

Sayed Ali and ors. Vs. the State of West Bengal and ors.

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Court : Kolkata

Decided On : Dec-10-2009

Judge : Bhaskar Bhattacharya, A.C.J. and ;Prasenjit Mandal, J.

Appeal No. : A.S.T. No. 1038 of 2009 and A.S.T.A. No. 107 of 2009

Appellant : Sayed Ali and ors.

Respondent : The State of West Bengal and ors.

Advocate for Def. : Arindam Chatterjee, ;Kaman Sahoo, Advs. in MAT 1223/2009, ;Chitta Ranjan Chakraborty, ;Parvej Anam, Advs. in Respondent No. 9 in AST 1038/2009, ;Manick Chandra Das and ;Subrata Banerjee, Advs. for Sta

Advocate for Pet/Ap. : Sardar Amjad Ali, Adv. in AST 1038/2009 and ;Chitta Ranjan Chakraborty and ;Parvej Anam, Advs. in MAT 1223/2009

Judgement :

Bhaskar Bhattacharya, A.C.J.

1. Both the appeals were taken up together as the order impugned in these two appeals is the same one being order dated 17th November, 2009 passed by a learned Single Judge of this Court in W.P. No. 18234(W) of 2009 by which His Lordship allowed the writ-application by passing a direction for holding a fresh meeting for the removal of the Pradhan on 22nd December, 2009 at 12:00 hours in the office of the Gram Panchayat with a direction upon the Requisitionists to

serve fresh notice upon all the members through Registered Post with acknowledgement due card with the intimation of the scheduled meeting for removal of the Pradhan.

2. Being dissatisfied, the Pradhan has preferred M.A.T. No. 1223 of 2009 while the Requisitionists have preferred the other appeal being AST 1038 of 2009.

3. The following facts are not in dispute:

In the concerned Gram Panchayat, the total number of members is 17 and 10 out of those members were dissatisfied with the conduct of the Pradhan and as such, they sent a notice to the Pradhan with a request to him to convene a meeting to discuss the issue of his removal from the post of the Pradhan. Consequently, the Pradhan fixed a date to discuss the issue and issued notice of the said meeting called by him. The majority members of the Panchayat did not attend the said meeting, as a result, the proposal of his removal was turned down by a meagre number of members present in the meeting.

4. Challenging such action on the part of the Pradhan as illegal, the Requisitionists, in the past, filed another writ-application being W.P. No. 15397 (W) of 2009. A learned Single Judge of this Court allowed such writ-application by quashing an order dated 10th August, 2009 issued by the Secretary, Kapasia Gram Panchayat and the purported resolution taken on 17th August, 2009 with a direction that the meeting to discuss the issue of removal of the Pradhan was to be held afresh on 29th September, 2009 at 12:00 hours at the same venue. It appears that on 29th September, 2009 a meeting was held where 10 Requisitionists attended the meeting whereas the remaining 7 members did not appear and in that meeting, the resolution of the Requisitionists for the removal of the Pradhan was unanimously passed.

5. Pursuant to the direction given by the learned Single Judge, Sri Krishna Kanta Ghosh, Joint Block Development Officer, attached to the said establishment, acted as an observer and Sri Ajoy Sankar Ghosh, PA & AO, was entrusted to assist in the holding the meeting. The observations made in the report of the Joint BDO agreed with the decision of the meeting but there was allegation in the report that

the notice intimating that the meeting would be held on 29th September, 2009 was not served upon all the members.

6. In view of such fact, the BDO and the prescribed authority held that the Requisitionists members did not properly serve the notice upon all the members and thus, according to the said officer, the meeting dated 29th September, 2009 was held without following the basic provision of causing service of notice upon the members and consequently, the resolution of the meeting should not be given effect to.

7. Being dissatisfied, the Requisitionists members moved their second writ-application out of which the present appeals arise.

8. By the order impugned in these appeals, the learned Single Judge has directed the Requisitionists to serve fresh notice upon all the members through Registered Post with acknowledgement due stating the scheduled time of the meeting, as indicated in the order, with further direction upon the Secretary of the concerned Gram Panchayat to send Special Messenger so as to ensure proper service of notice upon all the members. It was further pointed out that in the event of refusal to accept the notice of the meeting by any of the members, the same should be recorded in the report and in case of non-availability of any of the members, such fact should be required to be noted in the report of the Process Server or Special Messenger. It was further ordered that stern action would be taken against the Secretary of the Gram Panchayat if he failed to carry out the positive direction of the Court to cause service of notice of all the members.

9. Being dissatisfied, the Pradhan has come up with M.A.T. No. 1223 of 2004 and according to Mr. Chakraborty, the learned advocate appearing on behalf of the Pradhan-appellant, there is no scope of further meeting once a meeting has been held pursuant to the notice of requisition when in that meeting, the Pradhan could not be removed for any reason. He, therefore, submits that the learned Single Judge should not have passed further direction for holding fresh meeting within a period of six months from the date of the earlier meeting, namely, 29th September, 2009.

10. In the other appeal filed by the Requisitionists, their only grievance is that till further meeting is held, the present Pradhan should not make any principal expenditure except day-to-day running of the Panchayat.

11. We have heard both the appeals.

12. Therefore, the first question that arises for determination in these appeals is whether the learned Single Judge was justified in passing direction for holding fresh meeting within six months from the date of the earlier meeting, namely, 29th September, 2009 although, the resolution of such meeting has been cancelled by the concerned BDO and the prescribed authority.

13. In order to appreciate the question involved in these appeals, it will be profitable to refer to Section 12 of the Act which is quoted below:

12. Removal of Pradhan and Upa-Pradhan.- 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 (i) 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:

Provided that at any such meeting while any resolution for the removal of the Pradhan from his office is under consideration, the Pradhan, or while any resolution for the removal of the Upa-Pradhan from his office is under consideration, the Upa-Pradhan, shall not, though he is present, preside, and the provisions of Sub-section (2) of Section 16 shall apply in relation to every such meeting as they apply in relation to a meeting from which the Pradhan or, as the case may be, the Upa-Pradhan is absent:

Provided further that no meeting for the removal of the Pradhan or the Upa-Pradhan under this section shall be convened within a period of one year from the date of election of the Pradhan or the Upa-Pradhan: Provided also 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.

14. A plain reading of the last proviso to Section 12 indicates that if in spite of compliance of the earlier part of the said section either no meeting is held or no resolution removing the concerned office bearer is adopted, no other meeting should be convened for the removal of the said office bearer within six months from the date appointed for such meeting. In the case before us, the meeting that was allegedly held at the instance of the Pradhan did not comply with the requirements of the Act for holding such meeting because the members were not properly served and, at the same time, the Writ-Court has already held that such meeting was called by not complying with the requirement of the provision. In such circumstances, there is no bar of calling a meeting after complying with the requirement of the provision. In order to apply the last proviso to Section 12, a meeting must be convened by complying with the requirements of the Act but if no meeting is duly convened in accordance with the provisions of the Act the proviso cannot have any application.

15. If we accept the contention of Mr. Chakraborty, in that case, the Pradhan whose removal is sought will call a purported meeting without complying with the requirements of the Act in a way so that no meeting in the real sense can be held or that the resolution for removal definitely fails and shall take advantage of the said proviso by illegally retaining his power by further six months.

16. We, thus, find no substance in the aforesaid contention of Mr. Chakraborty.

17. Since in the appeal preferred by the Requisitionists, the decision of the learned Single Judge directing fresh meeting of the Requisitionists has not been challenged, we do not enter into the question whether the resolution of a meeting passed with overwhelming majority can be set at naught simply because one or two members were not served in accordance with law.

18. We, however, find substance in the contention of Mr. Ali, the learned advocate appearing on behalf of the Requisitionists, that till the holding of the meeting on 22nd December, 2009, the present Pradhan will not incur any major expenditure

except for day-to-day regular administration of the Gram Panchayat. The order passed by the learned Single Judge is, thus, modified only to the extent indicated above.

19. Both the appeals are, thus, disposed of.

20. In the facts and circumstances, there will be, however, no order as to costs.

Prasenjit Mandal, J.

21. I agree.

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