

Royhan and Others Vs Chamatkar Malitya and Others

Court: Calcutta High Court

Date of Decision: July 12, 1984

Acts Referred: West Bengal Panchayat Act, 1957 " Section 22(1), 28
West Bengal Panchayat Act, 1973 " Section 12, 16

Citation: 89 CWN 1044

Hon'ble Judges: M.N. Roy, J; A.C. Sengupta, J

Bench: Division Bench

Advocate: K.K. Moitra and H.A. Rashid, for the Appellant; N. Bajpayee and K. Ghosh, for the Respondent

Judgement

M.N. Ray, J.

By this application the appellant-petitioners want to have the interim Order dated 19.10.84, as issued by Prabir Kumar

Majumdar, J. in the concerned Civil Order, stayed and also for necessary directions on the opposite parties concerned to hold the bye-election of

8 No. Bali II Gram Panchayat, P.S. Nawda, District Murshidabad (hereinafter referred to as the said Panchayat). There was another prayer to

hold a meeting on 16.11.84, which in view of our order dated 12.11.84, has been held, with; some restrictions regarding the publication of the

results. Admittedly; the appellant-petitioners and opposite party Nos. 1-4 before us, were and are elected members of the said Panchayat, which

is composed of 10 members. It is also an admitted fact that after the election to the said Panchayat, opposite party Nos. 2 and 1 respectively,

were elected as Prodhan and Upa-Prodhan. According to the petitioners, the Prodhan had lost the confidence of the majority and as such, a no-

confidence motion, which was brought against him for the concerned charges, was duly passed.

2. It has been alleged on suppression, of such fact, the said Prodhan moved and obtained C. O. 434 (W) of 1983 and the said Civil Order was

rejected, after hearing the appellant-petitioners herein who had intervened in that proceeding. It has been stated, on such removal of the Prodhan,

the Upa-Prodhan took charge of the office of the Prodhan, but strangely enough, he had also started misusing the power of the office. It has been

categorically claimed that the said Upa-Prodhan, after becoming the Prodhan in the manner as indicated above, started acting on the dictates of the

outgoing Prodhan. In fact, various allegations against him and his conduct have been indicated and mentioned in the petition and there was a

specific allegation, that in spite of due requisition given to him repeatedly and specific directions by the appropriate Authorities, he had not

convened a meeting for the purpose of holding the bye-election of the Prodhan.

3. It would appear that thereafter, the said Upa-Prodhan holding the post of Prodhan, obtained C. O. 7280 (W) of 1984 with the further

directions to maintain status quo and such order was vacated by the Appeal Court on 11.7.84. It has been alleged that no steps have been taken in

terms of the directions as given by the Appeal Court. It has also been alleged that to camouflage the issue of the said bye-election and for the

purpose of holding the concerned office indefinitely, the Upa-Pradhan, who was holding the post of Prodhan in the manner as indicated above and

that too without the support of the majority, this Court was again moved by him, challenging the no-confidence resolution dated 30.6.84 and he

obtained an ex parte interim order on 24.7.84. The learned Judge issuing such order, ultimately on hearing the parties, disposed of the matter on

3.9.84, by quashing "the concerned resolution on 3.9.84, as according to him, the same was not signed by all the members of the said Panchayet.

It should be noted at this stage that Mr. Moitra, appearing in support of this application, stated that out of 10 members of the said Panchayat, 6

including the appellant-petitioners are against the Upa-Prodhan, who was acting as Prodhan and consequently 4 are supporting him. While making

the order as above, the learned Judge gave liberty to the requisition's to serve fresh notice.

4. According to the appellant-petitioners, pursuant to such leave as above, fresh notice was served on the Upa-Prodhan on 1.10.84, for calling a

meeting of no-confidence against him and they have also stated that this time, the notice was duly signed by all the 6 members. It was the case of

the appellant-petitioners that the Upa-Prodhan acting as Prodhan duly received the notice on 5.10.84" and pursuant thereto, he called the meeting

for no-confidence on 16.11.84. The copy of the notice dated 1.10.84 as produced by Mr. Moitra was looked into and from the same it appeared

that the said notice was signed serially by Royhan, Musakalim, Mollah Abdul Rab, Biswas Abdul Kalam Azad, Mandal Sahajuddin and Malitya

Khejmat and the same disclosed that those signatory members of the said Parichayet were not at all pleased with the activities of the said

Panchayat, rather they were of the view that the working of the same was not at all satisfactory and as such, they had no confidence in him. That

being the position, the said Upa-Prodhan acting as Prodhan, was requested to have a vote of confidence passed in his favour. Really, there was no

demand for the removal of the said Upa-Prodhan, who was acting as the Prodhan.

5. The appellant-petitioners have specifically alleged that proceeding on that fact, the Upa-Prodhan acting as a Prodhan had himself convened the

meeting for the concerned no-confidence against him, but against he obtained a Civil Order and while issuing the same on 19.10.84, the learned

Judge has also issued an interim order, as a "result whereof not only the earlier directions of this Court, on which the appellant-petitioners have

acted, but also the very basis of the notice as issued, for holding the no-confidence meeting, has been frustrated and in reality, the said Upa-

Prodhan is holding the Office of the Prodhan of the said Panchayat without having the confidence of the majority of the members of the same and

such enjoyment of the office has also been claimed to be against the intention and spirit of the West Bengal Panchayat Act, 1973. In this appeal,

which has been presented on 541.84, the appellant-petitioners have prayed for the orders as indicated above. On the basis of the relevant

pleadings of the appellant-petitioner as indicated above, Mr. Moitra submitted that the subsequent order obtained on 19.10.84 by the Upa-

Prodhan who was acting as Prodhan, was not bonafide and in fact, having convened the meeting, he was debarred from moving this Court against

the concerned notice of no-confidence. It was also submitted by Mr. Moitra that in view of the admitted fact that the Upa-Prodhan acting as

Prodhan has not got confidence of the majority, he should not be allowed to hold the office, more particularly when, on his failure, neglect and

virtual refusal to hold the meeting in terms of the notice dated 1.10.84 or on the date as fixed, the majority members of, the said Panchayat have

passed the necessary resolution of no-confidence on 16.11.84. The said resolution, on production, was looked into The same was signed by the

six signatories as mentioned above and the remaining four were absent. Mr. Moitra also narrated the place, where, in the circumstances as

mentioned in the pleading, the said resolution was passed. By the said resolution, the Upa-Prodhan, Chamatkar Malitya, who was then holding the

post of Prodhan, was removed unanimously and the said resolution further" recorded that the same was passed, as the majority had voted against

the said Sri Malitya. It should be noted that in terms of the order of this Court, the resolution as passed, has not been given effect to

6. The answering opposite parties have filed their opposition dated 20.11.84, through Sri Chamatkar Malitya and he, apart from agreeing with

some of the statements as contained in the application, has denied the other material allegations, apart from stating the circumstances., for which he

could not be present at the meeting of 16.11.84. He has also stated that in terms of the order as made by this Court, the appellant-petitioners were

only entitled to adopt a resolution, of no-confidence against him, but, had no jurisdiction or authority to remove him as there was no such notice for

the same. He wanted to submit that the resolution to remove, when the same was not admittedly in the notice dated 1.10.84, could not have been

passed.

7. The terms of the said notice dated. 1.10.84 have been indicated hereinbefore and there is was admittedly no proposal to remove the deponent.

That being the position, Mr. Bajpayee on a reference to the determinations in the case of Sole man Shah and Ors. vs. Director of Panchayat and

Ors (70 CWN 1088),"" which was a determination on sections 22(1) and 28 of the West Bengal Panchayat Act, 1957, and where, on

consideration of the effect of non-service of appropriate notice for removal it has been held that the meeting under the statute has(to Be convened

and considered in accordance with the statutory rights and obligations and a member has the right to complain of infraction, of the statutory, rights

and obligations, apart, from holding that a member of Anchal Panchayat, whose status and rights as a member are sought to be affected by a

resolution, has a right under the law to impeach violation of statutory rights and obligations, claimed that since there was no notice of removal of the

deponent, he could not be removed by the concerned resolution. Mr. Bajpayee of course suggested that if the majority members so want or wish

they may call a fresh meeting with appropriate notice or may try and have the necessary resolution passed now. In any event, he submitted that

there should be a proper meeting with due, proper and appropriate notice, Mr. Bajpayee on a reference to section 12 of the West Bengal

Panchayat Act, 1973, which deals, with removal of Prodhan and Upa-Prodhan, claimed that since the meeting has to convened specifically for the

purpose and in this case, there was no such specific agenda or notice for. removing the deponent, the resolution, if any passed, would be improper

and this case would come fairly and squarely within the purview of the determinations of Soleman Shah's case (supra) and more particularly, as

there has been a failure to follow and observe the statutory mandate.

8. Mr. Moitra, in order to substantiate that the meeting in ease was duly convened and the resolution was appropriately passed, referred to section

16 of the West Bengal Panchayat Act, 1973 which deals with the meeting of Gram Panchayat and make provisions for convening and holding a

meeting by the Upa-Prodhan, in the event Of the failure of the Prodhan and by other members of the Gram Panchayat, in case the failure by both

of them. By that, he wanted to contend that the meeting in this case was duly convened and in that meeting, the concerned resolution was

appropriately passed. He of course stated that Soleman Shah's case (supra) has no application in the facts of the present case. Mr. Moitra

scathingly criticised the attitude of the Upa-Prodhan to move this Court after he himself had issued the notice, in the manner as mentioned above.

9. On consideration of the notice dated 1.10.84 or the terms thereof read along with the resolution dated 16.11.84 and the terms of section 16 of

the West Bengal Panchayat Act, 1973, we are of the view that the resolution, so far as no confidence against the Upa-Prodhan acting as Prodhan,

has been appropriately passed. But, in view of the determinations in Soleman Shahs case (supra) and more particularly when it is manifest that

there was no notice of the removal of the Upa-Prodhan acting as Prodhan, it is very difficult to disagree With the submissions of Mr. Bajpayee as

recorded hereinbefore and as such, we have no other alternative but to hold that on the basis of the terms of the notice dated 1.10.84 and more

particularly for the specific agenda thereof, no resolution of removal of the said Upa-Prodhan acting as Prodhan could be passed or given affect to.

if the appellant-petitioners are desirous of removing the said Upa-Prodhan acting as Prodhan, they should have a resolution of his removal passed

in accordance with law as laid down in Sole-men Shah"s ease (supra), which we feel to be the good law on the subject. In fact, we agree with the

determinations as made therein. We also feel that a person, who is to be removed, must have due notice for the same. As such, we record that

when in the instant case, the concerned notice was silent about the removal of the Upa-Prodhan acting as Prodhan, the resolution removing him,

was bad in law. Thus, we order that; that part of the resolution dated 16.11.84, must not be given effect to and if the appellant-petitioners want to

have such a resolution of removal passed, they can do so in accordance with law. As indicated earlier, it must be restated that the Prodhan of the

said Panchayat has already been removed and the Upa-Prodhan acting as Prodhan is at present definitely under the disability of not having the

confidence of the majority. There are explicit provisions in the West Bengal Panchayat Act, 1973, in a contingency like the present one or for filling

up casual vacancies in the office of the Prodhan and Upa-Prodhan. Above being the position, in modification of our earlier order dated 12.11.84,

the application is allowed in part and to the extent that the resolution dated 16.11.84, in so far as the same relates to the passing of the no

confidence against Chamatkar Malitya is affirmed, but not the one in respect of his removal.

The application is thus disposed of as above. There will be no order for costs.