

(2009) 04 CAL CK 0018

Calcutta High Court

Case No: Writ Petition No. 30717 (W) of 2008

Syed Mehdi Alam, Chairman,
Murshidabad Municipality

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: April 2, 2009

Acts Referred:

- West Bengal Municipal Act, 1993 - Section 18, 18(3)

Hon'ble Judges: Tapan Sen, J

Bench: Single Bench

Advocate: Malay Basu and Probal Sarkar, for the Appellant; Saptangsu Basu, Ayan Banerjee for the Respondent Nos. 5 to 8, 13, 15 and 19, Saibal Acharya for the Respondent No. 18, Subhasish Mukhopadhyay for the respondent Nos. 9, 10, 11, 14, 16 and 17, Md. Galib, Subhabrata Dutta for the Respondent No. 12, Fazlul Haque and Supriya Roy Chowdhury for the State, for the Respondent

Final Decision: Allowed

Judgement

Tapan Sen, J.

In this writ petition the petitioner, who is the Chairman of the Murshidabad Municipality, prays for the issuance of Writ of Mandamus commanding upon the respondents not to give effect to a notice dated 11.11.2008 (Annexure-P) as well as the subsequent notice dated 19.11.2008 (Annexure P-6) and also to refrain from acting in terms of the notice dated 04.12.2008 as contained in Annexure P-10. The Petitioner further prays for an order restraining the Respondents from holding any meeting and/or from giving effect to any resolution that may be adopted in such a meeting concerning his removal.

2. The petitioner further prays for an order commanding upon the respondents to allow him to continue functioning as Chairman of the said Municipality.

3. The petitioner has stated that the Murshidabad Municipality is composed of 16 (Sixteen) elected Councillors, but, referring to Annexure P-7, states that on 28.3.2008, one of the said Councillors, namely, Smt. Shyamasri Chakraborty, had resigned which was subsequently accepted in a Meeting of the Councillors held on 25.9.2008, vide Annexure P-8 and as such the number of Councillors had been reduced to 15 (Fifteen). There is also no dispute amongst the Learned Counsel appearing for the parties that on the resignation of Smt. Shyamasri Chakraborty, the Murshidabad Municipality had only 15 (Fifteen) Councillors on and from the date of acceptance of the resignation on 25.9.2008.

4. On 11.11.2008, 6 (Six) Councillors out of 15 (Fifteen) sent a letter to the Chairman purportedly exercising their rights u/s 18(3) of the West Bengal Municipal Act, 1993 and requested that a Special Meeting under the amended Act be called for taking a Resolution for the removal of the Chairman. This Notice/Requisition (hereinafter referred to for the sake of brevity as the Requisition) has been marked as Annexure-P to the writ petition.

5. Thereafter, a Declaration and a Letter were received by the Chairman/ petitioner by the petitioner vide Annexures P-1 and P-2 respectively on the same day in which two of the requisitionists, namely, Gobinda Bala and Sadhan Kumar Goswami endorsed their support in favour of the Petitioner and declared that they had signed the requisition by mistake and that they had full faith and confidence in the Chairman.

6. Learned Counsel for the Petitioner states, with reference to Annexure P-13, that on the same day, that is on 11.11.2008 the Chairman himself wrote to the Sub-divisional Officer informing him about such a development and also informed him that these two persons, namely, Gobinda Bala and Sadhan Kumar Goswami, had voluntarily expressed their confidence in the Chairman. Learned Counsel, with reference to Annexure P-13, states that both these two persons had put their signatures on this letter in the presence of the Sub-divisional Officer, Lalbagh.

7. Learned Counsel states it was thereafter and at the end of the day on 12.11.2008 that Gobinda Bala sent a letter to the petitioner vide Annexure P-4 telling him that after submitting the No Confidence Resolution on 11.11.2008, some miscreants had obtained his signature on a blank sheet of paper under threat and that if any thing was recorded on such a paper, it should not, be taken to be his voluntary statement.

8. However, having received the aforementioned Declaration/Letter reposing support and/or faith upon the Chairman, the petitioner, on the same day, wrote to the remaining 4(Four) Councillors, namely, Shyamal Mukherjee. Smt. Madhuri Mondal, Smt. Bandana Das and Smt Sahida Bibi, telling them that since two of the Councillors had given their declarations before the Deputy Magistrate after being physically present before withdrawing from their "No Confidence Motion" they therefore did not have the necessary Quorum in terms required u/s 18(3) of the

West Bengal Municipal Act, 1993, to maintain a requisition for holding a Special Meeting for the removal of a Chairman and therefore, he informed them that the said requisition and/or notice u/s 18(3) cannot be given effect to.

9. Thereafter on 19.11.2008, the remaining 4 (Four) requisitionists sent another letter to the Petitioner vide Annexure- P-6 which was in the nature of a reply to his letter referred above informing him that their notice was in accordance with law and therefore, he was required to convene a Special Meeting within the stipulated period from the date of the requisition, i.e., on 11.11.2008. Thereafter on 04.12.2008 a Notice (Annexure-P-10) was received by the petitioner which was sent by 3 (Three) Councillors informing him that since the Chairman and the Vice-Chairman had both failed to convene a Meeting, they had therefore convened a Special Meeting under Rule 9(3)(b)(iii) of the West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995 for removal of the Chairman and that the said Meeting would be held on 18.12.2008.

10. According to the petitioner, such a meeting cannot be held because out of the 6 (Six) requisitionists, 2 (Two) had withdrawn and/or extended support to the petitioner and therefore, the total number of requisitionists had been reduced to the Number 4 (Four) which could not be said to be one-third (1/3rd) of the total number of elected Members as contemplated u/s 18(3) of the West Bengal Municipal Act, 1993 and therefore, such a requisition became meaningless, void and inoperative and therefore, the consequential Notice dated 04.12.2008 referred to above was also illegal.

11. It is on the basis of the aforementioned set of facts that this writ petition has been filed that on 23.12.2008. Another Hon"ble Single Judge recorded, on a prima facie view on 23.12.2008, that since admittedly there were 15 (Fifteen) Councillors, the request for convening such a Meeting should have been made by at least 5 (Five) Councillors and since only 4 (Four) Councillors ultimately made the request, the Chairman was therefore not required to convene such a Meeting.

12. While granting leave to the respondents to file their affidavit-in-opposition, the other Hon"ble Single Judge passed an order of status quo till 31st January, 2009, which was extended from time to time.

13. Let it be recorded that Mr. Subhabrata Dutta, appearing for the respondent No. 12 (Sadhan Goswami), states that the signature of his Client appearing in Annexure R-2 is not genuine. He, however, states that the Letter written by Sadhan Goswami on 11.11.2008 (Annexure P-2) contains his signature and it is in the nature of a declaration reposing faith and confidence in the Chairman. Let it further be recorded that the respondent No.12 is the present Vice-Chairman.

14. Let it also be recorded that the respondent Nos. 9, 10, 11, 14, 16 and 17, who are represented by Mr. Subhasish Mukherjee, have also supported the case of the petitioner.

15. Both Mr. Subhasish Mukherjee as well as Mr. Subhabrata Dutta have further stated that in view of the fact that they are supporting the case of the petitioner, they are not interested in filing any opposition to the writ petition.

16. Mr. Saibal Acharya appears for the respondent No. 18 (Biplab Chakroborty). He is only aggrieved with a portion of the affidavit-in-opposition which pertains to an allegation having been made against his client which is to the effect that he being an outsider to the Municipality obtained the signature of Gobinda Bala as well as of the respondent No. 12 on blank-sheets of papers after subjecting them to threat and coercion. Mr. Saibal Acharya strongly protests to such statements being made and submits that this is a totally built up story without any basis as it is not supported by any Complaint/FIR before the Competent Authority. He further states that he has been unnecessarily dragged in this writ petition.

17. Thus, upon a perusal of the aforementioned facts and circumstances, it is evident that though 6 (Six) Councillors out of 15 (Fifteen) had requisitioned the meeting, but on the same day, a dispute arose on the basis whereof 2 (Two) of them withdrew and stated before the Sub-divisional Officer vide Annexure P-13, that they had signed on the "No Confidence Motion" under a misconception and that they were now expressing their Confidence in favour of the Chairman. It was under these circumstances that the Chairman replied and sent a letter to all concerned stating that the requisitionists did not have the necessary strength of one-third (1/3rd) Membership for the purpose of convening a Meeting.

18. Mr. Saptangsu Basu, Learned Counsel appearing for the respondent Nos. 5 to 8, 13, 15 as well as 19, has submitted that u/s 18(3) a Resolution for removal of the Chairman can be carried by a majority of the total number of the Board of Councillors holding office present and voting. He states that since 6 (Six) Councillors were present and since out of this 6 (Six) they had all sent the requisition, it must be deemed to mean that they were in a majority and it was a sufficient compliance of section 18(3). Section 18 of the Act reads as follows:

"18. Termination of office of Chairman.- (1) The Chairman shall cease to hold office as such if he ceases to be a Councillor of the municipal area.

(2) The Chairman may, at any time, by giving a notice in writing to the Board of Councillors, resign his office, and the procedure for acceptance or otherwise of the resignation shall be such as may be prescribed.

(3) The Chairman may be removed from office by a resolution carried by a majority of the total number of [elected members] of the Board of Councillors holding office for the time being, present and voting by them, at a special meeting to be called for this purpose in the manner prescribed upon a requisition made in writing by not less than one-third of the total number of [elected members] of the Board of Councillors, and the procedure for the conduct of business in the special meeting shall be such as may be prescribed:

Provided that no such resolution shall be moved before the expiry of six months from the date of assumption of office by a Chairman, and if such resolution is not carried by a majority of the total number of [elected members], no further resolution for such purpose shall be moved before the expiry of a period of six months from the date on which the former resolution was moved".

19. The argument of Mr. Saptangsu Basu does not appeal to this Court inasmuch as section 18(3) clearly lays down that such a requisition has to be made in writing by not less than one-third (1/3rd) of the total number of elected Members. There is no dispute that the total number of elected Members are now 15 (Fifteen) in number. Thus, one-third (1/3rd) of 15 (Fifteen) would have been at least 5 (Five) for purposes of carrying a requisition for removal of the Chairman. After 2 (Two) persons withdrew their support before the Magistrate concerned, the number was reduced to 4 (Four).

20. Under such circumstances, the requisition fell short of the required majority as contemplated u/s 18(3) and therefore it could not have been a requisition which can be deemed to be one-third (1/3rd) of the total number of elected Members of the Board of Councillors.

21. Mr. Saptangsu Basu makes a further submission to the effect that the Chairman could not have personally refused to hold the meeting as such a decision could only have been taken under Rule 19 of the West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995. In the opinion of this Court, such a submission has no merit on account of the fact that if the requisition itself fell short of the requirement of section 18, there was, therefore, no question by a further deliberation or a discussion/decision to be taken in a subsequent meeting.

22. Under such circumstances, this Court does not find any irregularity if the Chairman refused to call the meeting. Consequently, the Notices dated 11.11.2008, 19.11.2008 and 04.12.2008 being not in conformity with section 18, the same cannot be sustained.

23. The writ petition is allowed. The impugned notices as contained in Annexure-P, P-6 and P-10 are set aside and quashed. As a consequence. Prayers (a) to (f) are allowed.

24. Urgent xerox certified copy of this Order, if applied for, be supplied to the parties.