Md. Ismail Vs State of West Bengal and Others

Writ Petition No. 17973 (W) of 2005

Court: Calcutta High Court

Date of Decision: Nov. 9, 2005

Acts Referred:
West Bengal Panchayat Act, 1973 â€" Section 12, 16

Citation: (2006) 1 CALLT 267 : (2006) 1 CHN 390

Hon'ble Judges: Jyotirmay Bhattacharya, J

Bench: Single Bench

Advocate: Sadananda Ganguly, Ekramul Bari and Syed Mansur Ali, for the Appellant;Asok Banerjee and Abdul Alim for Respondent Nos. 14 to 16 and 18 to 26 and Suman Basu, for respondent Nos. 7 to 13, for the Respondent

Final Decision: Dismissed

Judgement

Jyotirmay Bhattacharya, J.
The legality and/or validity of the notice by which a meeting was requisitioned by 14 out of 21 members of

Chakulia Gram Panchayat for transacting the business on the agenda of removal of Pradhan of the said Gram Panchayat, has been challenged by

the Pradhan of the said Gram Panchayat on the following grounds :

Firstly on the ground that the requisition of the meeting for the second time within six months from the date appointed for holding the earlier meeting

for the said purpose, is barred under the third proviso to Section 12 of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said

Act).

Secondly on the ground that requisition of the meeting by the requisitionists without service of prior notice in writing upon the Pradhan requesting

him to call a meeting for the said purpose, is illegal being contrary to the scheme as provided in the second proviso to Section 16 of the said Act.

2. Mr. Ganguly, learned Advocate, appearing for the petitioner, submitted that initially seven members of the said Gram Panchayat, by their letter

dated 18th July, 2005 requested the Pradhan of the said Gram Panchayat to convene a meeting for transacting the business on the agenda of

removal of Pradhan. Pursuant to such request, a meeting was convened by the Pradhan of the said Gram Panchayat appointing 1st August, 2005

as the date for holding such meeting.

3. Subsequently, by the letter dated 27th July, 2005, the said seven members withdrew the said notice dated 18th July, 2005 and requested the

Pradhan of the said Gram Panchayat to treat the said notice dated 18th July, 2005, as cancelled.

4. Pursuant to the said letter, the meeting which was scheduled to be held as on 1st August, 2005, as aforesaid, was cancelled by the Pradhan of

the said Gram Panchayat and the members of the said Gram Panchayat were informed accordingly vide Annexure "P-4" to this writ petition.

5. Subsequently, 14 members of the said Gram Panchayat, by their notice dated 19th August, 2005 vide Annexure "P-4" to this writ petition at

page 44, requested the Pradhan to convene a meeting for transacting the business on the agenda for removal of the Pradhan. Since in spite of

receipt of the said notice, the Pradhan of the said Gram Panchayat did not convene any meeting for the said purpose within the period as

prescribed under the second proviso to Section 16 of the said Act, the said 14 members, by the impugned notice, requisitioned a meeting for the

said purpose appointing 13th September, 2005 as the date for holding the said meeting.

6. It is alleged by the petitioner that the impugned notice is illegal and the same cannot be given any effect to on the grounds, as aforesaid.

7. Mr. Banerjee, learned Senior Counsel, appearing on behalf of the respondent Nos. 14 to 16 and 18 to 26 submitted that the restriction for

calling the meeting for the second time within six months from the date appointed for holding the earlier meeting for the very same purpose as

provided in the third proviso to Section 12 of the said Act, has no application in the instant case, inasmuch as the earlier meeting which was

convened by the Pradhan of the said Gram Panchayat vide Annexure P-2" to this writ petition at page 24 stood cancelled by the notice being

Annexure "P-4" to this writ petition at page 34 issued by the Pradhan of the said Gram Panchayat.

8. According to Mr. Banerjee, in view of such cancellation of the meeting, the notice by which the meeting was called by the Pradhan for the said

purpose practically became non est in the eye of law. Thus, Mr. Banerjee contended that there was no valid requisition for the meeting earlier and

as such, the restriction for calling the meeting within six months from the date, appointed for holding such meeting earlier as provided in the third

proviso to Section 12 of the said Act, has no application in the facts of the instant case.

9. By producing the original postal envelope containing the notice dated 19th August, 2005 being Annexure "P-4" to this writ petition at page 44,

Mr. Banerjee submitted that the said notice was validly tendered to the Pradhan of the said Gram Panchayat by the postal authority on 19th

August, 2005 but since the Pradhan of the said Gram Panchayat refused to accept the said service, the said postal envelope came back unserved

with the postal remark ""refused"" to the sender of the said notice. Mr. Banerjee further contended that in view of such refusal, service should be

presumed to have been validly made upon the Pradhan of the said Gram Panchayat.

10. Mr. Banerjee further contended that the copy of the said notice was also served upon the Secretary of the said Gram Panchayat, on 19th

August, 2005, but in spite of such service, no meeting was convened by the Pradhan for the said purpose within the period as prescribed under the

second proviso to Section 16 of the said Act. As such, after the expiry of the statutory period, the meeting was requisitioned by the said 14 out of

21 members of the said Gram Panchayat for the said purpose by the impugned notice.

11. Thus, according to Mr. Banerjee, there was no illegality in requisitioning the said meeting by the requisitionists in the manner, as aforesaid.

12. Mr. Basu, learned Advocate, appearing for the respondent, Nos. 7 to 13, however, complained about the non-service of the notice for holding

the meeting for the aforesaid purpose upon the said respondents. The said respondents thus challenged the validity of the said meeting which was

held on 13th September, 2005, on the ground of non-service of the said notice upon the said respondents.

13. Mr. Banerjee denied the allegation regarding non-service of notice upon the said respondents by producing the postal envelopes which were

sent to those respondents for effecting service of the said notice upon them. Mr. Banerjee contended that service could not be effected upon them,

as they avoided receipt of the same.

14. Mr. Banerjee ultimately contended that in any event the resolution which was adopted by the majority members of the said Gram Panchayat

for removal of the Pradhan could not have been altered and/or swayed in any way even with the participation of the said seven members, as 14 out

of 21 members resolved for removal of the Pradhan.

15. Under such circumstances, Mr. Banerjee submitted that no interference is warranted in the facts of the instant case.

16. Heard the learned Advocates of the parties. Considered the materials on record.

17. I have already indicated above that the ''meeting which was initially called by the Pradhan for the aforesaid purpose was cancelled by the

Pradhan by a subsequent notice. In view of such cancellation, no meeting, in fact, was earlier effectively convened by the Pradhan for the said

purpose.

18. Since no meeting was effectively convened earlier, the embargo in calling the meeting for the second time within six months from the date

appointed for holding the earlier meeting as provided in the third proviso to Section 12 of the said Act, has no application in the facts of the instant

case.

19. Thus, the first ground of challenge fails.

20. With regard to the second ground of challenge, this Court finds that the letter of request for calling the meeting, issued by the 14 members of

the said Gram Panchayat vide Annexure "P-4" to this writ petition at page 44 was validly tendered by the postal authority to the Pradhan of the

said Gram Panchayat, but since the Pradhan of the said Gram Panchayat refused to accept the said notice, the service of the said notice, is deemed

to have been validly effected upon the Pradhan of the said Gram Panchayat. The xerox copy of the said postal envelope which was produced by

Mr. Banerjee, was kept with the record.

21. Thus, the second ground of challenge also fails.

22. The respondent Nos. 7 to 13 have not challenged the validity of holding the said meeting on the ground of non-service of notice by filing any

independent writ petition before this Court. The said respondents have simply come to support the Pradhan of the said Gram Panchayat who does

not retain the confidence of the majority members of the said Gram Panchayat.

23. Xerox copies of the postal envelopes produced by Mr. Banerjee show that notices were sent for service in the correct address of the

respective addressees by registered post with acknowledgement card, but due to non-availability of the addressees, viz., the respondent Nos. 7 to

13 or for other similar reasons, the said service could not be effected upon the said respondents. But, even then in view of the decision of the

Hon"ble Supreme Court in the case of Jai Charan Lal Vs. State of U.P. and Others, , interference cannot be made in the facts of the instant case

on the ground of such irregularities. The Hon"ble Supreme Court in the said decision held that even if there are some irregularities in calling the

meeting, the resolution having been passed by the necessary majority, the decision of the majority cannot be disturbed in exercise of its

discretionary power.

24. Since here in the instant case, 14 out of 21 members resolved for removal of the Pradhan, the decision of those absentee seven members,

cannot be the decisive factor on the issue for removal and/or retention of the Pradhan in view of another subsequent decision of the Hon"ble

Supreme Court in the case of Hareram Pandey Vs. Ajit Chaudhary, , wherein the Hon"ble Supreme Court refused to interfere with the result of

the election in a similar circumstances.

25. In democracy the voice of the majority should be honoured; otherwise the entire system will collapse.

26. In such view of the matter, this Court holds that there was no illegality in the impugned notice and as such no interference is warranted in the

facts of the instant case.

27. Accordingly the writ petition stands rejected.

28. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.