

(2006) 09 CAL CK 0059

Calcutta High Court

Case No: Writ Petition No. 18641 (W) of 2006

Shri Abdul Wadud

APPELLANT

Vs

The Block Development Officer
and Others

RESPONDENT

Date of Decision: Sept. 6, 2006

Acts Referred:

- West Bengal Panchayat Act, 1973 - Section 16

Citation: (2007) 1 CALLT 331 : (2007) 1 CHN 584

Hon'ble Judges: Jyotirmay Bhattacharya, J

Bench: Single Bench

Advocate: Sardar Amjad Ali and Mausam Noor, for the Appellant; Bharati Mutsuddi and Amlan Kumar Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

Jyotirmay Bhattacharya, J.

Six members of Rosulpur Gram Panchayat out of 12 members, by their notice dated 25th July, 2006 requested the Pradhan of the concerned Gram Panchayat to convene a meeting for transacting the business on the agenda regarding "No Confidence" against the Pradhan. Since the Pradhan, in spite of receipt of the said notice, did not convene the said meeting within the period prescribed u/s 16 of the West Bengal Panchayat Act, 1973, the said six members, by their notice dated 11th August, 2006, convened a meeting to be held on 21st August, 2006 for transacting the business regarding the agenda of removal of Pradhan.

2. The validity and/or legality of the said notice is under challenge in this writ petition at the instance, of the Pradhan of the said Gram Panchayat.

3. Mr. Ali, learned Senior Advocate, appearing for the petitioner, submitted that the said Act does not contemplate any proceeding to be transacted on the agenda regarding "No Confidence" against the Pradhan. Mr. Ali further submitted that the

notice being annexure "P-1" to this writ petition which was issued for calling a meeting on the agenda of "No Confidence" cannot be regarded as a notice for holding a meeting for transacting the business on the agenda of removal of the Pradhan.

4. Mr. Ali further submitted that Section 16 of the said Act provides that the Pradhan when required in writing by 1/3rd of the members of a Gram Panchayat, subject to a minimum of three members, has to call a meeting for removal of the Pradhan, shall do so fixing the date and hour for the meeting to be held within 15 days after giving intimation to the prescribed authority and seven days' notice to the members of the Gram Panchayat, failing which the members aforesaid may call a meeting to be held within 35 days after giving intimation to the prescribed authority and 7 days' notice to the Pradhan and other members of the Gram Panchayat.

5. By referring to the said provision, Mr. Ali submitted that unless a request in writing as contemplated in Section 16 of the said Act, is made by the requisite number of members, the Pradhan is not required to convene any meeting for discussing the agenda of removal of Pradhan.

6. Mr. Ali referred to the following decisions of this Hon'ble Court to support his contention that the request to hold a meeting on the agenda of "No Confidence" and the notice to call a meeting on the agenda of removal of Pradhan are not synonymous:

(i) [Soleman Shah and Others Vs. Director of Panchayat, Burdwan and Others,](#)

(ii) Kitabuddin Setkh v. Daud Hossain reported in 1995(1) CLJ 198

(iii) [Sri Dabir Mondal Vs. State of West Bengal and Others,](#)

7. Relying upon the said decisions, Mr. Ali submitted that since the petitioner was never called upon to call a meeting for discussing the agenda regarding removal of Pradhan, the petitioner had no obligation to call a meeting for discussing the said agenda in terms of the second proviso to Section 16 of the said Act.

8. Mr. All further argued that the right to call a meeting for the said purpose by the requisitionists matures only when the Pradhan, after receiving a request in writing from 1/3rd of the total members of the Gram Panchayat to convene a meeting for discussing the agenda of removal of Pradhan, fails to call a meeting for the said purpose within 15 days from the date of receipt of such request from the said members.

9. According to Mr. All, since no such request was ever made to the Pradhan, the right to requisition a meeting by the requisitionists did not mature at all due to non-fulfilment of the statutory requirement and as such the notice, by which the meeting was requisitioned, is absolutely illegal and as such, the same cannot be given effect to.

10. Such contention of Mr. All was strongly opposed by Mrs. Mutsuddi who relying upon one unreported Division Bench decision of this Court in F.M.A.T. No. 2141 of 1995 submitted that the dispute as to whether "the notice of removal" and "the notice of No Confidence" is same and identical or not, has already been decided in the said Division Bench decision of this Court wherein it was held that the notice of "No Confidence" and the notice of removal, is same.

11. Relying upon the said decision, Mrs. Mutduddi submitted that when the Pradhan failed to convene the meeting for discussing the agenda regarding removal of Pradhan within 15 days from the date of receipt of the request letter from six out of twelve members of the said Gram Panchayat, the said members, by the impugned notice, requisitioned the meeting to be held on 21st August, 2006 indicating in the said notice that the said meeting will be held for transacting the business regarding removal of Pradhan. The said notice was duly served upon the Pradhan, but in spite thereof, the Pradhan did not participate in the said meeting and ultimately seven members out of twelve members adopted a resolution for removal of Pradhan in the said meeting in the presence of the observer deputed by the prescribed authority.

12. Mrs. Mutsuddi further submitted that, when the majority members have lost confidence in the Pradhan, the Pradhan cannot oppose his removal from the post of Pradhan.

13. By relying upon another unreported Division Bench decision of this Court in the case of Naru Gopal Chakraborty and Ors. v. State of West Bengal and Ors. Mrs. Mutsuddi submitted that in a democratic process there is no scope for allowing a person who has lost confidence to continue even for a minute after the resolution of his removal had taken place.

14. Thus, on the basis of the aforesaid submission, Mrs. Mutsuddi invited this Court to reject this application.

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

16. The only question which has cropped up in this writ petition for answer is as follows:

Whether the notice by which a requisitioned meeting was convened by the requisitionists for transacting the business on the agenda of removal of Pradhan, can be held as valid in the absence of service of notice by the requisite number of members upon the Pradhan requesting him to call a meeting for the same purpose ?

17. Admittedly by the notice dated 25th July, 2006 issued by the six members of the said Gram Panchayat no request was made to the Pradhan to call a meeting for transacting the business on the agenda of removal of Pradhan. By the said notice, the Pradhan was requested to call a meeting for transacting the business regarding

"No Confidence" against the Pradhan. It is also an admitted position that the Pradhan did not call any meeting pursuant to the said notice. As a result, six members of the said Gram Panchayat by the impugned notice convened the said requisitioned meeting by specifying in the notice that the agenda regarding removal of Pradhan will be transacted in the said meeting.

18. In fact, in an identical set of facts, the Division Bench of this Court in FMAT No. 2141 of 1995 held that "the notice of removal" and the notice of "No Confidence" is same. It was further held therein that the Court should not interfere with the functioning of a democratic body on some technical plea or pretext. The Division Bench further held that the expression "removal" of the Pradhan as envisaged in the Panchayat Act is the same as "no confidence" and everybody understands that when a Pradhan loses confidence of the majority of the members, question of his removal arises. It was further held therein that on the basis of such request made by the requisitionists, the Pradhan should have called a meeting for transacting the business on the agenda of removal of Pradhan.

19. On careful consideration of the said unreported decision of the Division Bench of this Court, this Court holds that the question which is raised in this writ petition is no longer a res Integra.

20. As such, this Court cannot hold that the right to call the requisitioned meeting did not mature after expiry of 15 days from the date of service of the request letter upon the Pradhan for calling a meeting for discussing the agenda regarding "No Confidence" by the requisite number of members.

21. The decisions which were cited by Mr. Ali do not fit in the facts of the instant case. The first two citations which were relied upon by Mr. Ali in the case of (i) [Soleman Shah and Others Vs. Director of Panchayat, Burdwan and Others](#), and (ii) Kitabuddin Seikh v. Daud Hossain reported in 1995(1) CLJ 198 . dealt with a situation where the Pradhan was removed in a requisitioned meeting which was convened for the purpose of transacting the business on the agenda of "No Confidence". In both the aforesaid decisions, it was uniformly held that in a meeting which was called for discussing the agenda of "No Confidence", Pradhan cannot be removed simply by adoption of resolution of "No Confidence" against the Pradhan. It was further held in both the aforesaid decisions that the Pradhan cannot be removed from his office until a resolution for removal of Pradhan from his office had been duly adopted in a meeting duly convened in the manner prescribed by law.

22. In the case of Soleman Shah v. Director of Panchayat (supra), it was held that since removal is a serious charge it has to be specifically mentioned in the notice and if the notice does not mention removal then, it is a misleading notice and a resolution of removal where the notice did not mention removal is bad in law.

23. "Notice" as referred to in the said decision, in my view, is the notice of requisitioning the meeting and not the notice by which a request is made to the

Pradhan to call a meeting for removal of Pradhan as contemplated in the first part of the second provision to Section 16 of the said Act.

24. In all those decisions, the subject-matter of challenge was the validity of the notice by which the requisitioned meeting was convened on the agenda of "No Confidence" and the legality of the resolution adopted in the said meeting for removal of Pradhan. It was held in all those decisions that in such a requisitioned meeting which was convened for discussing the agenda of "No Confidence", no resolution can be validly adopted for removal of Pradhan. It was further held therein that even by adopting a resolution on "No Confidence", the Pradhan cannot be removed.

25. I also fully agree with the said proposition of law and in fact the principles laid down therein is binding upon this Court also in a similar set of facts. But after taking into consideration the aforesaid two citations carefully, this Court finds that in neither of the said decisions it was held that when a resolution of removal is adopted in a meeting which was requisitioned for the purpose of transacting the business on the agenda of removal, the removal is illegal and/or invalid.

26. Here in the instant case, the resolution of removal was adopted by the majority members in a meeting which was requisitioned for transacting the business on the agenda of removal of Pradhan. As such, this Court does not find any illegality either in the impugned notice or in the resolution adopted in the said meeting for removal of Pradhan. This conclusion is arrived at by this Court by following the unreported Division Bench decision of this Court which was relied by Mrs. Mutsuddi as in my view, the set of facts on which such finding was arrived at by the Division Bench in the said case, fit in the present case in toto.

27. After all the petitioner was elected as Pradhan of the said Panchayat in a democratic process and as such, he has to accept his removal also, when such removal was made in a democratic process. The foundation of democracy will collapse if the voice of the majority is not honoured.

28. In this context, reference may be made to a decision of the Hon'ble Supreme Court in the case of [Jai Charan Lal Vs. State of U.P. and Others](#), wherein it was 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.

29. Under such circumstances, this Court does not feel it necessary to disturb the decision of the majority which was taken in the said meeting regarding removal of the Pradhan merely on the ground of certain irregularities in the initial letter of request particularly when this Court finds that the confusion regarding the purpose of the said meeting was clarified and/or removed in the impugned notice wherein the purpose of calling the meeting for discussing the agenda of removal of Pradhan was specifically mentioned and the members participated in the said meeting with

the clear idea about the agenda to be discussed in the said meeting.

30. Before parting with, this Court also intends to keep it on record that the other decision which was cited by Mr. All in the case of Dabir Mondal v. State of West Bengal and Ors. (supra) cannot help the petitioner in any way as no finality was arrived at in the said decision. In paragraph 11 of the said decision, the learned single Judge formulated three questions of law and referred those questions to be answered by the Division Bench of this Court. Since no finality was arrived at in the said decision, the findings recorded in the said decision cannot have any binding effect.

Under such circumstances, this Court does not find any merit in this writ petition. The writ petition, thus, stands rejected.

After delivery of the Judgment, learned Advocate appearing for the petitioner prays for stay of operation of this order, as his client wants to challenge this order in higher forum.

Considering the submission of the learned Advocate for the petitioner, I direct that the operation of this order will remain stayed for a period of ten days from date.

However, it is made clear that the petitioner is restrained from taking any major policy decision during the period of such stay.

Urgent xerox certified copy of this Judgment be supplied within three days from the date of compliance of the necessary formalities by the parties in this regard.