

(2010) 01 CAL CK 0003

Calcutta High Court

Case No: M.A.T. No. 1276 of 2009 with C.A.N. 10810 of 2009

Khalil Seikh and
Others

APPELLANT

Vs

Asman Sk. and Others

RESPONDENT

Date of Decision: Jan. 12, 2010

Acts Referred:

- West Bengal Panchayat Act, 1973 - Section 12, 16, 4

Hon'ble Judges: Mohit S. Shah, C.J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Ashish Sanyal and Mr. Pratip Kumar Chatterjee, for the Appellant; Kamalesh Bhattacharyya, Ibrahim Shaikh, Billawadal Bhattacharyya, Habibur Rahaman and Mr. Anindya Bhattacharyya Mr. S. Dasgupta and Mr. Tulsidas Maity, for the Respondent

Final Decision: Dismissed

Judgement

Bhaskar Bhattacharya, J.

This Mandamus-Appeal is at the instance of the private respondents in a writ-application and is directed against an order dated November 18, 2009 passed by a learned single Judge of this Court by which His Lordship disposed of the said writ-application by holding that the notice dated 23rd October, 2009 issued by the present appellants did not require the Pradhan of the concerned Gram Panchayat to convene a meeting in terms of section 16 of the West Bengal Panchayat Act (hereinafter referred to as the Act).

2. Being dissatisfied, the private respondents have come up with the present appeal.

3. The following facts are not in dispute:

There are 13 elected members in the concerned Gram Panchayat, namely, Chandpur Gram Panchayat. The appellant Nos. 1 and 2 were elected as the candidates of the Revolutionary Socialist Party and the appellant Nos. 3 to 7 were

elected as the Congress(I) candidates. The aforesaid 7 members, out of the total 13, being dissatisfied with the activities of the Pradhan of the said Gram Panchayat sent a notice on 23rd October, 2009 to the Pradhan thereby alleging "no confidence" and asked him to call a meeting of the said Panchayat. In spite of receipt of such notice dated 23rd October, 2009, the Pradhan of the said Panchayat having failed to call any meeting as per demand, the appellants before us again sent a notice on 9th November, 2009 thereby requisitioning a meeting on 18th November, 2009 with the agenda of the removal of the Pradhan in terms of section 12 read with section 16 of the Act.

4. In the meantime, the Pradhan on 29th October, 2009 moved a writ-application before this Court being W.P. No. 18530 (W) of 2009 challenging the notice dated 23rd October, 2009, sent by the appellants out of which the present mandamus-appeal arises.

5. The learned single Judge, as it appears from the order impugned, although, specifically recorded that no order should be passed on the said writ-application, yet, in the body of the said order held that in the notice dated October 23, 2009 written by the appellants no request was made to the Pradhan to convene a meeting and as such, no question of convening a meeting at the instance of the Pradhan arose in terms of section 16 of the Act.

6. Being dissatisfied, the private respondents have come up with the present appeal.

7. Mr. Sanyal, the learned advocate appearing on behalf of the appellants, vehemently contended before us that the learned single Judge, while recording the finding that the notice dated October 23, 2009 did not require the Pradhan to convene a meeting as there was no request for holding such meeting, totally misread the contents thereof, particularly, the last sentence of the said notice where specific request was made for calling of a meeting in accordance with the Act. Mr. Sanyal, therefore, prays for dismissal of the writ-application after setting aside the aforesaid finding recorded by the learned single Judge.

8. Mr. Bhattacharyya, the learned advocate appearing on behalf of the writ-petitioner/respondent, has, however, supported the order passed by the learned single Judge and has contended that in the notice dated October 23, 2009 there being no agenda of removal, the said requisition cannot be said to be one in terms of the second proviso to section 16 of the Act. Mr. Bhattacharyya, therefore, submits that there being no demand in terms of section 16 of the Act for removal, subsequent notice of requisition dated November 9, 2009 was illegal and the outcome of the meeting pursuant to such requisitioned meeting was also illegal. In this connection, Mr. Bhattacharyya has relied upon a Division Bench decision of this Court in the case of Kitabuddin Seikh v. Daud Hossain & Ors. reported in 1995(1) CLJ 198.

9. Therefore, the only question that falls for determination in this appeal is whether the learned single Judge was justified in disposing of the writ-application by declaring that the notice dated 23rd October, 2009 issued by the appellants was really not a notice for calling a meeting expressing "no confidence" in terms of the second proviso to section 16 of the Act.

10. In order to appreciate the question involved herein, it will be profitable to refer to the provisions of sections 12 and 16 of the Act as it stood on the date of issue of the notices dated 23rd October, 2009 and 9th November, 2009 and those are 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.

16. Meetings of Gram Panchayat. - (1) Every Gram Panchayat shall hold a meeting at least once in a month in the office of the Gram Panchayat. Such meeting shall be held on such date and at such hour as the Gram Panchayat may fix at the immediately preceding meeting:

Provided that the first meeting of a newly-constituted Gram Panchayat shall be held on such date and at such hour and at such place within the local limits of the Gram concerned as the prescribed authority may fix:

Provided further 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 a 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. 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 proceedings of the meeting. The prescribed authority shall, on receipt of the report, take action thereon as it may deem fit.

Provided also that for the purpose of convening a meeting u/s 12, at least one-third of the members referred to in clause (i) of sub-section (2A) of section 4, subject to a minimum of three members, shall require the Pradhan to convene the meeting:

Provided also that if the Gram Panchayat does not fix at any meeting the date and the hour of the next meeting or if any meeting of the Gram Panchayat is not held on the date and the hour fixed at the immediately preceding meeting, the Pradhan shall call a meeting of the Gram Panchayat on such date and at such hour as he thinks fit.

(2) The Pradhan or in his absence, the Upa-Pradhan shall preside at the meeting of the Gram Panchayat; and in the absence of both or on the refusal of any or both to preside at a meeting, the members present shall elect one of them to be the President of the meeting.

(3) One-third of the total number of members subject to a minimum of three members shall form a quorum for a meeting of a Gram Panchayat:

Provided that no quorum shall be necessary for an adjourned meeting.

(4) All questions coming before a Gram Panchayat shall be decided by a majority of votes:

Provided that in case of equality of votes the person presiding shall have a second or casting vote:

Provided further that in case of a requisitioned meeting for the removal of Pradhan or Upa-Pradhan u/s 12, the person presiding shall have no second or casting vote."

11. On a plain reading of the aforesaid provisions, it is clear that in a notice in terms of second proviso of section 16 of the Act all that is required is that at least one-third of the members of the Panchayat subject to a minimum of three should in writing ask the Pradhan to call a meeting fixing the date and hour of the meeting to be held within 15 days after giving intimation to the prescribed authority and 7 days" notice to the members of the Gram Panchayat. If in spite of receiving such notice the Pradhan fails to call such a meeting, the requisitioning members may call a meeting

within 35 days after giving intimation to the prescribed authority and 7 clear days" notice to the Pradhan and other members of the Gram Panchayat, as indicated therein.

12. We have gone through the notice dated 23rd October, 2009 issued by the appellants. It appears that in the first part of the notice the appellants have alleged various illegal activities of the Pradhan resulting in expressing "no confidence" in him. In the last sentence of the said notice, they have specifically asked the Pradhan to call a meeting immediately after receipt of the said notice in accordance with the Act.

13. Therefore, the ingredients of section 16 are present in the notice dated 23rd October, 2009 and the learned single Judge totally overlooked the last sentence of the said notice whereby specific demand was made for calling a meeting.

14. We also find no substance in the contention of Mr. Bhattacharyya, the learned advocate appearing on behalf of the writ-petitioner/respondent, that there is necessity of incorporating the agenda of removal of the Pradhan in the notice of demand of calling a meeting as section 16 of the Act does not require incorporation of any agenda in the notice. The appellants in clear terms have expressed their "no confidence" in the notice dated 23rd October, 2009 and also have asked the Pradhan to immediately call a meeting in accordance with the Act. The Pradhan having refused to convene such meeting, it appears that subsequently the appellants have issued notice dated 9th November, 2009 for requisitioning the meeting for the removal of the Pradhan.

15. As regards the decision of Kitabuddin Seikh (supra) referred to by Mr. Bhattacharyya, we find that the said decision was given on November 25, 1994 wherein in a meeting, merely the resolution of "no confidence" was passed but there was no resolution of removal of the Pradhan and in such circumstances, it was held that by simply adoption of the resolution of "no confidence" against the Pradhan, there was no vacancy in the office of the Pradhan and the Pradhan cannot be removed from his office unless and until a resolution of the removal of the Pradhan from his office had been duly adopted in a meeting duly convened in the manner prescribed by law.

16. In the case before us, in the subsequent notice dated 9th November, 2009 there was specific agenda of the removal of the Pradhan and to that effect a resolution has also been passed. Therefore, for the purpose of disposal of the present writ-application, the said decision in the case of Kitabuddin Seikh (supra) has no application. It further appears that after the decision in the case of Kitabuddin Seikh (supra), the provisions of sections 12 and 16 of the Act have been substantially amended and as per amended provisions, the Pradhan can, at any time, be removed from the office by a resolution carried by the majority of the existing members at a meeting specifically convened for that purpose as provided in section 12 of the Act.

17. We, therefore, find that the learned single Judge in the facts of the present case by overlooking the last sentence of the notice dated 23rd October, 2009 erred in law in holding that the said notice was not a demand for calling a meeting in terms of the second proviso to section 16 of the Act.

18. We, therefore, set aside the order impugned and hold that the writ-petitioner/respondent had no merit in the allegations contained in the writ-application and that the notice dated 23rd October, 2009 served upon the Pradhan which was challenged in the writ-application was quite in conformity with the second proviso of section 16 of the Act.

19. The appeal is, thus, disposed of with the aforesaid observation.

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

Mohit S. Shah, C.J.

20. I agree.