

Purnendu Roy Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: May 3, 2011

Acts Referred: Constitution of India, 1950 " Article 226

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

West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995 " Rule 7, 8, 9

Citation: (2011) 5 CHN 423

Hon'ble Judges: Indira Banerjee, J

Bench: Single Bench

Judgement

Indira Banerjee, J.

In this writ application, the petitioner has challenged a notice of special meeting bearing No. 354/1/25/KM dated 25th

March, 2011 issued by three Councilors of Kulti Municipality being the respondent Nos. 11, 12 and 19. On or about 2nd March, 2011 some

Councilors of Kulti Municipality served a notice on the Chairman of the Kulti Municipality, the contents whereof are extracted here in below:--

We more than one third of undersigned elected Councilors of Kulti Municipality do hereby serve notice upon you u/s 18(3) of the West Bengal

Municipal Act, 1993 that we lost confidence on you as the Chairman of Kulti Municipality.

Accordingly, we request you to convene a special meeting immediately as per the provision of West Bengal Municipal Act, 1993 to establish the

No Confidence on you.

Thanking you.

2. Meetings of Municipality are governed by provisions of Chapter-III of the West Bengal Municipalities (Procedure and Conduct of Business)

Rules, 1995.

3. The relevant provisions of 1995 rules are set out here in below for convenience:--

7. Meeting and its validity.--(1) Meetings of the Municipality may be:

(a) ordinary meetings; or

(b) extraordinary meetings.

2) A meeting of the Municipality shall be deemed to have been duly held when:

(a) the meeting is duly convened;

(b) there is necessary quorum;

(c) the meeting is held within the municipal premises;

(d) the meeting, is presided over by a person authorized under the Act and these rules; and

(e) the proceedings of the meeting are duly recorded.

8. Ordinary meetings.--(1) The Chairman or in his absence, the Vice-Chairman shall convene a meeting of the Municipality for the transaction of

normal business not less than once in every month.

2) if there is no business to be laid before the members at any such meeting the Chairman or, in his absence, the Vice Chairman shall, instead of

convening the meeting, give notice of the fact to each member at least three days before the date appointed for the meeting.

3) Seven days" notice to the members shall be necessary for such meeting.

4) The Councilors may, at a meeting, fix the date or dates and time for holding the next meeting or meetings.

9. Extraordinary meeting.--(1) In an extraordinary meeting, no matter, other than the one for which the meeting has been convened, shall be

discussed. Such meetings may be-

(a) an emergent meeting; or

(b) a special meeting.

2) An emergent meeting for transaction of business of an emergent nature, may be convened, at any time, by the Chairman or, in his absence, the

Vice-Chairman, after twenty-four hours" notice to the members.

3) (a) A special meeting may be convened by the Chairman or, in his absence, by the Vice-Chairman suo motu after giving not less than three

days" notice to the members.

(b) A special meeting may also be convened after giving not less than three days" notice to the members, on a requisition containing specifically the

agenda and signed by not less than one-third of the total number of.

Councilors of the Municipality, by-

(i) the Chairman, within fifteen days from the date of receipt of such requisition or, on his failure to do so,

(ii) the Vice-Chairman within seven days thereafter or, on his failure to do so, or

(iii) any three of the Councilors of the Municipality within further seven days thereafter.

(c) Notwithstanding anything contained in these rules, if the situation so demands owing to stalemate condition prevailing in the functioning of the

Municipality, the Officer may, in the interest of public service, convene a special meeting of the Municipality with at least three days" notice to the

members, specifying the agenda and venue of the meeting.

4. Ordinary meetings are governed by Rule 8. Such meetings are to be convened by the Chairman or in his absence by the Vice-Chairman.

Ordinary meetings are to be held not less than once in every month. If there is no business to be laid before the members at any such meeting, the

Chairman or, in his absence, the Vice-Chairman might, in stead of convening the meeting, give notice of the fact to each member at least three days

before the date appointed for the meeting. Notice of seven days to the members shall be necessary for such meeting. Apart from ordinary meetings

there is provision in Rule 9 for extraordinary meetings. Extraordinary meetings may be emergent meetings or special meetings. An emergent

meeting may be convened at any time by the Chairman or in his absence the Vice-Chairman, upon 24 hours' notice to the members.

5. A special meeting may be convened by the chairman, or in his absence by the Vice-Chairman suo motu, after giving not less than three days"

notice to the members. A special meeting may also be convened after giving not less than three days" notice to the members, on a requisition

containing specifically the agenda and signed by not less than 1/3rd of the total Councilors of the Municipality, by the Chairman, within 15 days

from the date of receipt of requisition. If the Chairman fails to convene a meeting within 15 days from the date of requisition, the meeting may be

convened by the Vice-Chairman within seven days thereafter.

6. In this case, some Councilors requisitioned a meeting on 2nd March, 2011. The Chairman was required to convene a meeting within 15 days

from the date of receipt of requisition, that is, within 17th March, 2011. The Chairman did not do so. The Vice-Chairman had time till 24th/ 25th

March, 2011 to convene a meeting. A notice dated 23rd March, 2011 has been issued convening a special meeting of the Councilors on 24th,

May, 2011 at 12 Noon, that is, after two months from the date of notice.

7. As held by the Division Bench of this Court in *Tarak Nath Singh Vs. State of West Bengal*, and in *Chinbanu Khatun vs. State of West Bengal &*

Anr., reported in 2009(4) CHN 501, there is a difference between convening a meeting and holding a meeting. The Chairman is required to

convene a special meeting within 15 days from the date of receipt of notice. If the chairman does not do so, the Vice-Chairman is required to

convene a meeting within 7 days thereafter. If neither reacts the Councilors, at least three in number, might convene a special meeting.

8. The Chairman or the Vice-Chairman, as the case may be, would necessarily have to convene a meeting within the time stipulated in Rule 9. The

question is whether the meeting can be fixed by the Chairman or the Vice-Chairman at any time. Can the Chairman fix a meeting after 6 months, 8

months or 10 months as per his own wish?

9. On a conjoint reading of Rules 7, 8 and 9 it is clear that a special meeting is required to be convened within the time stipulated in Rule 9. This

Court is of the view that the special meeting has to be fixed on a convenient date, as soon as possible, but with sufficient time for proper service of

notice of the meeting on all Councilors. The notice of special meeting has to reach at least 3 days before the scheduled date of such meeting. The

notices may have to be posted at least 7 working days before the last date of service, in terms of the rules. A special meeting should generally be

held within 15/20 days from the date on which the meeting is convened. The special meeting must, if possible, be fixed before the scheduled date

for the next ordinary meeting to transact routine business.

10. In the instant case the meeting is scheduled to be held after two months. In Tarak Nath Singh (supra) the Vice-Chairman had convened a

meeting on 24th August, 2007 fixing the date of meeting on 12th September, 2007. A set of Councilors issued a notice dated 30th August, 2007

and convened a meeting on 3rd September, 2007. The Division Bench was of the view that the meeting convened on 3rd September, 2007 could

not be sustained in the eye of law.

11. In Chainbanu Khatun's case (supra) notice from Councilors was received on 22nd July, 2008. The Vice-Chairman issued a notice on 11th

August, 2008 convening a special meeting on 20th August, 2008. In the meanwhile the Councilors convened a meeting which was held on 19th

August, 2008, just one day earlier.

12. The Court was concerned with which resolution would prevail, the resolution adopted on 19th August, 2007 or the resolution of 20th August,

2007. The Court upheld the resolution of 20th August, 2007 adopted at the meeting convened by the Vice-Chairman.

13. When the writ application was moved on 31st March, 2011, this Court declined an interim order and issued directions for affidavits as

observed above. No affidavit-in-opposition has been filed.

14. One of the basic issues which require consideration in the writ petition is whether a writ may at all be issued to quash a notice of Special

Meeting issued by an individual Councilor and if so, whether the Vice-Chairman had locus standi to file the writ application.

15. This Court is of the view that no legal right of the petitioner has been infringed. This Court is unable to accept the contention that the Vice-

Chairman had a statutory right to convene a meeting. There is a difference between a statutory right and a statutory duty. This Court holds that the

Chairman and on his failure, the Vice-Chairman had a statutory duty to convene a meeting. The Vice-Chairman acted illegally in convening a

meeting after two months. As observed above, such meetings ought to be fixed as expeditiously as possible and in any case, not later than 15/20

days from the date on which the meeting is convened.

16. The petitioner, as Vice-Chairman, lacks locus standi to file a writ petition challenging the notice of Special Meeting issued by individual

Councilors. Even otherwise, a mere notice of a meeting cannot, in my view, be challenged by invoking the extraordinary jurisdiction of this Court

under Article 226 of the Constitution of India. In any event, the writ application has apparently become infructuous, since the meeting was

requisitioned on 2nd March, 2011. The writ application is disposed of accordingly. Certified Photostat copy of this order, if applied for, be

supplied to the parties subject to compliance of all requisite formalities.