

S/L 5
15.07.2021
Court. No. 19
GB

W.P.A. 11472 of 2021

Sima Majumdar (Ghosh) & Anr.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

*Mr. Bikash Ranjan Bhattacharya,
Mr. Sayan Chattapadhyay,
Ms. Payel Shome,
Ms. Smriti Das.*

...for the Petitioners.

*Mr. Chitta Ranjan Chakraborty,
Mr. Dip Jyoti Chakraborty.*

...for the Requisitionists.

*Mr. Anirban Roy,
Mr. Raja Saha,
Mr. Saikat Chatterjee.*

...for the State.

This writ petition has been filed challenging two notices both dated June 30, 2021, issued by the prescribed authority and the Block Development Officer, Bamongoal Division Block, Malda calling for the meetings for removal of the Pradhan on the basis of the requisition of the members of the Bamongola Gram Panchayat. The petitioners are the Pradhan and Upa-Pradhan, who have joined together in the writ petition challenging the notices issued for holding a meeting for their removal on the ground of lack of confidence. The meeting for the removal of the Pradhan was held on July 15, 2021.

The first challenge to such notice is that the notice, should have been issued by the prescribed authority within five working days from June 23, 2021, but as the notice was issued on June 30, 2021, the provision of law was not followed as June 30, 2021 was the 6th day.

The learned advocate for the requisitionists as also for the State respondents submit that June 23, 2021 being the date of the requisition shall be excluded from calculation of the period of five working days. The period of five working days shall be calculated from June 24, 2021, which shall end on June 30, 2021, June 26 and June 27, 2021 being the Saturday and Sunday which are holidays.

Reliance is placed on a decision of this Court in the matter of ***Manjura Khatoon versus Pradhan, Samsabad, G.P. No.7*** reported in ***1998 (1) Calcutta Law Journal 1***, passed by this Court while considering a similar provision under Section 16(1) of the West Bengal Panchayat Act, 1973.

In this case the Hon'ble Court was of the opinion that the seven days' notice which was to be given by the Pradhan, the issuing date of the notice had to be excluded and not the date of the meeting. Support has also been drawn from Section 9 of the General Clauses Act as an interpretation to the expression "from".

The expression "of" appearing in Section 12(3) shall be read to construe the similar meaning of the expression "from" as stated in the Section 9 of the General Clauses Act. Section 9 of the General Clauses Act is quoted below:

“9. Commencement and termination of time. – (1) in any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word from”, and, for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.”

Section 12 (3) of the West Bengal Panchayat Act, 1973 is quoted below.

“12. Motion of no confidence or removal of Pradhan or Upa-Pradhan.-

(3) The prescribed authority on receipt of the motion shall satisfy himself that it conforms to the requirements of sub-section (2) and on his satisfaction shall specially convene, by issue of notice, within five working days of the receipt of the motion, a meeting of the Gram Panchayat to be held in its office fixing date and hour of the meeting and sending such notice at least before clear seven days to each of its existing members for consideration of the motion and for taking a decision on it.”

It is provided in the statute that the prescribed authority on receipt of the motion upon satisfying himself that the provisions of Section 12(2) had been complied with

shall specially convene a meeting by issuing a notice within five working days of the receipt of the motion.

In my view, the judgment of this Court and the provisions of Section 9 would mean that the date of receipt of the requisition notice shall be excluded. The relevant portion of the judgment in *Manjura Khatoon (Supra)* is quoted below:

“2. The first question that has to be considered is whether the meeting which was called by the Pradhan on 13.6.97 on receipt of notice from some members on that very date can be said to be bad in law so as to invalidate the meeting held on 20.6.97 on the basis of such notice. Under the second proviso to Section 16 of the West Bengal Panchayat Act, 1973 the Pradhan is required to call the requisitioned meeting within 15 days after giving seven days’ notice to the members of the Gram Panchayat. The question is whether in this particular case ‘seven days’ notice’ was given by the Pradhan to the members of the Gram Panchayat. It may also be noticed here that in the very same proviso there is another provision that if the Pradhan fails to call such meeting, in that event the requisitioning members may themselves call the meeting after giving ‘seven clear days’ notice’ to the Pradhan and other members of the Gram Panchayat. It may be noticed that while the said proviso requires the Pradhan to give seven days’ notice for calling the meeting the requisitioning members, when they are to call the meeting, are required to give seven clear days’ notice. This difference in the language

should have to borne in mind. In my opinion while computing the period of seven clear days the date of issuing the notice as well as the date of the meeting are required to be excluded so that seven clear days' may intervene between the said two dates. But in computing the period of seven days' notice, as distinct from seven clear days' notice, only the date of issuing the notice has to be excluded and not the date on which the meeting has been fixed. here we find that the notice was issued by the Pradhan on 13.6.97 fixing the meeting on 20.6.97. If 13.6.97 is excluded in computing the period of seven days' notice but including 20.6.97 in that case we will find that the notice as has been given satisfies the requirement of 'seven days' notice', although it would not have been sufficient to satisfy the requirement of 'seven clear days' notice'. Therefore I find that in this present case where under the law the Pradhan is required to give seven days' notice and not seven clear days' notice the notice which was issued on 13.6.97 fixing 20.6.97 as the date for holding the meeting is valid.

3. The learned Advocate for the petitioner in the case of Manjura Khatoon refers to the decision of the Supreme Court in (1) Jai Charan Lal v. State of U.P., AIR 19 8 SC 5 in support of his argument that the date of issuing the notice as well as the date of the meeting should be excluded and only the intervening period should be counted in considering whether seven days' has been given. In that case the Supreme Court was considering the relevant provisions of the U.P.

Municipalities Act, 1916 under which the relevant notice was required to be sent 'not less than seven clear days before the date of meeting'. The Supreme Court in Paragraph 6 of the decision observed that as the notice was sent on the 17th and the meeting was to be called on 25th it was obvious that seven clear days did intervene and there was no breach of concerned part of the section. It will be thus clear that the provisions of the Act under consideration of the Supreme Court in that case required that not less than seven clear days' notice must be given. In our case the provision under consideration, as we have seen, does not require seven clear days' but requires only seven days' notice and that being so, the date of the meeting mentioned in the notice also has to be taken into consideration in computing whether the notice satisfies the requirement of 'seven days notice'. The learned Advocate for the petitioner in Manjura Khatoon also attracts my attention to the decision of M N. Roy, J. in (2) Sirajul Islam v. State of West Bengal, 85 CWN 188. That was a decision where the learned Judge had to consider Section 17 of the West Bengal Panchayat Act and not Section 16 which falls for our consideration in the present case. On the other hand two other decisions have been placed before me, by the learned Advocate for the respondent Pradhan, one in (3) Md. Asraf Ali mandal v. Block Development Officer, 1992 (2) CHN 229 rendered by Ruma Pal, J & the other in (4) Samarendra Goswami v. Dabuk Gram Panchayat, 1995 (2) CHN 238 rendered by Satyabrata Sinha, J. where it has been

specifically held that the provision regarding seven days' notice in the concerned proviso to Section 16 of the West Bengal Panchayat Act is directory and not mandatory. That being so any irregularity in the matter of giving seven days' notice will not ipso facto vitiate the notice or the meeting held on the basis of such notice if no prejudice has been caused to anybody by reason of such irregularity in the matter of a directory provision of law. I respectfully agree with the decisions of the abovementioned two learned Judges Satyabrata Sinha and Ruma Pal, JJ. On the point."

In the matter of ***Jai Charan Lal Anal versus State of U.P. & Ors.*** reported in **(1967) 3 SCR 981**, the Hon'ble Supreme Court has held that the date of issuing notice, being the initial date should be excluded. The Supreme Court was considering a provision with regard to holding of a meeting not earlier than thirty days. The relevant portion of the judgment is also quoted below:

"The next contention is that the District Magistrate had to convene the meeting for the consideration of the motion on a date which was not earlier than thirty days from the date on which the notice under sub-section (2) was delivered to him. As the notice was delivered to the District Magistrate on October 26, the learned counsel contends that the date fixed for the meeting, namely, November 25 was earlier than thirty days because according to him the 30th day should be excluded in addition to the date on which the notice was

handed. In other words, the learned counsel wishes to exclude both the terminal days i.e. October 26 and November 25 and wants to count thirty clear days in between. He contends that the expression “not earlier than thirty days” is equal to the expression “not less than thirty days” and, therefore, thirty clear days must intervene between the two terminal days. In support of his contention the learned counsel relies upon a ruling reported in *Sm. Haradevi v. State of Andhra* in which the expression “not earlier than three days”, was equated to the expression “not less than three days” that is to say, three clear days. He also relies upon certain other rulings which deal with the expression “not less than so many days”. In our judgment the expression “not earlier than thirty days” is not to be equated to the expression “not less than thirty days”. It is no doubt true that where the expression is “not less than so many days” both the terminal days have to be excluded and the number of days mentioned must be clear days but the force of the words “not earlier than thirty days” is not the same. “Not earlier than thirty days” means that it should not be the 29th day, but there is nothing to show that the language excludes the 30th day from computation. In other words, although October 26 had to be excluded the date on which the meeting was to be called need not be excluded provided by doing so one did not go in breach of the expression “not earlier than thirty days”. The 25th of November was the 30th day counting from October 26 leaving out the initial day and therefore it cannot be described as earlier

than thirty days. In other words, it was not earlier than thirty days from the date on which the notice under sub-section (2) was delivered to the District Magistrate. The reading is also borne out by the other expression “not later than thirty-five days” which is used in the section. In this Court the expression “not later than 14 days” as used in Rule 119 under the Representation of the People Act was held to mean the same thing as “within a period of fourteen days”. In that expression the number of days, it was held, should not exceed the number fourteen. In the sub-section we are dealing with the number of days that should not exceed thirty-five days. On a parity of reasoning not earlier than thirty days would include in 30th day but not the 29th day because 29th day must be regarded as earlier than thirty days. If the provisions were “not earlier than thirty days and not later than thirty days” it is obvious that only the 30th day could be meant. This proves that the fixing of the date of the meeting was therefore in accordance with law and we respectfully disapproved of the view taken in the Andhra Pradesh case.”

The decision of the Hon'ble Division Bench in the matter of ***Md. Firoz Alam & Ors. versus State of West Bengal & Ors.*** reported in **2010 (3) CHN (CAL) 636**, shall not be applicable in this case as the same was rendered in a different states of fact while interpreting the terms “seven days’ clear notice”.

In the decisions of Jai Charan Lal Anal (Supra) and Manjura Khatoon (Supra) the Hon'ble Apex Court and this Court have held that in situations like the present one the first date of issuance of the notice would be excluded and thus the date of requisition shall not be counted while calculating the five working days. The notices dated June 30, 2021 was issued on the fifth working day, the date of requisition being excluded.

Thus, I do not find any error in the meeting to be held on July 15, 2021. Similarly the notice of meeting to be held on July 16, 2021 is not invalid and the meeting on July 16, 2021 is for removal of the Upa-Pradhan. It is the 15th working day from receipt of the requisition excluding the intervening holidays. The working days on and from 23rd, 2021 were 24th, 25th, 28th, 29th, 30th June, 2021, and 2nd, 5th, 6th, 7th, 8th, 9th, 13th, 14th, 15th, and 16th July, 2021. 16th July 2021 is the 15th working day from the date of requisition.

Accordingly, the writ petition is disposed of without any interference.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)