
(2000) 09 CAL CK 0057

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 7307 (W) of 2000

Sri Dabir Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 15-09-2000

Acts Referred:

West Bengal Panchayat (Constitution) Rules, 1975 — Rule 6
West Bengal Panchayat Act, 1973 — Section 12, 16, 8, 9

Citation : (2001) 1 CALLT 110 : (2000) 2 CHN 695 : 105 CWN 270

Hon'ble Judges : Prabir Kumar Samanta, J

Bench : Single Bench

Advocate : Mr. R.N. Das, Mr. D.P. Dutta and Mr. S. Sen, for the Appellant; Mr. Abhijit Basu and Mr. Subhrajit Basu, for the Respondent

Judgement

P.K. Samanta, J.—A question that was decided by the learned single Judge in a case reported in Menoka Halder and Others Vs. The State and Others, requires answer afresh by the Division Bench of this Court for the reasons stated hereinafter.

2. To appreciate the question which arises out of the facts of this case must necessarily be stated. The writ petitioner is the Prodhan of Mitrapur Gram Panchayat. This Gram Panchayat has in all 18 members divided in two groups of different political parties. It is not in dispute that 1/3rd of the members of the said Gram Panchayat by a letter dated 27th of April, 2000 requested the writ petitioner, Prodhan, for convening a meeting as per section 12 read with section 16 of the West Bengal Panchayat Act, 1973 for consideration of a resolution of no confidence against the Prodhan. It is also in dispute that the writ petitioner pursuant to the said requisition notice dated 27th April, 2000 did not call a meeting in compliance with the second proviso to section 16 of the said Act within the time prescribed therein. Consequently, the requisitionists by a notice dated 20.5.2000 convened a meeting on 30.5.2000 for passing a resolution for removal of the Prodhan at Panchayat Office after giving notice to all concerned.

In the affidavit in opposition filed on behalf of the 10 members of the said Gram Panchayat, namely the respondent Nos. 7 to 16 it was stated that one Mr. Samsul Huda, a Relief Inspector of the office of the prescribed authority was sent as an observer by the prescribed authority at the requisition meeting dated 30.5.2000. It was further stated that in presence of the said observer 10 members of the Gram Panchayat took an unanimous decision to remove the writ petitioner from the post of Prodhan of the said Gram Panchayat. It further appears from the records of this case that the prescribed authority upon consideration of the report of the observer of the said meeting exercised his power under Clause (a) of sub section 8 of section 9 of the said Act by removing the writ petitioner from his post of Prodhan and further directed him to hand over cash, assets, documents registers and seals which he had in his possession, custody or control to Smt. Usha Mal, the existing Up-Pradhan of the Gram Panchayat, by issuing an order dated 2.6.2000 to the above effect. The prescribed authority further pursuant to the provisions of Rule 6 of the West Bengal Panchayat (Constitution) Rules, 1975 issued a notice dated 6th June, 2000 for a meeting of the said Gram Panchayat on 28th June, 2000 to be held at Gram Panchayat office at 11 A.M. for election of the Prodhan of the said Gram Panchayat. In this writ petition the question having been raised that the requisition meeting dated 30.5.2000 with the agenda for removal of Prodhan was not permissible under the law as the requisitionists themselves by their notice dated 27th April, 2000, requisitioned for a meeting for consideration of a resolution of no confidence against the Prodhan, an order for stay of operation of the resolution dated 30th May, 2000 was passed pending disposal of the writ petition.

3. It may be stated that in the writ petition though it was alleged that 7 days clear notice of the aforesaid requisition meeting dated 30.5.2000 was not given to the members of the Gram Panchayat, that some members because of their absence in three consecutive meetings of the Gram Panchayat and some others because of their failure to make payment of their dues to the Panchayat were liable to be disqualified as members of the said Gram Panchayat and were not entitled to vote in the said requisition meeting yet then participated in the said meeting, but such allegations were not pressed at the hearing of this writ petition. Only argument advanced in this case is that in view of the decision of the learned single Judge of this Court in the above noted case, there could not have been an agenda for removal of the Prodhan in the requisition meeting dated 30th May, 2000 as the original requisition made by the requisitionists, by their requisition dated 27.4.2000 was for the purpose of consideration of a resolution of no confidence against the Prodhan. Accordingly, it was seriously contended that the requisition meeting on 30.5.2000 with the agenda for removal of Prodhan and the resolution passed for removal of the Prodhan in such requisition meeting were bad in law and consequently all further proceedings for removal of the Prodhan by the prescribed authority and for election of the Prodhan of the said Gram Panchayat cannot be sustained in law.

4. In the case of Menoka Halder (supra) several members of a Gram Panchayat by a letter dated 1.12.93 requested the Pradhan to convene a meeting within the statutory period for consideration of a resolution for no confidence against the Pradhan. Pursuant to the said letter the Pradhan by a notice dated 17.12.93 had convened a meeting at Panchayat office on 22.12.93 after giving notice to all concerned. On the said date none of the requisitionists turned up at the meeting and the same was adjourned sine die for want of quorum. Thereafter the requisitionists by a notice dated 29.12.93 called for a requisition meeting dated 12.1.94 for removal of the Pradhan. Though, it was contended in the said case that since pursuant to the requisition dated 1.12.93 the Pradhan called the requisition meeting on 22.12.93 by a notice dated 17.12.93 so the requisition made by the members of the Gram Panchayat by their notice dated 1.12.1993 was acted upon and no further meeting could be called and/or held by the requisitionists themselves pursuant thereto, but such contention did not find favour with the Court as the requisition meeting dated 22.12.1993 was held without giving 7 days' clear notice to the members of the Gram Panchayat. The Court held that the inactivity of the Pradhan after getting the notice dated 1.12.93 formed the foundation of giving of the notice dated 29.12.93 by the requisitionists themselves. The Court observed as under :--

"Under section 12 of the West Bengal Panchayat Act, 1973, a Pradhan can be removed from office by a resolution of the Gram Panchayat carried by the majority of the existing members of the Gram Panchayat at a meeting specially convened for the purpose. When the requisitionists give a notice u/s 16(1) second proviso first part requiring the Pradhan to call a meeting, the Pradhan has to call a meeting within 15 days after giving intimation to the prescribed authority and seven days' notice to the members of the Gram Panchayat. Naturally, the agenda of the meeting has to be stated in the notice to be given by the Pradhan. Unless the Pradhan knows the agenda he is not in a position to mention that in the notice. So in the notice under the first part under the second proviso to section 16(1) of the Act, the agenda or the purpose of calling the meeting has to be stated. If the Pradhan falls to call the meeting under the second part of the proviso referred to above, then the requisitionists can convene a meeting under the third part of the said proviso."

5. There was no dispute whatsoever that notice issued by the Pradhan under the second part of the second proviso to section 16(1) of the Act on the basis of the first notice dated 1.12.93 was not in strict compliance thereof. But the Court held that the notice dated 29.12.93 under the third part of the second proviso to section 16(1) of the Act containing the agenda for removal of the Pradhan in connection with the proposal of no confidence against him was not according to law in view of the judgment of the Division Bench of this Court in the case reported in Royhan and Others Vs. Chamatkar Malitya and Others, .

6. The relevant facts of that case which formed the basis of that decision were that upon leave granted by the Court a fresh notice was served upon Upa-

Prodhan on 1.10.84 for calling a no confidence meeting against him. The said Upa-Pradhan was acting as Prodhan. The terms of the said notice dated 1.10.84 were indicated in the judgment and there was admittedly no proposal for removal of the person holding the office of Upa-Pradhan but acting as Prodhan. The said Upa-Prodhan upon receipt of the said notice dated 1.10.84 called a meeting for no confidence on 16.11.84. The majority members of the Panchayat on 16.11.84 passed the necessary resolution of confidence and by the said resolution the Upa-Prodhan who was then holding the post of Prodhan was removed unanimously. The Division Bench of this Court relying on the decision of learned single Judge of this Court in the case of Soleman Shah and Others Vs. Director of Panchayat, Burdwan and Others, held that when it is manifest that there was no notice for removal of the Upa-Prodhan acting as Prodhan, there was no other alternative but to hold that on the basis of the terms of the notice dated 1.10.84 and more particularly on the specific agenda thereof no resolution for removal of the said Upa-Prodhan acting as Prodhan could be passed or given effect to. These two decisions of this Court point out one thing in particular that the resolution for removal of Prodhan or Upa Prodhan was passed by a majority decision of the members of the Gram Panchayat while there was no notice for such a requisition meeting with the specific agenda for removal. Those decisions were not on the basis of the facts that a requisition was made upon the Prodhan under the first part of the second proviso to section 16(1) of the Act to convene a meeting for no confidence against him and the Prodhan failed to convene a meeting under the second part of the said proviso pursuant to such requisition and thereafter the requisitionists themselves called a meeting under the third part of the second proviso to section 16(1) of the Act with the specific agenda for removal of the Prodhan. The significant question therefore arises as to whether a notice of a requisition meeting could be given by the requisitionists themselves under the third part of the second proviso to section 16(1) of the Act with the specific agenda for removal of the Prodhan or the Upa Prodhan as the case may be while the requisition was made by them upon the Prodhan to call a meeting under the first part of the second proviso to section 16(1) of the Act for consideration of a resolution of no confidence against him and the Prodhan failed to call a meeting under the second part of the said proviso, with such agenda. The next obvious question would be if such a requisition meeting is held on the basis of the notice issued by the requisitionists themselves in compliance with other provisions of the Act relating thereto and under the third part of the second proviso to section 16(1) of the Act with the specific agenda for removal of the Prodhan or Upa Prodhan as the case may be and if such a resolution is passed then what would be the effect thereof. The decision of the learned single Judge in the case of Menoka Halder (supra) was not upon consideration of the aforesaid questions even though such questions were before the Court on the facts of that case. The said decision was arrived at by merely placing reliance on the decision of this Court in Royhan case (supra).

7. There is no dispute whatsoever that a resolution of no confidence against the

Prodhan and/or the Upa-Prodhan as the case may be can never be equated with the resolution for removal of such office bearer. If any resolution of no confidence against the Prodhan and/or Upa Prodhan as the case may be is passed in a meeting then the consequent step would be to convene another meeting in the manner prescribed in the said Act for removal of the Prodhan and/or the Upa-Prodhan and; in such resolution for removal of the Prodhan and/or the Upa Prodhan as the case may be is passed in a meeting then only the Prodhan and/or the Upa Prodhan can be declared to have been removed from the respective office and only then there would be a resultant vacancy which would be filled up by electing a Prodhan by the members of the Gram Panchayat in a meeting duly convened therefor. Reference may be made to the decisions of this Court reported in *Paramananda Mahato and Others Vs. State of West Bengal and Others*, ; 1994 (1) CHN 423 (In re. *Mihir Mondal & Ors*); 1995 (1) CLJ 198 (*Kitabuddtn SK v. Daud Hossein & Ors.*).

8. In view of the aforesaid propositions of law answers to the questions as are posed above are necessary. Because section 12 of the Act which is the only provision for removal of Prodhan and Upa Prodhan from their respective offices provides that a Prodhan and/or a Upa Prodhan of a Gram Panchayat may at any time be removed from office by a resolution carried by the majority of the existing members referred to in Clause (i) of sub section (2A) of section 4 at a meeting specially convened for the purpose. Section 16 of the Act prescribes the manner and mode of holding meetings of a Gram Panchayat which include both general and specially convened meetings. Second proviso to section 16(1) of the Act lays down the procedure for a meeting to be specially convened. The meeting as referred to in second proviso to section 16(1) of the Act merely speaks of a meeting that is required to be convened specially on requisition in writings by 1/3rd of the members of a Gram Panchayat subject to a minimum of 3 members. The said provision does not distinguish between a meeting for consideration of a resolution for no confidence against the Prodhan and/or Upa Prodhan as the case may be and a meeting for removal of such office bearer. Accordingly, such specially convened meeting could be either for consideration of a resolution of no confidence against the Prodhan and/or Upa Prodhan as the case may be or for removal of such office bearer from his office. It is therefore, for the requisitionists to decide whether they would require a meeting for consideration of a resolution of no confidence against such office bearer or for a meeting for removal of such office bearer.

9. If it is considered in this backdrop then obviously it comes to mind that when Prodhan is required in writing by the members of the Gram Panchayat to call a meeting for consideration of a resolution of no confidence against Prodhan or Upa Prodhan of a Gram Panchayat as the case may be then under second part of the second proviso to section 16(1) of the Act, The Prodhan is under statutory obligation to call a meeting within the time prescribed there for. The Prodhan is to call such a specially convened meeting only with the agenda as required by the requisitionists in writing under first part of the second proviso to section

16(1) of the Act. The Prodhan has no choice to frame an agenda other than the agenda indicated in the requisition in writing by the requisitionists for such a specially convened meeting. The third part of the second proviso comes into play as soon as the Prodhan falls to convene a meeting within the prescribed period even upon requisition made in writing by 1/3rd members of the Gram Panchayat subject to a minimum of three members. There, the requisitionists will have the power and/or the authority to convene a meeting in the manner prescribed therein. Therefore, the question arises whether the requisitionists themselves will have the power to frame their agenda for such a specially convened meeting which they are required to convene by themselves under the third part of the second proviso to section 16(1) of the Act on the failure of the Prodhan to call such a meeting under the second part of second proviso to section 16(1) of the Act. No doubt the right to exercise authority under third part of the second proviso to section 16(1) arises on the failure of the Prodhan to exercise his authority under second part of the second proviso to section 16(1) of the Act. The question therefore, narrows down to the point whether such authority should be restricted to the agenda of the meeting as indicated in the requisition made by the requisitionists.

10. As stated hereinbefore second proviso to section 16(1) of the Act merely speaks of a meeting that is required to be convened on the requisition of 1/3rd members of the Gram Panchayat. The said proviso does not lay down that such meeting should be for any specific purpose. The meeting under second proviso to section 16(1) could be for any purpose inclusive of the purpose for removal of Prodhan and/or the Upa Prodhan of a Gram Panchayat as the case may be. If it is held that the said second proviso to section 16(1) is meant only for the purpose of holding a specialty convened meeting for the purpose of removal of Prodhan and/or Upa-Prodhan as the case may be. then there is no scope for holding a meeting under the said proviso for consideration of a resolution of no confidence against the Prodhan and/or the Upa-Prodhan as the case may be. A meeting commonly means a gathering of persons held for the purpose of discussion of matters. Section 16 of the Act provides for holding of meetings that are required to be held in a Gram Panchayat. Second proviso to section 16 of the Act lays down the procedure for calling specially convened meeting on requisition in writing by 1/3rd members of a Gram Panchayat subject to a minimum of three members.

11. Such specially convened meeting is required to be held by issuing notice both to the members of Gram Panchayat and the prescribed authority. A notice of meeting, to be valid, must necessarily and clearly state the business to be transacted at the meeting and give all material information to enable it to be fully understood. Therefore a notice of a meeting should state in sufficient detail the purpose of the meeting. If a full and complete agenda is sent with the notice or forms part of the same document, then this requirement is observed. The function of the agenda therefore is to disseminate information relating to the business to be discussed at the meeting. In the case in hand, there is no dispute

whatsoever that the notice dated 20.5.2000 fixing the requisition meeting on 30.5.2000 disseminated the information that the business relating to the removal of the Prodhan from his office would be discussed. In this case it was also not argued that there was no dissemination of information relating to the business to be transacted in the said meeting from the said notice. It is also not the case of the Prodhan that he failed to appreciate precisely the purpose for which the said meeting was convened by the requisitionists. That being the position, the aforesaid two decisions of this Court as reported in Royhan and Others Vs. Chamatkar Malitya and Others, and Soleman Shah and Others Vs. Director of Panchayat, Burdwan and Others, where resolution was passed for removal of the office bearer of a Gram Panchayat when the notice concerned was silent about the agenda for removal of such office bearer do not come in aid for a decision on the question that has arisen in the case in hand. The question that has arisen had the occasion to be answered in the perspective as above, in the case of Menoka Halder (supra) as the similar situation arose in the said case. The said case having been decided by following the decision of the Division Bench in Royhan's case which in my view as above, did not guide the question that had arisen in Menoka Halder's case to be answered, I am of the view that the questions which I formulate hereunder need to be answered by a Division Bench of this Court.

A. Whether a notice of a requisition meeting by the requisitionists themselves, under third part of the second proviso to section 16(1) of the West Bengal Panchayat Act, 1973 which emanates from the failure of the Prodhan to convene a meeting under second part of the second proviso to section 16(1) must restrict it's agenda to the precise agenda that was indicated in the first requisition made in writing to the Prodhan by the requisitionists themselves?

B. When the notice of a requisition meeting by the requisitionists themselves under third part of the second proviso to section 16(1) has been issued in compliance with the provision thereof with the specific agenda for removal of Prodhan and/or Upa Prodhan as the case may be, and all concerns have the clear, unambiguous information about the matter/business to be discussed in such a meeting and where such matter or business is an obvious corollary to the business for which a requisition was made in writing by the requisitionists to the Prodhan to call a meeting and such Prodhan failed to convene a meeting in accordance with the second part of second proviso to section 16(1) of the Act whether such a notice would be an invalid notice in law ?

C. What would be the effect of a resolution if passed for removal of Prodhan and Upa-Prodhan, as the case may be, in such a requisitioned meeting called by the requisitionists themselves under third part of second proviso to section 16(1) of the Act ?

12. With these questions, I refer this writ petition to the Division Bench of this Court for answers thereof. Pending disposal of the matter there shall be stay of operation of the impugned resolution dated 30.5.2000.

Referred to Division Bench