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Court : Kolkata

Decided On : Aug-10-2009

Judge : Pranab Kumar Deb, J.

Acts : West Bengal Panchayat Act, 1973 - Sections 4(2A), 12, 16 and 16(1); ;Uttar Pradesh Panchayati Raj Act - Section 14; ;Constitution of India - Article 14

Appeal No. : W.P. 12820 (W) of 2009

Appellant : Rahamat Sanpui

Respondent : The State of West Bengal and ors.

Advocate for Def. : S. Dasgupta, ;Tulsidas Maity, Advs. for State, ;Subrota Mukhopadhyay and ;Rituparna Sarkar, Advs. for Private Respondents

Advocate for Pet/Ap. : Kalyan Bandopadhyay and ;Mintu Goswami, Advs.

Disposition : Petition allowed

Judgement :

Pranab Kumar Deb, J.

1. The issue revolves round the question as to whether an elected Pradhan can be removed pursuant to the adoption of resolution of 'no confidence motion' against him in a meeting which has been specifically convened to consider the issue as to

whether Pradhan enjoys the confidence of house. In the aftermath of the Panchayat Election held in the month of June, 2008, the writ petitioner was elected as Pradhan of Netra Gram Panchayat. On 29/06/09 the writ petitioner received a requisitioned notice signed by the respondent Nos. 3 to 9, whereby he had been intimated that the requisitionists had lost their confidence in him. Accordingly, request was made to the Pradhan to take confidence of the Gram Panchayat by convening a meeting of the aforesaid Gram Panchayat. Pursuant to such notice, the writ petitioner as Pradhan called a meeting to discuss the issue as to whether Pradhan did have confidence of the members of the Gram Panchayat. 14/07/09 was fixed for discussion of the agenda. In the aforesaid meeting the agenda as to whether the members had confidence in the Pradhan was duly taken up, with all the members of the Gram Panchayat participating in it. The issue of confidence in the Pradhan was decided through secret ballot. No confidence against the Pradhan was adopted in view of the seven members supporting the motion of 'no confidence', as against six members expressing their confidence in the Pradhan. The resolution so adopted was forwarded to the Prescribed Authority in terms of the provision of the Act.

2. Acting as prescribed authorities, the Block Development Officer vide memo No. 1338 dated 20/07/09 directed the Pradhan to hand over the charge of the office to the Upa Pradhan of the Gram Panchayat with immediate effect in view of his removal from the post of Pradhan by the majority of the members of the Gram Panchayat.

3. Calling the action of the Gram Panchayat, which has been endorsed by appropriate authorities, as contrary to the provisions laid down in Section 12 and 16 of the West Bengal Panchayat Act. Mr. Kalyan Bandopadhyay, learned senior Advocate, has submitted that an elected Pradhan can only be removed strictly in terms of the procedure laid down in Section 12 and 16 of the Panchayat Act. It is argued that unless and until a specific resolution being adopted by removal of the Pradhan by the majority of the concerned Gram Panchayat, no order for removal of the Pradhan can be issued.

4. Citing the case of Soleman Shah and Ors. v. Director of Panchayat, Burdwan and Ors. reported in 70 CWN 1088, Mr. Bandopadhyay has submitted that in considering the provision laid down in Section 12 and 16 of the Act, the writ court has underlined the proposition that removal and loss of confidence are two different concepts. It has also been underlined that removal of a Pradhan is a serious charge. It has to be specifically mentioned. A notice which does not mention removal is a misleading notice. A resolution of removal where the notice did not mention the removal is bad in law. Reliance has also been placed on the case of Rati Kanta Giri v. State of West Bengal and Ors. reported in 98 CWN 889, to substantiate his contention that although no confidence and removal are inextricably, related to each other, the two are, however, distinguishable matters and are to be considered separately. Citing the case of Kitabuddin Seikh v. Daud Hossain and Ors. reported in 101 CWN 413, Mr. Bandopadhyay has submitted that issue as to whether removal and no confidence motion are synonymous or not have been discussed threadbare by the Division Bench in disposing of the said writ. The Division Bench have viewed that resolution of no confidence cannot be equated with a resolution of removal. It was held that unless a resolution was specifically taken for removal of the Pradhan, the ouster of the Pradhan could not be effected by adoption of a no confidence motion.

5. Calling the action of the Pradhan as deplorable, Mr. Subroto Mukhopadhyay, learned senior counsel representing the private respondents, has submitted that a Pradhan lacking the confidence of the Gram Panchayat has got no legal or moral right to cling to his post by throwing all norms into the air. It is argued that since the 'no confidence motion' was adopted by the majority of the members, the prescribed authority did the right thing by asking the Pradhan to hand over the charge to the Upa Pradhan of the aforesaid Gram Panchayat.

6. Referring to the notice made by the requisitionists, it is submitted that in the aforesaid notice, the requisitionists requested the Pradhan to call a meeting in terms of Section 12 and 16 of the Panchayat Act. It was clearly spelt out as to for what purpose the meeting would be called. The 'no confidence motion' having been supported by the majority of the members of the Gram Panchayat, the Pradhan is required to abdicate his post.

7. Citing the case of Ram Beti v. District Panchayat Rajadhikari and Ors. reported in : AIR 1998 SC 1222, Mr. Mukhopadhyay has submitted that the apex court has underlined the proposition that a Pradhan can be removed by moving a motion of no confidence. Since the motion of no confidence was adopted pursuant to a notice in terms of Section 12 and 16 of the Panchayat Act, the resultant effect would be the automatic removal of the Pradhan.

8. Dwelling on the issue of the removal of the Pradhan pursuant to the adoption of the no confidence motion. Mr. Mukhopadhayay has submitted that in view of the conflicting decisions being taken as to whether the removal can be directed following adoption of 'no confidence motion', a reference was made to the Division Bench in connection with the writ petition being W.P. No. 7307 (w) of 2000.

9. The reference was made on three questions:

A. Whether a notice of requisition meeting by the requisitionists themselves, under the 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 the 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 requistionists 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 or Upa-Prodhan, as the case may be, in such a requisitioned meeting called by the

requisitionists themselves under third part of second proviso to the Section (1) of the Act?

10. In answering these questions, the Division Bench viewed that wording of the Resolution, like removal or no confidence, amounts to the same and simply because when a Meeting is sought to be requisitioned for passing Resolution for No Confidence and a Notice for calling the Meeting for removal of the Prodhan amounts to same, the use of two different phraseology like 'removal' or 'no confidence' will not invalidate the notice or resolution.

11. It has also been held that the wording of the notice calling the meeting for 'removal' and 'no confidence', is not contradictory ; they are synonymous with each other and the effect is the same. In case the Motion of 'no confidence' is passed, the result would be the removal of Prodhan or Upa-Prodhan, as the case may be.' It is submitted by Mr. Mukhopadhyay that the issue having been finally set at rest by the Division Bench following the reference being made in the W.P. 7307 (W) of 2000, the writ petitioner is not entitled to challenge the order of dismissal by taking the flimsy plea that ouster cannot be effected in the absence of specific agenda for removal of the Pradhan. It is submitted that in the wake of the judgment given by the Division Bench, the writ court in Amulya Mondal v. State of West Bengal and Ors. reported in 2007 CWN (Vol. 111) 1081 has also taken the same view that the word 'removal' or 'lack of confidence' are synonymous with each other. Sections 12 and 16 of West Bengal Panchayat Act lay down the elaborate procedure for the removal of an elected Prodhan.

12. Section 12 of the Panchayat Act provides that Subject to the other provisions of this section, a Pradhan or an Upa-Pradhan 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 (1) of Sub-section (2A) of Section 4 at a meeting specially convened for the purpose. Notice of such meeting shall be given to the prescribed authority.

13. Proviso of Section 16 of the Panchayat Act provides that the Pradhan when required in writing by one-third of the members of the Gram Panchayat subject to a minimum of three members to call meeting shall do so fixing the date and hour

of the meeting (to be held) within fifteen days after giving intimation to the prescribed authority and seven days' notice to the members of the Gram Panchayat, failing which the members aforesaid may call a meeting to be held within thirty five days after giving intimation to the prescribed authority and seven clear days' notice to the Pradhan and other members of the Gram Panchayat. Such meeting shall be held in the office of the Gram Panchayat on such date and at such hour as the members calling the meeting may decide.

14. An elaborate procedure having been prescribed for the removal of the Prodhan, the procedure so provided in the Act is required to be strictly followed to secure the ouster of a Pradhan. The legislation is to be strictly construed. As the issue of removal of a Prodhan is too serious to be ignored, meetings have to be convened and conducted in accordance with what has been prescribed by the statute, as has been highlighted in the case of Soleman Shah v. Director of Panchayat (supra).

15. Since the only issue in the agenda was whether the Pradhan enjoyed the confidence of the house, the order of the removal of the Pradhan could not be issued in view of the adoption of no confidence motion only. The removal of the Pradhan not being the issue in the agenda of the meeting, no order of removal could be issued pursuant to the adoption of no confidence. As held in the case of Rati Kanta Giri v. State of West Bengal and Ors. (supra), although no confidence and removal are inextricably, related to each other, the two are, however, distinguishable matters and are to be considered separately. Removal can not be equated with no confidence.

16. Unless the relevant provisions contained in the Panchayat Act for removal of the Pradhan are strictly complied with, the ouster cannot be effected. The Division Bench in Kitabuddin Seikh v. Daud Hossain and Ors. (supra) have viewed that if the requisition meeting is called to consider the question of confidence against the Pradhan and not for his removal, in that case the adoption of the resolution for removal of the Pradhan will be treated as contrary to the notice. In Resida Khatoon and Ors. v. Block Development Officer and Ors. reported in 2000 (1) C.L.J. 293, the Division Bench have also taken the view that for removal of a Pradhan from

office, adoption of a resolution by the majority of the existing members of a meeting specifically convened for this purpose is a mandatory requirement of law. No Pradhan or Upa-Pradhan can be removed from office unless this is done. It has also been held that no meeting for removal of the Pradhan shall be held unless notice of such a meeting in the manner prescribed in these two sections are given. Here the notice was given to discuss the question of no confidence against the Pradhan and not for his removal. A resolution of no confidence was also adopted against the Pradhan without any mentioning of his removal. Acting on such notice and resolution, no order of removal should have been issued. What the prescribed authority has done is contrary to what has been prescribed under Section 12 and 16 of the Panchayat Act.

17. In Ram Beti v. District Panchayat Rajadhikari and Ors. (supra), the apex court discussed at length the provisions relating to the removal of the Pradhan and Upa-Pradhan under U. P. Panchayati Raj Act. Section 14 of the U. P. Panchayati Raj Act is identical with that of Section 12 of the West Bengal Panchayat Act. It specifically lays down that the Gram Panchayat may at a meeting specially convened for the purpose and of which 15 days' previous notice shall be given, remove the Pradhan by a majority of the two-third members of the present and voting.

18. In interpreting the provision, the apex court held that the Gram Panchayat would be entitled to remove the Pradhan of a Gram Sabha by moving a motion of no confidence. The issue was whether the conferment of such power on Gram Panchayat was violative of the provision contained in Article 14 of the Constitution. Answering in the negative, the apex court has viewed that the Section itself empowers the Gram Panchayat to remove the Pradhan of a Gram Sabha by moving a motion of no confidence and as such it is not unconstitutional and void being violative of the concept of democracy or is arbitrary and unreasonable so as to be hit by Article 14 of the Constitution. Here there is no question of Gram Panchayat removing the Pradhan of a Gram Sabha by moving a motion of no confidence. What was the contents of the notice made by the requisitionists in Ram Beti's Case is also not known. If a notice is made by the requisionists for removal of the Pradhan and if the agenda of the meeting is for removal of the

Pradhan, in that case the Pradhan can be removed by adoption of no confidence. Here the notice was silent about the removal of the Pradhan and the agenda was also not for removal of the Pradhan. In such circumstances, the removal of the Pradhan cannot be directed consequent to the adoption of the no confidence motion. While disposing of the reference in Sri Dabir Mondal v. State of West Bengal the Division Bench recorded simply the observation made in Royhan and Ors. v. Chamatkar Malitya and Ors. reported in 89 CWN 1044 that in case there was no notice for removal or No confidence motion against the Pradhan or Upa-Pradhan, no Resolution could be passed for removal of or lack of confidence in the Pradhan or Upa-Pradhan, as the case might be. The judgment of Kitabuddin Seikh v. Daud Hossain and Ors. Was not even discussed in the judgment of the Division Bench while disposing of the reference. Considering the ratio of decisions and having regard to the observations made by the Division Bench in Kitabuddin Seikh v. Daud Hossain and Ors., Resida Khatoon and Ors. v. Block Development Officer and Ors. and Royhan and Ors. v. Chamatkar Malitya and Ors. and considering the aspect that provisions of Section 12 and 16 of West Bengal Panchayat Act are to be strictly construed, this Court is of the view unless the meeting is specifically called for removal of the Pradhan in terms of Section 12 and 16 of the Panchayat Act and the agenda in the meeting is the removal of the Pradhan, the order of removal of Pradhan cannot be given effect to. It may serve as prelude to his eventual ouster. The adoption of no confidence may pave the way for his removal, but by simple adoption of no confidence motion against the Pradhan without a specific agenda in the meeting for the removal of the Pradhan, the ouster cannot be effected in a roundabout way.

19. In the result, the writ petition is allowed. The impugned order dated 20/07/2009 issued by the prescribed authority is set aside. This order, however, will not stand in the way of the members calling a meeting with the specified agenda of removal of the Pradhan.

20. Urgent xerox certified copy, if applied for, are to be supplied.

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