

(1978) 06 CAL CK 0026**Calcutta High Court****Case No:** None

In Re: Sailendranath Ghose

APPELLANT

Vs

RESPONDENT

Date of Decision: June 20, 1978**Acts Referred:**

- Bengal Municipal Act, 1932 - Section 61, 61(3), 61(4), 78

Citation: (1978) 2 ILR (Cal) 90**Hon'ble Judges:** G.N. Ray, J**Bench:** Single Bench**Advocate:** Bhupendra Kumar Dey, for the Appellant;**Final Decision:** Dismissed**Judgement**

G.N. Ray, J.

The Petitioner in the instant writ petition is the Chairman of the Champdany Municipality. It appears that a notice to move a resolution of no-confidence signed by 9 Commissioners of the Champdany Municipality out of the 15 Commissioners holding Office for the time being along with a copy of the resolution was delivered to the District Magistrate, Hooghly. After receipt of such intention to move the resolution of no-confidence, the District Magistrate convened a special meeting of the Commissioners of Champdany Municipality on June 12, 1978 and issued notices to the Commissioners to that effect. The Sub-divisional Officer, Chandernagore, was authorised u/s 61(4) of the Bengal Municipal Act to hold such meeting. Pursuant to such notice, the meeting was held on June 12, 1978 and the Sub-divisional Officer acted as Chairman in the said special meeting. From the minutes of the resolution held in the said meeting on June 12, 1978, since annexed to the writ petition, it appears that the said President started the meeting by reminding the Commissioners present about the object of convening the special meeting by the District Magistrate and inviting them to express their decision one by one regarding the no confidence resolution taken by 9 Commissioners of the Municipality for

removal of the Petitioner from the office of the Chairman of the Municipality. It, further, appears from the minutes of the resolution that the President requested them to express their willingness as to whether they would cast their vote openly or secretly. But all the 9 Commissioners present in the said meeting were willing to vote openly. It, further, appears that one of the Commissioners proposed in the meeting for removal of the Chairman and another Commissioner seconded the proposal. Thereafter, on invitation of the President of the meeting all the 9 Commissioners present raised hands in favour of the removal of the Chairman and they expressed their desire for his removal immediately. It may be mentioned in this connection that the Chairman of the Municipality, namely the present Petitioner, also received the aforesaid notice from the District Magistrate that a special meeting would be convened on June 12, 1978, for considering a resolution of 9 Commissioners to remove the Petitioner from the office of the Chairman of the Municipality. The Petitioner, however, states in the writ petition that along with the said notice the resolution of the said 9 Commissioners informing the District Magistrate that they intended to remove the Chairman from the office was not annexed and as such, the Petitioner did not get the copy of such resolution along with the notice issued by the District Magistrate. It may be mentioned in this connection that at the present moment there are only 15 Commissioners of the Champdany Municipality and the resolution was passed in the said special meeting held on June 12, 1975, by nine members. It is thus evident that in the said meeting the said no-confidence resolution was passed by more than half but less than two-third of the total number of Commissioners then holding the office of the Municipality. The Petitioner now apprehends that the State Government may remove the Petitioner from the office of the Chairman of the Municipality in view of the fact that no-confidence resolution was passed by half of the number of Commissioners then holding the office of the Municipality. Against such threatened injury the Petitioner has moved the instant writ petition.

2. Mr. Dey, the Learned Counsel appearing for the Petitioner, contended at the first place that the copy of the resolution of 9 Commissioners since handed over to the District Magistrate for the purpose of convening the special meeting was not annexed to the notice served on the Petitioner by the District Magistrate, Hooghly and for not annexing the said copy of the resolution, the mandatory provision of Section 61(3) of the Bengal Municipal Act was not complied with. Accordingly, the special meeting convened on June 12, 1978, was illegal and no effect could be given to the resolution passed in the said special meeting. For the purpose of appreciating the said contention of Mr. Dey, it is necessary to refer to the provision of Section 61(3) of the Bengal Municipal Act which runs as follows:

(3) Written notice of the intention to move the resolution signed by not less than one-third of the total number of Commissioners holding office for the time being together with a copy of the resolution shall be delivered to the District Magistrate and the District Magistrate shall, notwithstanding anything contained in Section 78,

convene a special meeting of the Commissioners for the consideration of the resolution, to be held at the Municipal Office on a date not later than 50 days on the date on which the notice was delivered to him and shall give not less than 15 clear days" notice of the meeting of the Commissioners.

3. It appears from the aforesaid provision of Sub-section (3) of Section 61 that the written notice of the intention to move the resolution signed by not less than one-third of the total number of Commissioners holding office for the time being together with a copy of the resolution should be delivered to the District Magistrate. In the instant case, from the notice of the District Magistrate, it appears that along with the written notice of the intention to move resolution signed by the 9 Commissioners of the Municipality, a copy of the resolution was also delivered to the District Magistrate. It, further, appears from the provision of Sub-section (3) of Section 61 that the District Magistrate shall on receipt of such notice convene a special meeting of the Commissioners for the consideration of the resolution to be held at the Municipal office on a date not later than 20 days from the date when the notice was delivered to him and he shall give not less than 15 clear days" notice to the Commissioners of such special meeting. It appears from the notice of the District Magistrate, Hooghly, that 15 clear days" notice of the special meeting to the Commissioners was given and within 30 days from the date on which the District Magistrate received the said notice of the resolution from 9 Commissioners the date of the special meeting was fixed. Accordingly, it appears that the special meeting was not convened in contravention of the provision of Sub-section (3) of Section 61 of the Act. Mr. Dey, however, contended that since a no-confidence resolution was going to be passed against the Chairman for the ends of justice and equity the Chairman must get a copy of the resolution which was handed over to the District Magistrate alongwith the notice issued by the District Magistrate fixing the date for holding the said special meeting. The service of such resolution along with the notice of the District Magistrate is implicit in Section 61(3). It does not appear from Section 61(3) that a copy of the resolution of the Commissioners is also required to be served on the Commissioners and/or the Chairman along with the notice of the District Magistrate convening the special meeting of the Commissioner u/s 61(3) of the Bengal Municipal Act for the ends of equity and natural justice and service of such resolution is also not implicit in Section 61(3) of the Act. The purpose of the notice is to apprise the Chairman and the Commissioners that requisite number of Commissioners had expressed their no confidence against their Chairman and they gave notice along with their resolution to the District Magistrate to convene a special meeting u/s 61(3). In my view, this contention of Mr. Dey cannot be accepted. A reference to the impugned notice will also establish that there has not been any violation of the principles of natural justice. From the notice of the District Magistrate it is quite clear that 9 Commissioners gave notice to the District Magistrate expressing their intention to move a resolution of no-confidence against the Chairman of the Municipality and along with such notice, the District Magistrate

also received a copy of the resolution of the said 9 Commissioners recording their no-confidence against the Chairman. It is also clear from the said notice issued by the District Magistrate that he had convened a special meeting on June 12, 1978, solely for the purpose of considering the said resolution by the Commissioners of the Municipality. Hence, it cannot be contended that the Chairman of the Municipality was kept in darkness about the move taken by the said 9 Commissioners or about the purpose of the special meeting. Mr. Dey next contended that in the said special meeting no resolution was formally tabled and as such, it cannot be contended that the resolution of no-confidence against the Chairman was properly passed by the 9 Commissioners present. I am also unable to accept this contention of Mr. Dey. It will appear from the minutes of the said special meeting that the President started the meeting by reminding the Commissioners present about the object of convening the special meeting by the District Magistrate and the President also requested the Commissioners to express their opinion one by one regarding the no-confidence resolution taken by the said 9 Commissioners of the Municipality for removal of the Petitioner from the office of the Chairman of the Municipality. It will be too hyper-technical, if not incorrect, to suggest that the resolution was not tabled formally and/or properly. Accordingly, it cannot be contended that the said special meeting was not properly held and/or the resolution of no-confidence was not properly passed. Under the provisions of Section 61 of the Bengal Municipal Act, the State Government may remove a Chairman if more than half of the members holding the office of the Municipality had passed the no confidence resolution against the Chairman in a specially convened meeting for the purpose. It is entirely for the State Government to consider the said no-confidence resolution passed by the 9 Commissioners and to decide as to whether the Chairman, in the facts and circumstances of the case, should be removed from the office or not. There is no material on record on the basis of which this Court can reasonably infer that the State Government is proceeding with any mala fide intention or maliciously against the Petitioner and/or the State Government will abuse its powers. Accordingly, no relief can be given to the Petitioner in the instant writ petition and the writ petition is dismissed.