

(2007) 01 CAL CK 0004

Calcutta High Court

Case No: Writ Petition No. 728 (W) of 2007

Shri Gopal Sarkar

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Jan. 16, 2007

Acts Referred:

- West Bengal Panchayat (Constitution) Rules, 1975 - Rule 6

Citation: (2007) 2 CALLT 91

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Amitava Bhattacharyya, for the Appellant; Sumitra Dasgupta and Mr. Saibal Kumar Acharyya for State, Mr. Kalyan Bandopadhyay, Partha Sarathi Deb Barman and Mr. Dipankar Mandal for Eighth to Twenty-Sixth and Twenty-Eighth Respondents, for the Respondent

Final Decision: Dismissed

Judgement

J.K. Biswas, J.

The writ petitioner, a member of Ranaghat-II Panchayat Samiti, Nadia, is questioning the notice of the Prescribed Authority and Sub-Divisional Officer, Ranaghat dated January 3, 2007 issued under Rule 6 of the West Bengal Panchayat (Constitution) Rules, 1975.

2. Twenty-one persons lodged a caveat, and hence order was made by me on January 12, 2007 directing their addition, since they had not been made respondents in the case. In compliance with the order the twenty-one caveator were added as the eighth to twenty-eighth respondents. Name of the twenty-seventh respondent (Mahendra Nath Bagchi) is to be expunged, since, though he was one of the caveator, he was not an existing member of the Samiti at the date the caveat was lodged.

3. Hence I order that name of the twenty-seventh respondent shall be expunged, and that the department shall take necessary steps for the purpose immediately. For record only: there are forty-one seats in the Samiti, and out of them at the date the impugned notice was issued thirty-eight seats were occupied by thirty-eight valid members (including the petitioner and the twenty caveators who have been added as respondents in the case).

4. The Sabhapati of the Samiti was removed, and the sub-divisional officer, as the competent authority, made the requisite declaration dated September 28, 2006 and ordered that the vacancy should be filled according to the relevant rules within one month. Notices issued twice for holding meeting for electing the Sabhapati were challenged in this Court, and they were quashed.

5. The last notice was quashed on the ground that without obtaining extension of time to hold the meeting in terms of provisions in Rule 6, the prescribed authority issued that for holding the meeting. In view of the orders made by this Court quashing the previous notices, steps were taken for obtaining extension of time for holding the meeting.

6. In terms of provisions in Rule 6 of the West Bengal Panchayat (Constitution) Rules, 1975, in ordinary course, meeting for filling the vacancy for the post of Sabhapati was to be held within thirty days from the date of occurrence of the casual vacancy. Here the casual vacancy occurred (or rather was declared) on September 28, 2006. Since the requisite meeting was not held by October 28, 2006 the question of extension arose.

7. In view of the provisions in Rule 6, and the orders made by this Court, the District Magistrate and District Panchayat Election Officer, Nadia made an order dated January 2, 2007 extending the time to hold the meeting till January 31, 2007. Thereupon the impugned notice was issued by the prescribed authority fixing January 12, 2007 for the meeting.

8. The petitioner questions the notice first on the ground that it was not issued in terms of provisions in Rule 6. Counsel contends that even if the requisite order had been made by the district Panchayat election officer for extending the time, that will not make the notice a legal one, as the fact of extension of time by the appropriate authority was not stated in the notice under Rule 6.

9. I am unable to agree with him. It is not necessary (particularly because there is no statutory requirement) to state in a notice issued under Rule 6 of the West Bengal Panchayat (Constitution) Rules, 1975, when the proposed meeting is scheduled for a date later than thirty days from the date of occurrence of the casual vacancy, that the district Panchayat election officer allowed extension of time for holding the requisite meeting.

10. In my view, an order made by the district Panchayat election officer extending time to hold the meeting is sufficient to empower the prescribed authority to issue a notice under Rule 6 fixing the date for the proposed meeting for a date later than thirty days from the date of occurrence of the casual vacancy. Here the district Panchayat election officer issued the order on January 2, 2007, and a copy thereof has been produced before me.

11. It is of no consequence that, according to the petitioner, though he requested the prescribed authority by making an application dated January 8, 2007 to supply him any order made by the district Panchayat election officer extending time for holding the meeting, the order dated January 2, 2007 made by the authority concerned was not supplied to him. The alleged inaction, in my opinion, did not make the impugned notice bad in law.

12. The petitioner's further case is that the impugned notice having been served on him only on January 8, 2007, when the meeting was fixed for January 12, 2007, the authority was not competent to act on it, since at least seven clear days' notice was not given to him. Counsel says that in view of provisions in Rule 6 the prescribed authority was under a mandatory statutory obligation to cause the notice served on the petitioner at least seven days before January 12, 2007.

13. In response counsel for the respondents submit that the period of seven days mentioned in Rule 6 was not mandatory, and that even if the notice was served not leaving seven clear days before the date fixed for the meeting in question, that was not to make it bad in law. They rely on the Division Bench decision of this Court in *Aloke Pramanik v. State of West Bengal & Ors.*, 1996(1) CLJ 434.

14. To this, counsel for the petitioner submits that the apex Court decision in [K. Narasimhiah Vs. H.C. Singri Gowda](#), was not properly appreciated by the Division Bench that gave the decision considering the West Bengal Panchayat (Panchayat Samiti Administration) Rules, 1984, Rule 19, which has no manner of application to the impugned notice issued under the West Bengal Panchayat (Constitution) Rules, 1975. His further argument is that by not getting seven clear days' notice, the petitioner suffered irreparable prejudice.

15. When I wanted to know how and what prejudice the petitioner suffered by not getting seven clear days' notice, counsel invited me to consider the averments made in paras 13, 14 and 17 of the writ petition. After going through those paragraphs, I do not find a single word that the petitioner used for stating how and what prejudice he suffered by not getting seven clear days' notice of the proposed meeting.

16. I am unable to appreciate the contention that the Division Bench decision was given by their Lordships without properly appreciating the apex Court decision in *K. Narasimhiah*. I am not supposed to examine whether the apex Court decision was properly examined by their Lordships. I only say that I am just bound by the Division

Bench decision, if the principle stated in that applies to the present case; and I hold that it does.

17. In the West Bengal Panchayat (Panchayat Samiti Administration) Rules, 1984, Rule 19, the makers of the rules said, "Notice for meeting: At least seven clear days" notice of all meetings except an emergent or a requisitioned meeting shall be given to all members in Form I. At least three clear days" notice for emergent meeting shall be given to all members of the Sthayee Samiti in Form IA. Seven clear days" notice for a requisitioned meeting shall be given in Form 1B:"

18. And what the rule makers said in the West Bengal Panchayat (Constitution) Rules, 1975 has already been mentioned hereinbefore. In Rule 6 also nothing was said about personal service on the members. The notice was to be served on each member at least seven days before the date fixed for the meeting to be held for filling the casual vacancy.

19. I do not agree that since the impugned notice was issued under a different set of rules, the principle stated in the Division Bench decision should not be applied to it. It was held in the Division Bench decision that the provision for giving notice leaving at least seven clear days from the date of the meeting was not a mandatory requirement, and hence notice of less than seven days would also serve the purpose.

20. In this context, in my view the question of suffering prejudice by the notice is also important. If it is shown that the notice has suffered any prejudice by not getting seven clear days" notice, in my view the notice becomes vulnerable, and in a given case it may be set aside. But in the absence of anything to show that the notice suffered any prejudice, I do not think the writ Court should interfere with such a notice as the one in the present case.

21. Here, as I have already pointed out, the petitioner has stated nothing to show that he suffered any prejudice by not getting the notice at least seven days before January 12, 2007 when the meeting was to be held. He received the notice, admittedly, on January 8, 2007. He took out the writ petition on January 11, 2007, when the meeting was scheduled for January 12, 2007. I understand that the meeting was duly held.

22. For these reasons, I do not find any merit in the case. The writ petition is accordingly dismissed. There shall be no order for costs in it.

Urgent certified Xerox copy of this order shall be supplied to the parties, if applied for, within three days from the date of receipt of the file by the section concerned.

Writ petition dismissed.