram Panchayat, after such notice thus became four in favour of Malati including herself and five against her. Malati did not convene the meeting. The requisitionists, invoking Sections 12 and 16 of the West Bengal

Panchayat Act, gave a further notice of requisition meeting appearing at page 133-A. The said notice was also signed by respondent No. 7 to 11. They convened the meeting on March 31, 2010 scheduled to be held at 11 a.m. to consider the proposed resolution for removal of Malati from the post of Pradhan. The meeting was duly held and it now appears that Malati was removed from the office of the Pradhan. A Xerox copy of the resolution as handed over in Court was kept on record. The Block Development Officer being the prescribed authority under the said Act of 1973, asked Malati to hand over charge to Upa-pradhan.

3. Before the said meeting could be held Malati however approached the learned single Judge on March 29, 2010 inter alia praying for quashing of the said notice dated March 23, 2010 as also an order of restraint against respondent Nos. 7 to 11 and the State Authorities from holding any meeting in furtherance of the said impugned notice.

4. The learned single Judge vide judgment and order dated April 13, 2010 dismissed the writ application. His Lordship was of the view that the Pradhan understood the notice dated March 23, 2010. It was not her case that she was unable to follow the said notice. Hence, infirmities, if any, would not vitiate the subsequent proceeding. His Lordship observed that once the majority of the members lost confidence on the Pradhan the conclusion was "obvious". His Lordship observed that the expression "giving" means "communicate" or "impart". His Lordship relied on the decision of the Apex Court in the case of State of Punjab Vs. Khemi Ram, and observed that "seven clear days" as contained in Section 16 should be counted from the date of issue and not from the date of receipt. His Lordship dismissed the writ petition being devoid of merit.

5. Being aggrieved by the judgment and order of the learned single Judge, the appellant preferred the instant appeal that was heard by us on the above mentioned date.

6. As observed hereinbefore, Mr. De raised the plea of insufficient notice. In support of his contention Mr. De relied on second proviso to Section 16(1) read with Section 12 of the said Act of 1973. Mr. De relied on two unreported decisions in the case of Smt. Madhumita Biswas v. The State of West Bengal and Ors. dated April 5, 2007 (M.A.T. No. 3686 of 2006); Md. Firoz alam and Ors. v. State of West Bengal and Ors. dated April 10, 2008 (A.S.T. No. 195 of 2008).

7. Mr. Sumitra Dasgupta, learned Counsel appearing for the State respondents being respondent Nos. 1, 2 and 3 contended that the Section 16 stipulated that seven clear days notice should be given. The word "give" meant that it should be counted from the date of dispatch and not from the date of receipt. He relied on the decision of this Court reported in 2010 (1) CHCN 557 (Khalil Seikh and Ors. v. Asman Sk. and Ors.)

8. Mr. Sourav Mukherjee, learned Counsel appearing for the respondent Nos. 4 and 5 supported the appellant and contended that no notice was ever received by his clients. According to him, the period should be calculated from the date of

receipt as stipulated in Section 16. According to Mr. Mukherjee, once the Section categorically stipulated notice of seven clear days, notice shorter than seven clear days would not be permissible in law. In support of his contention Mr. Mukherjee relied on the Apex Court decision in the case of Meera Sahni Vs. Lt. Governor of Delhi and Others, .

9. Ms. Debjani Roy, learned Counsel appearing for the respondent No. 6 supported the appellant and adopted the contentions raised by Mr. De and Mr. Mukherjee.

10. Opposing the appeal, Mr. Amal Baran Chatterjee, learned advocate appearing for the respondent Nos. 7 to 11 on the other hand contended that the interpretation given by Mr. De was erroneous as would be apparent on a plain reading of the section which imposed an obligation upon the requisitionists to give seven clear days notice. The word "give" would obviously mean that the period should be counted from the date of giving of the notice being dispatched and not from the date of the receipt. Mr. Chatterjee relied on two Apex Court decisions reported in Jai Charan Lal Vs. State of U.P. and Others, and State of Punjab Vs. Khemi Ram, Mr. Chatterjee also relied upon the decision in the case of Upananda Chatterjee v. State of West Bengal and Ors. reported in 2007 (7) CHCN 605. He contended that respondent Nos. 4 and 5 refused to accept notice as would appear from the original envelope returned unserved.

11. Mr. Chatterjee prayed for dismissal of the appeal.

12. To decide the point in controversy, let us first discuss the relevant provisions of the statute.

13. Section 12 inter alia provides that a Pradhan or Upa-pradhan could be removed from the office by a resolution carried by majority at a meeting specially convened for the said purpose upon giving notice to the prescribed authority. The second proviso to Section 16(1) inter alia provides that Pradhan would require in writing by one-third of the members of Gram Panchayat subject to a minimum of three members to call a meeting, shall do so fixing the date and hour of the meeting to be held within fifteen days after intimation to the prescribed authority and seven days notice to the members. The said proviso further stipulates that in case of failure on the part of the Pradhan to convene a meeting, the requisitionist may call a meeting within thirty five days after "giving" intimation to the prescribed authority and "seven clear days notice" to the Pradhan and other members. In the instant case, Pradhan admittedly did not convene the meeting in terms of the requisition. Hence, the second notice issued by the requisitionists was perfect in terms of the provisions of Section 16(1). Appellant raised the plea that the notice was short as she received it on March 27 whereas the meeting was held on March 31. The learned Judge observed that the appellant being a Pradhan understood the notice and purport thereof. The learned Judge also accepted the contention of the requisitionists with regard to the interpretation of "seven clear days" as discussed hereinbefore. The learned

Judge in addition, considered the effect of Section 12 which clearly stipulates that a Pradhan could be removed by majority having five members in support of the resolution against four including the Pradhan. From the resolution it appears that all five members present at the meeting unanimously resolved that they lost confidence in the Pradhan and as such they removed the Pradhan in accordance with the provisions of Section 12. Hence, the Pradhan's removal was made by absolute majority and was valid in view of the provisions of Section 12. Question now remains as to whether the notice convening the meeting was valid or not. The majority of the members were present and voted in favour of the resolution. It was not the case of the Pradhan that she did not receive the notice. However, two of her supporters being respondent Nos. 4 and 5 contended that they did not receive the notice whereas the undelivered packet came back with the remark "refused". If out of nine members, six members duly received the notice well ahead of the meeting and did not raise any issue with regard to service it is presumed that the notice was attempted to be served on all the members in usual course including respondent Nos. 4 and 5. Question however remains, is the notice insufficient in accordance with the second proviso to Section 16(1)? Learned Judge relied on the Apex Court decision in the case of State of Punjab (Supra), where interpreting the word "communicate" Apex Court observed that it could not be interpreted to mean that the order would become effective only on its receipt. In the case of Jai Charan Lal (Supra), the Apex Court considered Section 87A(3) of the Uttar Pradesh Municipalities Act where the Apex Court decided almost identical provision. In Section 87A(3) it was, inter alia, provided that written notice of intention to make a motion of no confidence on the President must be signed by the members not less than one third of the total strength. Sub-section 3 provided that the District Magistrate would call a meeting and would usually send notice by Registered Post "not less than seven clear days" before the date of the meeting. While interpreting such provision the Apex Court observed that the District Magistrate was obliged to "send" notice not less than seven clear days. The word "send" would mean that the crucial date would be the date of dispatch. In the instant case, second proviso to Section 16(1) inter alia provides that the notice shall be "given". In our view, "seven clear days" would start considering the date of dispatch and not the date of receipt. The learned Judge, in our view, very rightly approached the problem. Mr. De relied upon a passage from Shackle ton on the Law and Practice of Meetings wherein "clear days" were defined by exclusion of the day when the notice was served and the day when the meeting was held. Such observation was made by the author being prompted by the English decision in the case of In re Railway Sleepers Supply Company reported in 1885, Volume - XXIX, Chancery Division, Page-204. In the said decision, Section 51 of the Companies Act, 1862 was considered wherein it was provided that a resolution would be deemed to be special when it had been passed at any general meeting of which notice specifying the intention to propose such resolution had been duly given and such resolution had been confirmed at a subsequent general meeting, of which notice had been duly given, and held at an interval of "not less than fourteen days, not

more than one month, from the date of the meeting" at which such resolution was passed. In our view, such proposition of law is well-settled and would also be applicable in the instant case, when we would interpret the word "clear days". In our considered view, "clear days" means while computing it must exclude the start date and the date of the meeting. Parties, however, joined issue before us as to what would be the start date in the given circumstance. Is it the date of issue or date of receipt? Mr. De relied upon the two unreported decisions in the case of Smt. Madhumita Biswas (Supra) and in the case of Md. Firoz Alam (Supra). In the case of Firoz Alam (Supra) the Division Bench of our Court while interpreting both the Sections observed that the language used in Section 12 was different from Section 16. Section 12 inter alia empowers the majority to remove Pradhan and Upa-pradhan "at any time" in a specially convened meeting. Section 16 spoke about different meetings. Under the second proviso to Sub-section 1 one-third members of the Gram Panchayat may request the Pradhan to convene a meeting and Pradhan was statutorily obliged to convene such meeting within fifteen days from the date of receipt of such requisition and seven days notice to all members. Under the second proviso in case of failure to convene a meeting by Pradhan the requisitionists were entitled to pass a resolution by convening meeting for the said purpose by "giving" seven clear days notice. The Division Bench considered various meetings contemplated under the said Act of 1973. The Division Bench also considered Rule 5 and 6 which spoke of notice of meeting to the members and procedure of delivery of notice. After discussing all the provisions the Division Bench held that seven clear days notice would mean a gap of seven clear days in between the date of service of notice and date of holding of the meeting. The Division Bench considered the Apex Court decision in the case of Jai Charan Lal (Supra) and observed that the language used in the Uttar Pradesh Municipalities Act would have a different connotation. The other Division Bench judgment in the case of Upananda Chatterjee (Supra) was also considered where the other Division Bench relying on a Supreme Court decision in the case of K. Narasimhiah Vs. H.C. Singri Gowda, held that the provision for service of seven clear days notice was not mandated. The Division Bench also considered the another unreported decision of our Court in the case of Madhumita Biswas v. State of West Bengal (Supra) where the other Division Bench observed that it was mandatory and not directory. Considering the views of two different Division Benches discussed above the Division Bench in the case of Firoz Alam (Supra) held that it was not necessary to deal with the proposition as to whether the notice was mandatory or directory. The Division Bench ultimately held that Section 12 clearly prescribed for removal of the Pradhan by a majority. Section 16 spoke about removal of Pradhan by the procedure laid down therein. The Division Bench ultimately held that the majority of the members gave notice to Pradhan for convening a meeting. The Pradhan failed to convene a meeting u/s 16. The requisitionists thereafter held a meeting upon notice to the prescribed authority as well as the members and took a decision to remove the Pradhan and such attempt of the requisitionists was valid u/s 12. Their Lordships rejected the contentions of the Pradhan and sustained the removal.

14. In the case of Madhumita Biswas (Supra) the other Division Bench held that giving of seven clear days notice was mandatory and not directory. The said Division Bench held that the provisions of the West Bengal Panchayat Act was not *pari materia* with Mysore Town Municipalities Act considered by the Apex Court. In the case of Khalil Sekh (Supra), plea was taken that the first notice asking the Pradhan to convene meeting was not properly given. The Division Bench negated such contention. While doing so, the Division Bench interpreted second proviso to Section 16 and observed that in case Pradhan failed to call such meeting despite receipt of notice the requisitionists were entitled to convene the meeting by giving seven clear days notice. The Apex Court decision in the case of Meera Sahni (Supra) was cited to support the contention that the statutory compliance must be had in the manner as prescribed in the statute. Apex Court held, where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.

15. In this case, the notice was admittedly issued on March 23, and meeting was held on March 31. If we exclude both the dates we get seven clear days being 24th to 30th. Section 16 clearly stipulates that the notice should be "given" and not "delivered" or "served". Giving of the notice means dispatch of the same. Once the notice was issued on March 23, it was immaterial when it was received by the notice so long there was no complaint with regard to non-receipt of the notice and the meeting could not be held to be void. The learned Judge relied upon State of Punjab (Supra). We do not find any scope of interference.

16. Even assuming we hold that seven clear days should be computed from the date of receipt it would have no bearing on the subject controversy in view of the clear mandate of Section 12 as interpreted by the other Division Bench in the case of Firoz Alam (Supra).

17. On examination of the precedents it appears that the Division Benches of our Court are not *ad idem* on the subject issue and in our considered view it is high time that the matter should be referred to the larger bench to be constituted by the Chief Justice for settling the law on the subject.

18. The area of disagreement, as we find on perusal of the decisions referred to above is summarized as under:

Decision

View

Remark

Jai Charan Lai Anal(Supra) (S.C.)

U.P. Municipalities Act Seven clear days notice to be sent.

The word "send" would mean that the relevant date would be the date of despatch and not the date of receipt

This judgment would be applicable in the present context.

State of Punjab v. Khemi Ram (S.C.)

Administrative Law

The word "communicate" would mean, when the order was signed and sent for communication and not the date of receipt.

This is not *pari materia* with Section 16 of the Panchayat Act.

J.N. Pramanick (Supra) (S.B.)

Section 16(3) of Bengal Municipal Act

Provision for sending fifteen clear days notice is directory and not mandatory.

The section postulates notice to be "given" meaning thereby the date of despatch would be the relevant date.

Md. Asraf AH Mondal (Supra)(S.B.)

Section 16 of the Panchayat Act.

Provision for giving notice of seven clear days is directory and not mandatory

J.N. Pramanick (Supra) was relied upon along with K. Narasimhiah (Supra)

Alok Pramanick (Supra) (D.B.)

West Bengal Panchayat Act

Even a notice shorter than seven days would serve the purpose

This judgment relied upon K. Narasimhiah where Mysore Town Municipalities Act, 1951 was considered. From the judgment however, we do not find the exact provision considered by the Narasimhiah. Hence, it would not be safe to rely on the said decision and apply the same while interpreting the subject provision.

Madhumita Biswas (Supra) (D.B.)

Section 105 of the West Bengal Panchayat Act *pari materia* with Section 16 thereof.

The provision is mandatory and not directory.

In this unreported decision, the Division Bench distinguished K. Narasimhiah (Supra) and held that

Mysore Municipalities Act was not *pari materia* with West Bengal Panchayat Act. The Division Bench also observed that the decision in the case of Alok Pramanick (Supra) was not the correct law as it failed to notice that Narasimhiah would not have any application in the subject controversy.

Upananda Chatterjee (Supra) (D.B.)

West Bengal Panchayat Act

The word "given" would mean that despatch by registered post would be sufficient compliance of Section 16.

This judgment literally followed Alope Pramanick (Supra), Narasimhiah (Supra) and distinguished Madhumita Biswas (Supra). The Division Bench observed that the earlier Division Bench in the case of Madhumita (Supra) should have referred the matter to the Chief Justice for constitution of the larger bench while disagreeing with Alope Pramanick (Supra). The Division Bench followed the earlier decision in the case of Alope Pramanick (Supra) and ignored Madhumita Biswas (Supra)

Firoz Alam (Supra)

West Bengal Panchayat Act

The Division Bench on an identical controversy followed

This Division Bench also did not refer it to the Chief Justice.

Madhumita Biswas and held that the provision is mandatory and not directory and then upheld the ultimate resolution by taking recourse to Section 12 by observing that once the resolution was passed by an absolute majority the shortcomings of Section 16 would be saved and would have no effect.

19. We have already held that the notice of dispatch was the relevant date. We have also observed that when the resolution was taken by absolute majority clear mandate of Section 12 would override the shortcomings, if any, u/s 16. In this regard, we follow Firoz Alam (Supra)

20. In our considered view, this appeal should fail and should be dismissed.

21. We however feel that because of the divergent views of different Division Benches matter should be placed before the Hon'ble Chief Justice for constitution of a larger Bench to answer the following questions:

i) What would be the relevant date for computation of "seven clear days" in terms of the second proviso to Section 16(1) of the West Bengal Panchayat Act, 1973?

ii) Is the second proviso to Section 16(1) mandatory or directory?

iii) What would be the effect of the resolution in case a notice shorter than seven clear days is given and Pradhan is removed by an absolute majority in a meeting other wise validly called?

22. Let this matter be referred to the Hon'ble Chief Justice for constitution of the larger bench.

23. Urgent xerox certified copy would be given to the parties, if applied for.

Kalidas Mukherjee, J.

24. I agree.