

CONSTITUTIONAL WRIT
PRESENT: The Hon'ble Justice Nadira Patherya
Judgment on: 04.02.2010
W. P. No.19839 (W) of 2009
With
CAN No.10393 of 2009
SK. JALALUDDIN AND ANOTHER
VERSUS
STATE OF WEST BENGAL AND OTHERS

Point:

Requisition meeting: Whether any time is specified within which notice of requisition meeting is to be given to the prescribed authority for removal of Sabhapati -West Bengal Panchayet Act, 1973-S.16.

Fact: The majority members of a Panchayat Samity had no confidence in the Sabhapati and a requisition was made on 07-10-2009 to the Sabhapati to convene a meeting for his removal under Section 101 of the West Bengal Panchayet Act, 1973. As the Sabhapati failed to convene a meeting, a notice was issued under Section 105 of the 1973 Act on 16-11-2009. At the said meeting held pursuant to notice dated 16-11-2009 the Sabhapati was removed. The petitioners by filing the instant writ application has challenged the communication dated 17-11-2009 whereby it was sought to intimate the requisitionists that due to non-compliance of Sections 101 and 105 of the West Bengal Panchayet Act, 1973, no effect can be given to the removal of the Sabhapati.

Held: No time is specified within which intimation is to be given to the prescribed authority by the requisitionists under the second proviso of Section 16 of the 1973 Act. If the time is to run from the intimation given by the requisitionists then the requisitionists would be free to hold the meeting at their free will. The legislature contemplated a time limit within which meeting would be held on failure of the Sabhapati to call a meeting and 35 days should be calculated from the Sabhapati's failure to call a meeting. (Paragraph – 8)

Unless the requisitionists are convicted there is no bar to their making a requisition. (Paragraph – 9)

Cases cited:

1. 2008 CWN 153
2. 2007 (4) CHN 932
3. AIR 1936 Privy Council 257
4. 64 CWN 553

5. 2004 (11) SCC
6. AIR 2005 SC 300
7. 2005 (1) SCC 45
8. 1997 (2) CLJ 323
9. 99 CWN 100

For the Petitioners : Mr. Ashok De, Mr. Soumen Kumar Dutta.

For the State : Mr. S. Dasgupta, Mr. Prafulla Kumar Ghosh.

For the Respondent No.6 : Mr. Samit Sanyal.

For the Respondent No.13 to 19 : Mr. Ashoke Banerjee,
Mr. Tapas Maity.

The Court:

1. By this writ petition the petitioner seeks quashing of notice dated 17-11-2009.
2. The case of the petitioner is that as the majority members of the Panchayat Samity had no confidence in the Sabhapati a requisition was made on 07-10-2009 to the Sabhapati to convene a meeting for his removal under Section 101 of the 1973 Act. A notice was also given to the prescribed authority. As the Sabhapati failed to convene a meeting, a notice was issued under Section 105 of the 1973 Act on 16-11-2009. At the said meeting held pursuant to notice dated 16-11-2009 the Sabhapati was removed. By a communication dated 17-11-2009 received by the petitioner, the respondent no.4 sought to intimate the requisitionists that due to non-compliance of Sections 101 and 105 of the 1973 Act no effect can be given to the removal of the Sabhapati. Hence, the instant application has been filed and orders sought.
3. Counsel for the State respondent submits that the notice issued is not in proper form. Rule 3(2) of the 1984 Rules postulates the notice to be issued in a particular form. There has been non-compliance in respect thereof and therefore, there was no meeting held in the eye of law. In fact the meeting was held beyond 35 days from the issuance of the first notice under Section 101 and as held in *2008 CWN 153*, the holding of meeting beyond the requisite period has rendered the meeting invalid.
4. Counsel for the added respondent no.19 submits that no notice was served on the added respondent as he has been suspended and as held in *2007 (4) CHN 932*, non-service of notice renders the meeting invalid.
Counsel for the respondent no.6 relies on decisions reported in *AIR 1936 Privy Council 257*; *64 CWN 553*; *2004 (11) SCC 1*; *AIR 2005 SC 300* and *2005 (1)*

SCC 45 to highlight the conditions necessary for issuance of notice.

5. Counsel for the petitioner in reply submits that Rule 3(2) of the 1984 Rules is directory and not mandatory in nature, as the consequences to follow, has not been specified. The true tests of compliance lies in construing the meaning that the requisitionists seek to convey as held in *1997 (2) CLJ 323* and the notice has fulfilled such criteria. The prescribed authority is the Sub-Divisional Officer (SDO) and notices have been issued to him. As held in *99 CWN 100*, *35 days will be counted* from the date of notice issued by the requisitionists to the Sabhapati to call a meeting under Section 16, second proviso of the 1973 Act. Suspended members are entitled to exercise rights till such time that they are removed. Therefore, orders as sought be passed.

Having considered the submission of the parties, there is no infirmity in the notices issued under Section 101 and 105 of the 1973 Act. The only issue that needs to be considered, is the starting point of 35 days and whether the meeting was held within such time.

6. On a reading of the second proviso of Section 105 of the 1973 Act on failure of the Sabhapati to call a meeting pursuant to requisition made under Section 12 of the 1973 Act 35 days ought to be calculated from the 8th day i.e 15-10-2009, as the notice under Section 12 was issued on 07-10-2009. Seven days clear notice is contemplated so also convening of meeting within 15 days.

7. Therefore, the Sabhapati would have to give the notice by the 8th day from the date of receipt of notice. In not doing so the Sabhapati has failed to convene the meeting and 35 days from the 8th day (15-10-2009) would expire on 18-11-2009. The meeting has been held on 24-11-2009, i.e, beyond 35 days. Accordingly, there is no infirmity in the order dated 17-11-2009.

8. The reasonings in *99 CWN 100* cannot be accepted as no time is specified within which intimation is to be given to the prescribed authority by the requisitionists under the second proviso of Section 16 of the 1973 Act. If the time is to run from the intimation given by the requisitionists then the requisitionists would be free to hold the meeting at their free will. The legislature contemplated a time limit within which meeting would be held on failure of the Sabhapati to call a meeting and 35 days should be calculated from the Sabhapati's failure to call a meeting. Accordingly, the reasoning of *2008 CWN 153* must be accepted.

9. Unless the requisitionists are convicted there is no bar to their making a requisition. For all the said reasons, no order is passed on this writ petition and is accordingly dismissed alongwith CAN No.10393 of 2009.

(Patherya J.)