

27.09.2021
Court No. 19
Item no.16
CP

WPA 15700 of 2021

Baby Mandal
Vs.
State of West Bengal & Ors.

(via video conference)

Mr. P. S. Bhattacharya, Sr. Adv.
Mr. Atarup Banerjee
Mr. M. Chatterjee

... for the Petitioner.

Mr. Sabir Ahmed
Mr. S. Sarkar
Mr. A. Saha

.....for the respondents 7 to 12.

Mr. Udaynarayan Betal
Mr. Bhaskar Hutait
Md. G. Nure Imrohi

....for the respondents 13 to 16.

Mr. Raja Saha
Mr. Supratim Dhar

....for the State.

The writ petitioner is one of the members of the Sahabazpur Gram Panchayat. The petitioner was removed from the office of pradhan by the majority members of the said gram panchayat on August 31, 2021. The prescribed authority issued a notice dated September 16, 2021 for election of the new pradhan on September 28, 2021. The prescribed authority cancelled the meeting by a notice dated September

22, 2021 which was subsequently revoked on the same day by the prescribed authority.

The contention of the said member is that seven clear days notice on and from the date of cancellation and revocation was not given to all the members as mandatorily required by the statute and as such, the meeting scheduled for election of the new pradhan cannot be held on September 28, 2021.

Reliance has been placed on Rule 3 of the West Bengal Panchayat (Constitution) Rules, 1975 (hereafter referred to as the said Rules).

Mr. Betal, learned advocate appearing on behalf of the respondents 13 to 16 also supports the case of the petitioner. According to him too, seven clear days notice from the date of cancellation and revocation must be given for holding the meeting for election of the new pradhan.

Mr. Ahmed, learned advocate appearing on behalf of the requisitionists, submits that the requirement of seven days notice is not a mandatory provision. That Rule 6 of the said Rules prescribing the procedure for election under Section 13 of the West Bengal Panchayat Act, 1973 provides for giving seven clear days notice, but the said rule has been held to be directory and not mandatory.

Mr. Saha, learned advocate appearing on behalf of the prescribed authority, submits that

seven clear days notice had already been given by the prescribed authority when the notice was initially issued on September 16, 2021 fixing September 28, 2021 as the date for holding the meeting for election of the new pradhan. The said Rule 6 provides that the election of the new pradhan shall be held within 30 days from the removal. The prescribed authority upon apprehending that the Inspector-in-charge, Kaliachak Police Station would not be able to provide police force, cancelled the meeting by issuing Memo No. 2536 dated September 22, 2021. Immediately thereafter, by another notice dated September 22, 2021 bearing Memo No. 2558, the cancellation was revoked. All the parties were aware of these two memoranda and much time had not expired between the cancellation and the revocation.

Rule 6 (1) of the said Rules provides as follows:

“6(1) As soon as may be but not later than thirty days from the date of any casual vacancy in the officer of Pradhan or Upa-Pradhan, Sabhapati or Sahakari Sabhapati or Sahakari Sabhadhipati by reason of death, resignation, removal or otherwise, or within such further time as may be allowed by the District Panchayat Election Officer for reasons to be recorded by him in this behalf [the prescribed authority referred to in sub-rule (1) of rule 3, sub-rule (1) of rule 4, sub-rule (1) of rule 5 or sub-rule (1)

of rule 5, or sub-rule (1) of rule 5A] shall call a meeting of all the members [eligible to participate under rule 3, rule 4, rule 5 or rule 5A, as may be appropriate] for the election of a Pradhan or an Upa-Pradhan, a Sabhapati or a Sahakari Sabhapati, a Sabhadhipati or a Sahakari Sabhadhipati, as the case may be, by fixing a date, place and time and causing a written notice to this effect in Form [to be served on each such member] at least [seven] days before the date of fixed for such meeting.”

Although the said provision requires a clear seven days notice, in this case, the parties had already been given seven days notice on and from September 16, 2021 that the election of the new pradhan would be held on September 28, 2021. On September 22, 2021 the meeting was cancelled and, thereafter revoked on the same day. Thus the view of the court is that an additional seven days notice is not required.

Moreover this court in the matter of Ramnath Paswan & ors. vs. Setaur Rahaman & ors., reported in (2008) 1 CHN 765 has held that Rule 6 which governs the procedure for election of a new pradhan upon removal of the earlier one, is a procedural rule and the provisions thereunder are not mandatory in nature. The relevant portion of the said judgment is quoted below: -

“10. In order to appreciate the question involved herein, it will be profitable to refer to section 13 of the West Bengal Panchayat Act and Rule 6 of the West Bengal Panchayat (Constitution) Rules, 1975 and those are quoted below:

“13. Filling of casual vacancy in the office of Pradhan or Upa-Pradhan.—In the event of removal of a Pradhan or an Upa-Pradhan under section 12 or when a vacancy occurs in the office of a Pradhan or an Upa-Pradhan by resignation, death or otherwise, the Gram Panchayat shall elect another Pradhan or Upa-Pradhan in the prescribed manner.

R. 6. Resignation of and filling up of casual vacancy in the office of the Pradhan and Upa-Pradhan of a Gram Panchayat, Sabhapati and Sahakari

Sabhapati of Panchayat

Samiti or Sabhadhipati and Sahakari

Sabhadhipati of Mahakuma/Zilla Parishad.

— (1) As soon as may be but not later than thirty days from the date of any casual vacancy in the office of Pradhan or Upa-Pradhan, Sabhapati or Sahakari

Sabhapati or Sabhadhipati or Sahakari

Sabhadhipati by reason of death, resignation, removal or otherwise, or within such further time as may be allowed by the District Panchayat Election Officer for reasons to be recorded by him in this behalf, the prescribed authority referred to in sub-rule (1) of Rule 3, sub-rule (1) of Rule 4, sub-rule (1) of Rule 5, or sub-rule (1) of Rule 5A shall call a meeting of all the members eligible to participate under rule 3, rule 4, Rule 5 or Rule 5A, as may be appropriate, for the election of a Pradhan or Upa-Pradhan, a Sabhapati or a Sahakari Sabhapati, a Sabhadhipati or a Sahakari Sabhadhipati, as the case may be, by fixing a date, place and time and causing a written notice to this effect in Form 1 to be served on each such member

at least seven days before the date fixed for such meeting.

(1A) Such meeting shall be presided over by such officer as may be authorised by the prescribed authority in Form 2 and such officer shall not be entitled to vote at the election.

(2) On the date of the meeting if there is no quorum, as provided in sub-rule

(3) of Rule 3, sub-rule (3) of Rule 4, sub-rule (3) of rule 5 or sub-rule (3) of Rule 5A, the Presiding Officer shall adjourn the meeting. The adjourned meeting shall be held on such date, place and time as may be fixed by the prescribed authority and the provisions regarding notice to members referred to in sub-rule (1) shall apply:

Provided that no quorum shall be necessary for an adjourned meeting.

(3) The Presiding Officer shall then conduct the election of the Pradhan or Upa-Pradhan, Sabhapati or Sahakari

Sabhapati, Sabhadhipati or a Sahakari Sabhadhipati, as the case may be, in the same manner as laid down in sub-rules (6), (7), (8) and (9) of Rule 3 and sub-rules (6), (7) and (8) of Rule 4 as far as applicable.

(4) The papers relating to an election to fill a casual vacancy shall be kept in safe custody by the prescribed authority for six months after which they may be destroyed.”

11. After hearing the learned Counsel for the parties and after going through the aforesaid statutory provisions, we find that the object of those provisions is to ensure quick filling up of the posts mentioned therein in the event of the vacancy of the posts mentioned therein. The rule 6 has vested the power of calling the meeting of election upon the prescribed authority but at the same time, the said rule has taken care to see that such power is not abused by restricting the time-limit for calling the meeting of election ordinarily within one month unless the

District Panchayat Election Officer permits him to defer the meeting by a reasoned order. The first question before us is if for any reason, the meeting is not held within one month and thereafter, the meeting is called by the prescribed authority pursuant to the order passed by this Court and the election is held without taking the permission of the District Panchayat Election Officer, whether the election would be vitiated for non-compliance of the provision contained in Rule 6.

12. In order to ascertain whether a particular statutory provision is mandatory or directory, the tests to be followed are now well-settled.

13. The intention of the legislature in enacting the provisions is the first and foremost factor to be considered. If the provisions are procedural in nature, the presumption is that those are generally directory unless the provisions are couched in a negative form and a consequence is indicated for non-compliance of such provision. If in the procedural provision, the word used is “must”, instead of “shall”, the provisions should be held to be mandatory in nature. The exceptions to the abovementioned rule are the cases where either “no notice” or “no opportunity” or “no hearing” has taken place causing injury or prejudice to the aggrieved person for non-compliance of such provision. In the case before us, the Rule 6 is undoubtedly a procedural provision for giving effect to the provision contained in section 13 of the Act and the same is not in a negative form and at the same time, no consequence is indicated for non-compliance of the provision. The intention of the legislature is to compel the prescribed authority to hold election within one month after the post has fallen vacant and only in exceptional cases, to permit prolongation of the same beyond that period and that too, after

taking permission from the higher authority based on a reasoned order. Therefore, the provision should be held to be directory and in case of violation of a directory provision, the outcome cannot be a nullity unless prejudice is caused to an aggrieved party for deviation from the provision.

14. In this connection, it will not be inappropriate to refer to the following observations of the Supreme Court in the case of *State Bank of India v. S.K. Sharma* reported in AIR 1996 SC 1669 at page 1683:

“A substantive provisions has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such case. In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under ‘no notice’, ‘no opportunity’ and ‘no hearing’ categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively.”

15. As pointed out earlier, we have also relied upon the following observations of the Apex Court in the case of *Lachmi Narain v. Union of India* reported in AIR 1976 SC 714:

“The primary key to the problem whether a statutory provision is mandatory or directory, is the intention of the law-maker as expressed in the law, itself. The reason behind the provision may be a further aid to the ascertainment of that intention. If

the legislative intent is expressed clearly and strongly in imperative words, such as the use of 'must' instead of 'shall', that will itself be sufficient to hold the provision to be mandatory, and it will be necessary to pursue the enquiry further. If the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the intent that the provision is to be mandatory (Crowford, the Construction of Statutes pp. 523-524)."

16. We, therefore, find that the learned Single Judge erred in law in holding that the provision of Rule 6 is mandatory and for mere non-compliance of such provision, the decision taken in the meeting should be quashed."

It is the intention of the legislature to ensure that all persons who are required to participate or who have a right to participate in the meeting to be held for election of the new pradhan are aware that a new pradhan is going to be elected at a particular meeting. This information was available in this case, as there has been several rounds of litigation in the matter. Moreover, the parties had been made aware by a notice dated September 16, 2021 that the erstwhile pradhan had been removed in accordance with law and a new pradhan is going to be elected in accordance with law at a meeting to be held on September 28, 2021. The issuance of notice of cancellation on September 22, 2021 and immediate revocation of the same has not curtailed the right of any of the members to participate in the meeting nor

can it be treated as a situation where the members have not been able to think and deliberate upon the issue of election of a new pradhan to be held on September 28, 2021. The cancellation and revocation thereof are inconsequential. Moreover, the members are not aggrieved and they have not approached the court. Only the erstwhile Pradhan is aggrieved and it is obvious that she wants to stall the election of a new Pradhan.

Under such circumstances, the writ petition is disposed of without any interference.

The prescribed authority shall submit a report to the District Magistrate explaining the reason why such erratic and irrational steps have been taken by him. However, this observation shall not affect the meeting to be conducted on September 28, 2021.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the learned advocate's communication.

(Shampa Sarkar, J.)