

Rabanmahato and Others Vs. State and Others

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Court : Kolkata

Decided On : Apr-28-1997

Reported in : AIR1997Cal368

Judge : V.K. Gupta, J.

Acts : W.B. Panchayat Act, 1973 - Sections 2(19), 16(1) and (3)

Appeal No. : C.O. 19068 (W) of 1994

Appellant : Rabanmahato and Others

Respondent : State and Others

Advocate for Def. : Mr. Milon Bhattacharjee, ;Mr. Lalit Mohan Mahato, ;Mr. Maink Das and ;Mr. Gautam Mukherjee, Advs.

Advocate for Pet/Ap. : Mr. Bidyut Kumar Banerjee and; Miss. Shila Sarkar, Advs.

Judgement :

ORDER

1. This case can be disposed of on a very short point.

2. It is claimed that some members of the Dimdiha Gram Panchayat under Purulia-I. Development Block, called upon the petitioner No. 1, who at the relevant time, was the Prodhan of the said Gram Panchayat, to convene a meeting for his removal. Actually, the removal of the Upa Pradhan the respondent No.2 was also

sought, but since it is stated that the petitioner No.2 has since died, this petition is not being prosecuted on her behalf. Because the petitioner No.1 is alleged not to have called the meeting, the requisitionists themselves called the meeting in terms of S. 16 of the West Bengal Panchayat Act. 1973. This meeting called by the requisitionists was fixed for 6th April, 1994. It is claimed that it was attended by 13 members of the Gram Panchayat and that the motion for the removal of the Gram Panchayat i.e. the Petitioner No. 1 was carried out because the 13 members present in the meeting voted in favour of the motion.

3. The holding of the meeting on 6th April, 1994 and the carrying out of the motion for removal of the petitioner No.1 has been assailed by the petitioner on a number of grounds. One of such ground is the absence of the observer by the prescribed authority in the said meeting. Reliance is sought upon 3rd proviso to S. 16(1) of the West Bengal Panchayat Act, 1973. This proviso reads as under:

'The prescribed authority may appoint an observer for such meeting who shall submit to the prescribed authority a report in writing duly signed by him within a week of the meeting on the proceeding of the meeting. The prescribed authority shall, on receipt of the report, take action thereon as it may deem fit.'

4. Second proviso to S. 16(1) stipulates that the Pradhan of the Gram Panchayat if required in writing by 1/3rd of the members to call a meeting shall do so fixing a date and hour of the meeting within 15 days after giving intimation to the prescribed authority. If the Pradhan fails to call such a meeting, within the aforesaid period, the members who require him to convene such a meeting, may themselves call a meeting after giving intimation to the prescribed authority with 7 days notice to the Pradhan and other members of the Gram Panchayat. As would be seen in either eventuality, whether the meeting is called by the Pradhan or by the members themselves, intimation is mandatorily required to be sent to the prescribed authority. In this background, what is required to be appreciated is that once the prescribed authority receives the intimation about the holding of the meeting of a Gram Panchayat, either from the Pradhan himself or from the members, i.e., the requisitionists, he has to appoint an observer for such a meeting who is required to submit to the prescribed authority a report in writing duly

signed by him within a week of the said meeting with regard to the proceedings of the meeting. The prescribed authority is to accordingly act upon such report and pass appropriate orders.

5. In the case before us it is alleged and not disputed by the respondents that the observer, even though duly appointed by the prescribed authority, was not present in the meeting. Mr. Bhattacharjee contends that the observer could not be present in the meeting because he was physically prevented from attending the meeting. The fact remains that the meeting went on in the absence of the observer and the proceedings started and concluded in his absence, resolution was moved and passed in his absence and the meeting actually concluded in his absence also. In the face of this admitted factual position with regard to the absence of the observer from the meeting, it is to be seen as to what effect does the absence of the observer from the meeting would have on its proceedings and upon the resolution that is claimed to have been passed in the meeting.

6. The giving of intimation about holding of every meeting to the prescribed authority is a mandatory requirement of law. The second proviso to S. 16(1) of the Act enjoins upon the Pradhan and or the members to intimate to the prescribed authority about the holding of the meeting. It thus goes without saying that the failure to intimate the prescribed authority about the holding of the meeting may itself result in the meeting being declared a nullity in the eyes of law. The purpose of giving intimation to the prescribed authority is to inform him that a meeting is going to be held for a particular purpose so that he may appoint an observer to be present at the meeting, to take note of the proceedings and to ensure that not only the proceedings are carried out in accordance with the provisions of law, but that sanctity is also ensured with respect to the proceedings of the meeting. The observer appointed by the prescribed authority undoubtedly represents the prescribed authority in the meeting. The prescribed authority is required to be appointed by the State Government in terms of S. 2(9) of the Act. He is a statutory authority. I am of the considered opinion that the presence of the observer in the meeting by itself is a sure guarantee and an assurance about the sanctity that would be attached to the proceedings of the meeting and that the proceedings would be recorded truly and faithfully. The observer representing the prescribed

authority is required to submit a report to him and, he being the prescribed authority's duly appointed representative, the prescribed authority is required in turn to act upon such report and pass appropriate orders.

7. It is no doubt true that a resolution for removal of a Pradhan is to be carried out by a majority of the votes of the members present and voting in a meeting. It is also no doubt true that it is the members who decide about the fate of such a motion and that nobody else is to vote upon a motion of removal of a Pradhan. But it does not do away with the basic requirement about somebody being nominated to observe the proceedings of the meeting, as a representative of the prescribed authority and this to ensure that the proceedings are carried out in accordance with law and that the record of proceedings is maintained truly and faithfully. The presence of the observer not only lends credence to the proceedings but it also tells everyone outside the meeting as to what all actually transpired in the meeting, how and in what manner.

8. The observer being the official representative of the prescribed authority which itself is statutory in character thus has been entrusted with the task of the recording the minutes of the proceedings of the meeting. The absence of the observer there fore from the meeting undoubtedly renders the very holding of the meeting illegal and thus tends to invalidate its proceedings. It thus follows that if a meeting is being held in the absence of the observer duly appointed by the prescribed authority, the holding of such a meeting, its proceedings and any resolution or motion that may be alleged to have been adopted therein, all should be deemed to be non-est in the eyes of law, invalid and incapable of being implemented or acted upon.

9. As has been seen and noticed, in the present case, the meeting was undoubtedly held in the absence of the observer who had duly been appointed by the prescribed authority. The reasons for his absence from the meeting are not relevant to the controversy before us. Why did the observer not attend the meeting, or why was he prevented from attending the same are not issues about which I am required to decide in this case. My only concern is that he was absent from the meeting, and from what I have said above, the meeting could not legally

and validly he held in his absence. The resolution/motion for removal of the petitioner there fore allegedly adopted in the said meeting cannot therefore be deemed to be valid or legal and therefore has to be quashed and set aside.

10. As is to be seen, the resolution/motion for removal of the petitioner is being quashed and set aside only on the technical ground of the absence of the observer from the meeting, hence the reconvening of such a meeting for such a purpose is wholly permissible in law. After hearing learned Advocates for the parties at length and upon consideration of all facts and circumstances of the case. I am of the view that the atmosphere in the Gram Panchayat is not wholly conducive or ideally suited so as to effectively enable either the petitioner himself or the members for convening a meeting for consideration of the resolution for removal of the petitioner as a Pradhan. In my view the interests of justice shall be properly served and the rights of all parties duly protected and safe-guarded if the prescribed authority itself is directed to convene the meeting for the aforesaid purpose so as to appropriately, properly and effectively take up for consideration the pending resolution for removal of the petitioner. The prescribed authority, not interested in the out-come of the resolution, nor being a part of any political set-up in the Gram Panchayat is the best person who should be entrusted the task of convening the meeting, either being presided by himself or by one of his nominated officers. In the peculiar circumstances therefore I hold that the convening of such a meeting for the aforesaid purpose by the prescribed authority shall be wholly lawful.

11. For foregoing reasons therefore I allow the writ petition and quash and set aside the motion/resolution whereby the petitioner was allegedly removed as the Pradhan of the Gram Panchayat. By issuance of a writ of mandamus I direct the prescribed authority of the Gram Panchayat to convene a meeting of the Gram Panchayat for the purpose of considering the motion/resolution for removal of the petitioner as Pradhan of the Gram Panchayat. The meeting shall be convened upon notice to all concerned, including the members of the Gram Panchayat. The meeting shall be presided either by the prescribed authority himself or by one of his nominated officers. It shall also be attended by an observer observed, as is required in terms of S. 16(3) of the Act. It shall be the duty of the prescribed

authority to ensure that the meeting is held in a congenial and conducive atmosphere, not necessarily in the office of the Gram Panchayat itself. Every endeavour of course should be made to convene and hold the meeting in the office of the Gram Panchayat but if prescribed authority feels that it may not be conducive and congenial to do so in that office, he may fix some other place for this purpose. It shall however be the duty of the prescribed authority to ensure that the discipline, decorum and law and order are properly maintained in this meeting. The meeting shall be held within four weeks from today and resolution put to vote. The resolution, (SIC) as carried out by the majority of the members present and voting shall be acted upon without any delay thereafter.

12. No order as to costs.

13. Petition allowed.

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