

(1985) 07 CAL CK 0024

Calcutta High Court

Case No: C.R. No. 10072 (W) of 1984

Paramananda Mahato and
Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: July 24, 1985

Acts Referred:

- West Bengal Panchayat Act, 1973 - Section 12, 16, 16(4)

Citation: 90 CWN 74

Hon'ble Judges: Ajit Kumar Sengupta, J

Bench: Single Bench

Advocate: Ashoke De and Sk. Niamatullo, for the Appellant; Manjari Gupta and Gobinda Bhattacharyya for the Prodhan, R.K. Dutta Gupta for the State, for the Respondent

Judgement

Asit Kumar Sengupta, J.

This application has been made by seven petitioners who are the elected members of Radhanagar Gram Panchayat. The respondent Nos. 8 to 14 are also the elected members of the said Gram Panchayat. thus in all there are 14 members of the said Radhangar Gram Panchayat. The Respondent No. 8, Isan Mahato was elected as the Prodhan and the petitioner No. 1 was elected as the Upa-Pradhan of the said Radhanagar Gram Panchayat. The petitioner No. 1, the Upa-Prodhan of the said Gram Panchayat convened a requisition meeting on 10th March, 1984 for considering a resolution of no confidence against the Prodhan. The meeting to consider the said no-confidence motion was held on 10th March, 1984 and all the fourteen members were present. The resolution of no-confidence was moved. Seven votes were cast in favour of the resolution and seven votes against the resolution. The total votes having been equally divided, the Upa. Prodhan the petitioner No. 1 utilised a second vote in favour of the resolution. After the resolution was passed in the manner aforesaid a copy of the resolution was sent to the Block Development Officer and Prescribed Authority, Jhargram Block, Midnapore for his approval. The

Block Development Officer and Prescribed Authority, the Respondent No. 5, by a notice dated 10th April, 1984 intimated the petitioner No. 1 that under the provisions of section 12 of the West Bengal Panchayat Act, 1973, the Pradhan can be removed by a resolution carried by majority of the existing members of the Gram Panchayat and according to Rule 13 the voting should have been taken by secret vote. It is also stated therein that the no-confidence was not carried by the majority of the existing members. In the said letter it was further observed as follows;

In view of the above, it appears that there was no scope of any casting vote and from the resolution for removing the Pradhan be deemed to have been lost as the same was not carried by the majority of the existing members of the Gram Pradhan for want to secret voting.

2. The said Memo dated 10th April, 1984 of the Block Development Officer and Prescribed Authority has been challenged in this application on the ground that the resolution was passed in accordance with the provisions of Section 16(4) of the Act and the direction contained in the said Memo is contrary to the provisions of the said Act. Upon the said application an interim order was passed on 17th April, 1984 directing that no further effect should be given to the said impugned memo dated 10th April, 1984 and the Respondent No. 8, the Pradhan was restrained from acting as a Pradhan of the said Gram Panchayat. The said interim order was initially for a period of three weeks. Thereafter, on 25th June, 1984 the rule was issued and interim order granted on 12th April, 1984 was directed to be continued till the disposal of the Rule.

3. An application for contempt was made by the petitioners on 8th March, 1985 for alleged violation of the order dated 25th July, 1984 passed by me. An application was also made for vacating the said interim order on 10th April, 1985 by the Respondent Nos. 8 to 14. The said application for vacating the interim order was specially assigned before me by the learned Chief justice on 16th April, 1985.

4. The short question which calls for determination in this proceeding is whether the Pradhan was validly removed. Mr. Ashok Dey, learned Advocate appearing for the petitioners has submitted that u/s 16(4) of the West Bengal Panchayat Act, 1973 all questions coming before the Gram Panchayat shall be decided by majority of votes and in case of equality of votes the persons presiding shall have a second or casting vote. He, therefore, contends that all questions would include the question regarding removal of the Pradhan. Accordingly, in this case when there was equality of votes the Upa Pradhan who was presiding over the meeting had to give his second or casting vote and thus by majority votes the Pradhan was removed. He has submitted further that Section 12 which lays down the procedure for removal of Pradhan and Upa Pradhan has to be read subject to the provisions of Section 16(4) of the Act.

5. It is contended by Mrs. Gupta, learned Advocate for the Respondent Nos. 8 to 14 and Mr. Dutta Gupta on behalf of the Government that the provisions regarding removal of the Prodhan and the Upa Pradhan are special provisions. Accordingly, the Special provision will have precedence over the general provisions contained in Section 16(4) of the Act. It is contended that Section 12 provides that the Resolution of the removal of the Prodhan and Upa Prodhan must be carried majority of the existing members but in this case it has not been done by the majority of the existing members as they were equally divided. Section 16(4) provides the procedure to be adopted in connection with the other business of the gram Panchayat. It is also contended that the West Bengal Panchayat (Amendment) Act, 1984 which has inserted a proviso to Section 16(4) has made it clear that second or casting vote cannot be taken into consideration for the removal of the Pradhan or Upa-Prodhan.

6. It is also contended by Mrs. Gupta for the Respondent Nos 8 to 14 that the resolution purporting to remove the Prodhan in any event was not legal inasmuch as there was no specific resolution for removal of the Prodhan.

7. I have considered the rival submissions. Section 12 of the West Bengal Panchayat Act provides that Prodhan and Upa-Prodhan of a Gram Panchayat may be removed from office by a resolution of the Gram Panchayat carried by the majority of the existing members of the Grain Panchayat at a meeting specially convened for the purpose. Section 16(4) of the said Act provides that all questions coming before a Gram Panchayat shall be decided by a majority of votes, provided that in the case of equality of votes the person presiding shall have a second or casting vote. The West Bengal Panchayat (Amendment) Act, 1984 which came into force from 7th December, 1984 amended Sub-section 4 of Section 16 by insertion of the following proviso.

Provided further that in case of a requisition meeting for the removal of a Prodhan and Upa-Prodhan u/s 12, the person presiding shall have no second or casting vote.

8. Having regard to the scheme of the Act it is difficult of for me to accept the contention of Mr. Dey appearing on behalf of the petitioners. It is no doubt true that in Section 16(4) it is rovided that all questions coming before the Gram Panchayat shall be decided by majority of votes and in the case of equality of votes the person presiding shall have a second or casting vote. The expression "all questions" in Section 16(4) means each and every question but were special provision is made as regards the. removal of Prodhan or Upa Prodhan in Section 12 of the Act, the validity the resolution passed has to be decided in the light of said provisions. Generally speaking, the section in the Act do of overlap one another. Each section deals with distinct matters or situations. Section 12 deals with the removal of Prodhan and Upa-Prodhan. Section 16(4) deals with all other matters. Each section completely covers the matter with which it deals. If two sections of the same statute are apparently repentant, the Court should construe such provisions in such a way

to reconcile the various provisions and resolve the apparent conflict into harmony. The legislature in its wisdom has provided that the Prodhan or Upa-Prodhan shall be removed by majority of the existing members of the Gram Panchayat and not by majority of the votes. The object as it appears is that the removal of a prodhan or Upa Prodhan should not be treated as any other question which comes before the Gram Panchayat. Accordingly in Section 16(4) the expression used is majority of votes. The right to have a casting vote is derived from the statute. Unless this right is specifically given relating to a special provision like removal of. Prodhan or Upa-Prodhan, the general provision relating to the casting vote cannot be read into the special provision contained in Section 12.

9. If the contention of Mr. Dey that expression "all the questions" in Section 16(4) would also cover the case of removal of the Prodhan or Upa-Prodhan is accepted, in that event no special provision was necessary in the Act. It may be that in a case like this where the members are equally divided the Prodhan or Upa-Prodhan cannot be removed but that is a matter for the legislature to consider. Mr. Dey has contended that language of a statute is prima facie to be construed as prospective only, and the Court should not construe the provision of Section 12 on the basis of the said amendment. This proposition cannot be disputed. But in my judgment the amendment has made the intention of the legislature clear. It has not changed the law. Where the existing members of a Gram Panchayat are equally divided if there is no casting vote, in that event there may be an impose or stalemate and a Prodhan or Upa-Prodhan may not be removed at all but that cannot be a ground for rejecting the contentions made on behalf of the respondents. It is for the legislature to find out a solution where there is such a division. The legislature in Section 12 has deliverabetly used the expression majority of the existing members". Majority of the existing members cannot be equated with the majority of votes; that is why the concept of casting votes cannot be read into section 12 of the act.

10. for the reasons aforesaid I am unable to accept the contentions of Mr. dey which must fail.

11. There is another aspect of the matter. u/s 12 of the Act, the resolution for removal of the Prodhan and Upa Prodhan must be considered in a specially convened meeting. The no-confidence resolution cannot be equated with resolution for removal of the Prodhan or Upa-Prodhan. Even in the Legislature Assembly if a no confidence motion is passed the Government may or may not resign depending on the constitutional conventions. It cannot therefore, be said that as soon as a no-confidence motion is passed against the Ministry, the Ministry is automatically removed. When a no-confidence motion is passed against the Prodhan or Upa-Prodhan as the case may be, the Prodhan or Upa-Prodhan cannot be deemed to have been removed. It may be that if such a no-confidence motion is passed. Prodhan or Upa-Prodhan may resign as he may reasonably apprehend that a resolution removing him may be passed. But merely because a no-confidence

motion has been passed, the Pradhan cannot be deemed to have been removed. A meeting has to be specially convened with a specific agenda for the removal of the Pradhan or Upa-Pradhan as the case may be. It has not been done in the instant case. There was no specific agenda for removal of the Pradhan nor any resolution to that effect was passed. In a sense the resolution which was passed in the meeting held on 10th March, 1984 is a valid resolution because that was not a resolution concerning the removal of the Pradhan. The question before the Panchayat was whether the members had confidence in the Pradhan or not. But unless specific resolution for removal of the Pradhan is passed, the Pradhan cannot be removed as has been sought to be done in this case.

12. Even otherwise the purported removal of the Pradhan is not valid being contrary to the provision of West Bengal Panchayat (Gram Panchayat Administration) Rules, 1981. Rule 13 of the said Rules prescribes the manner of voting. It specifically provides that any resolution for removal of the Pradhan or Upa-Pradhan from his office shall be decided by secret voting. Admittedly, this mandatory provision has not been allowed in this case. In the result, the application for vacating the interim order succeeds. The interim order passed by me on 25th July, 1984 is vacated. This order virtually disposes the writ application. In the result the rule is discharged. All interim orders are vacated. There will be no order as to costs.