

(1980) 12 CAL CK 0020

Calcutta High Court

Case No: None

In Re. Sirajul Islam

Vs

APPELLANT

RESPONDENT

Date of Decision: Dec. 1, 1980

Acts Referred:

- West Bengal Panchayat Act, 1973 - Section 11, 11(1), 11(1)(d), 17, 3

Citation: 85 CWN 188

Hon'ble Judges: M.N. Roy, J

Bench: Single Bench

Advocate: Biman Kanti Bose and Manik Chandra Das, for the Appellant; D.P. Majumder, for the Respondent

Final Decision: Dismissed

Judgement

M.N. Roy, J.

This application for a Rule, was moved with notice to the learned Government Pleader and Mr. Majumder has appeared for the Respondent, State of West Bengal or their officers, who have also been impleaded as. Respondents amongst other private Respondents. The petitioner is the Prodhan of Alipore-1 Gram Panchayat (Respondent No. 4), which was constituted under sections 3 and 4 of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act). It is the case of the petitioner, that after such constitution of the said Respondent No. 4, election of office-bearers was held on 4th June 1978 and he along with Respondent Nos. 5 to 8 and 10-13 were duly elected as members of the same. It is his case that subsequently Respondent Nos. 14 and 15 were nominated as Schedule Caste members and Respondent Nos. 9 and 16 were also nominated as female members. Thus, it appear and that too according to the petitioner, that at all material times the said Respondent No. 4 Gram Panchayat, had 13 members. It also appears that Respondent No. 5 Seratal Shiekh, was elected as Upa Prodhan. His election and that of the petitioner as Prodhan, as mentioned above, have been claimed to have been

made by majority of votes of the elected members of the Gram Panchayat.

2. It is the case of the petitioner, that as the Pradhan, he used to convene meetings, upon notice to the elected members; disclosing the business to be transacted in the concerned meetings. In fact, the relevant statutory provisions for list of business to be transacted at a meeting, would be section 17 of the said Act, which is to the following effect :

A list of the business to be transacted at every meeting of a Gram Panchayat except at an adjourned meeting, shall be sent to each member of the Gram Panchayat in the manner prescribed at least seven days before the time fixed for such meeting and no business shall be brought before or transacted at any meeting, other than business of which notice has been so given, except with the approval of the majority of the members present at such meeting :

Provided that if the Pradhan thinks that a situation has arisen for which an emergent meeting of the Gram Panchayat should be called, he may call such meeting after giving three days" notice to the members :

Provided further that not more than one matter shall be included in the list of business to be transacted at such meeting.

3. The petitioner has stated that the first of such meeting was held on 1st November 1978, which was convened pursuant to a notice dated 29th October 1978 and in that meeting, all the elected members, duly participated. The petitioner has stated that subsequently many such meetings were convened by him, in between the period from November 1978 to April 1980. He has also alleged that on no occasion, the elected members raised any objection on shortness of time, in giving the relevant notices and in fact, in all the meetings, the members concerned duly participated without any objection.

4. It is the categorical case of the petitioner that the meetings of the Respondent Gram Panchayat, were held on 29th March 1980, 2nd April 1980 and 30th April 1980, on the basis of notices dated 22nd March 1980, 29th March 1980 and 24th, April 1980 respectively. These notices, according to the petitioner, were duly served on all the members, being Respondent Nos. 5 to 16. It is his case that these Respondents received the concerned notices, long before the holding of the relevant meetings and as mentioned above, no body ever took or raised any objection regarding shortness of time, in notifying them. It is also the case of the petitioner that in these notices, the business to be transacted, were also appropriately notified or mentioned, in terms of section 17 of the said Act, as quoted above. The petitioner has further stated that the concerned meetings were duly held on appropriate formation of quorum, as six members of the Gram Panchayat viz. the petitioner and Respondent Nos. 5 to 9, attended these meetings. The petitioner has also stated that in these meetings, resolutions were duly passed, following the list of business to be transacted. He has also stated that Respondent Nos. 10 to 16 did not attend

the meetings even though they were duly informed and notified. In fact, the petitioner as alleged that these Respondent Nos. 10 to 16 absented themselves intentionally and without taking the permission of the Respondent No. 4, duly. These Respondents, the petitioner has stated further, never raised any objection on shortness of time of the notices.

5. It appears that on 5th May 1980, the petitioner issued notices to the members of the Gram Panchayat, fixing 12th May 1980, as the date for a discussion regarding the absence of the Respondent Nos. 10 to 16, in the meetings as mentioned hereinbefore. It is the case of the petitioner that on due tendering of the notices of the meeting, as referred to hereinbefore, those Respondent Nos. 10 to 16 refused to accept them and thus the petitioner and Respondent Nos. 5 to 9, on forming the quorum, duly, passed a resolution for taking steps against those non appearing members, in terms of section 11(1) (d) of the said Act. Section 11 lays down the contingencies when a member of a Gram Panchayat may be removed and sub-section (1) (d) thereunder provides that the prescribed authority may, after giving an opportunity to a member of a Gram Panchayat to show cause against the action proposed to be taken against him, by order remove from office, if he is absent from three consecutive meetings of the Gram Panchayat without the leave of the Gram Panchayat. The resolution, as passed, according to the petitioner, was duly forwarded to the Sub-divisional officer, Malda, Respondent No. 2, the prescribed authority in this case, for taking necessary steps against the defaulting members, under the provisions of the said Act as mentioned above.

6. The petitioner has stated that in the circumstances as mentioned above, those Respondent Nos. 10 to 16 took steps for removing him and the upaprodhan from the respective office of the Gram Panchayat and for that purpose they convened a meeting on 10th June 1980. It appears that against such action, which was sought to be taken a notice dated 19th May 1980, the petitioner moved and obtained Civil Order No. 5534 (W) of 1980 and in that proceedings B. C. Roy, J., gave liberty to these Respondents to hold the meeting, but they were required from not to given effect to the concerned resolution for some period and the case was fixed on 23rd June 1980, for further orders. On 12th August 1980, B. C. Roy, J., directed that the sub-divisional officer concerned. Respondent No. 2, should consider and decide the application for removal of Respondent Nos. 10-16, as presented before him by the petitioner. It was also directed that if the Respondent No. 2 approve the resolution regarding the removal of those Respondents, he should convene a meeting, after duly notifying all the members of the Gram Panchayat, for election of the Prodhan. In case the resolution as passed, was not accepted, directions were also given for election of Prodhan.

7. On such directions, the Respondent No. 2 admittedly initiated Case No. 36 to 42 of 1980 of Malda District against these Respondent Nos. 10 to 16 and has ultimately found that they were not liable to be removed from the membership of the Gram

Panchayat in question. The decision was arrived at on the specific findings amongst others that the concerned meetings were not held with the necessary and statutory notices u/s 17 i.e. the meetings were held without seven days notice. Such findings, the petitioner has claimed to be contrary to the records and evidence as adduced and on misconception or wrong consideration of the provisions of Section 11, as quoted above. It should be noted that the Respondent No. 2 specifically found that since statutory notices as referred to hereinbefore, were not duly and appropriately served, the Respondent Nos 10 to 16 could not be held and found to be guilty for not attending the concerned meeting and as such, their cases would not come under the mischief of section 11(1) (d). The petitioner, amongst others has claimed that if the provisions of sections 11 and 17 considered and construed together, then there would be no room for doubt, but to hold the determination as made by the Respondent No. 2, to be irregular, illegal and made on misconception of law.

8. The facts regarding the dates of issue of the notices, for holding the concerned meetings on the dates as indicated above, are not in dispute. Mr. Bose, appearing in support of the application contended that considering and construing the provisions of sections 11 and 17 as mentioned above, it should be found that these provisions required the petitioner, as Prodhan of the Gram Panchayat in question, to send a list of business to be transacted at every meeting, to the members, at least seven days before the concerned meeting only and no business could be brought before such meeting or transacted at any meeting, of which notice was not given, except with the approval of the majority of the members present at such meeting. It was also contended that section 17 of the said Act, does not provide for any period of notice for each meeting of the Gram Panchayat. Mr. Bose also contended that the period as specified in section 17, is not for the issue of the notice, but the same relates to the consideration of the agendas and objections. Section 17 has several limits and the first of which is that the list of business to be transacted, shall be sent ordinarily at least seven days before the time for transaction, as fixed, the second requirement is that no business other than those for which notice has been issued, can be transacted and thirdly, with the exception viz. such business, of course, can be transacted with the approval of the majority. In view of the several limits of section 17, the submissions of Mr. Bose, as referred to hereinbefore, appear to me to be without substance, as, if his submissions are accepted, viz the period as mentioned in section 17 relates to the business to be transacted and not to the notice, than the situation would be anomalous and construction of the section or its requirements, would be impossible. Section 17, in my view, makes it mandatory to serve due Seven days notice of the meetings and the agendas to be transacted, and ordinarily no business of the Gram-Panchayat, other than those for which such notice has been given, should be transacted. There is of course exceptions to such power, when members, duly served or the majority of them, can agree to have any business, not covered by the agendas to be transacted. I am also of the view that if such notice as mentioned above, is not served, there cannot be a meeting duly and legally convened

and members, not attending such meetings, would not loose their rights u/s 11(1) (d), as they are required to attend meetings duly and legally convened and not to loose their rights, if such meetings are not duly and legally convened. The period as mentioned in section 17, according to me, relates to notice only.

In view of the above, the submissions of Mr. Bose fail, so also the application, and the same is thus rejected.