

03-04. 18.11.2022
Ct. No.6
Tanmoy

MAT 1816 of 2022
Sudip Karmakar
-Versus-
The State of West Bengal & Ors.

With

MAT 1817 of 2022
Suresh Kumar Agarwal
-Versus-
The State of West Bengal & Ors.
With
IA No: CAN/1/2022

Mr. Kishore Dutta, Ld. Sr. Adv.,
Mr. Suman Sengupta, Adv.,
Mr. Dip Jyoti Chakraborty, Adv.

...for the appellant/
Vice-Chairman in
MAT 1816 of 2022.

Mr. Probal Mukherjee, Ld. Sr. Adv.,
Mr. Saikat Chatterjee, Adv.

...for the appellant in
MAT 1817 of 2022 and
...for the respondents in
MAT 1816 of 2022.

Mr. Anirban Ray, Ld. GP,
Mr. Raja Saha, Adv.,
Mr. Debraj Sahu, Adv.

...for the State.

Mr. Koustav Bagchi, Adv.,
Mr. Debayan Ghosh, Adv.,
Ms. Priti Kar, Adv.

...for the respondent
nos. 8-13 and 15 in
MAT 1816 of 2022.

Mr. Koustav Bagchi, Adv.,
Mr. Debayan Ghosh, Adv.,
Ms. Priti Kar, Adv.

...for the respondent
nos. 7-12 and 14 in
MAT 1817 of 2022.

By consent of the parties, both the appeals and the application connected with MAT 1817 of 2022 are taken up together for hearing.

These two appeals are directed against the same order, *interim* in nature, dated November 14, 2022, passed in two writ petitions being WPA 24269 of 2022 (*Biplab Kayal & Ors. – Vs. – The State of West Bengal & Ors.*) and WPA 24565 of 2022 (*Suresh Kumar Agarwal – Vs. – The State of West Bengal & Ors.*).

Biplab and others are the Councillors of Jhalda Municipality. Suresh is the Chairman of the Municipality.

The requisite number of Councillors submitted a notice dated October 13, 2022, to the Chairman of the Municipality for convening a Special meeting for the purpose of removal of the Chairman (Suresh Kumar Agarwal) on the ground that they had lost confidence in the Chairman. At this point, it will be helpful to note Rule 9 of The West Bengal Municipal (Procedure and Conduct of Business) Rules, 1995 (hereinafter referred to as the ‘1995 Rules’), which reads as follows:-

“9. Extraordinary meeting. – (1) *In an extraordinary meeting, no matter, other than the one for which the meeting has been convened, shall be discussed. Such meetings may be –*

(a) an emergent meeting; or

(b) a special meeting.

(2) An emergent meeting for transaction of business of an emergent nature, may be convened, at any time, by the Chairman or, in his absence, the Vice-Chairman, after twenty-four hours’ notice to the members.

(3) (a) A special meeting may be convened by the Chairman or, in his absence, by the Vice-Chairman suo motu after giving not less than three days’ notice to the members.

(b) A special meeting may also be convened after giving not less than three days' notice to the members, on requisition containing specifically the agenda and signed by not less than one-third of the total number of Councillors of the Municipality, by—

- (i) the Chairman, within fifteen days from the date of receipt of such requisition or, of his failure to do so,*
- (ii) the Vice-Chairman within seven days thereafter or, on his failure to do so, or*
- (iii) any three of the Councillors of the Municipality within further seven days thereafter.*

(c) Notwithstanding anything contained in these rules, if the situation so demands owing to stalemate condition prevailing in the functioning of the Municipality, the officer may, in the interest of public service, convene a special meeting of the Municipality with at least three days' notice to the members, specifying the agenda and venue of the meeting.”

It appears that the Chairman signed a notice on October 28, 2022, convening a Special meeting on November 21, 2022. However, for whatever reason, the notice was not circulated amongst the Councillors.

Being aggrieved, the Councillors made a further requisition to the Vice-Chairman for convening a Special meeting for the aforesaid purpose. This they did on October 28, 2022, although the Chairman had time till October 29, 2022, to issue notice for the special meeting. However, the fact remains that the Chairman's notice was never circulated.

In the aforesaid scenario, the Vice-Chairman, Sudip Karmakar, issued a notice dated November 3, 2022, convening the special meeting, surprisingly, on November 21, 2022.

The requisitioning Councillors issued a notice dated November 4, 2022, convening the special meeting on November 7, 2022.

The Vice-Chairman (Sudip Karmakar) challenged the notice issued by the requisitioning Councillors by filing WPA 24024 of 2022. The notice was challenged by Sudip on the ground that Sudip having issued a notice on November 3, 2022, within the statutorily prescribed period, the notice issued by the Councillors was of no effect. By an order dated November 7, 2022, a learned Single Judge of this Court quashed the Councillors' notice dated November 4, 2022, and clarified that the special meeting will be held on November 21, 2022, as already fixed.

In the present round of litigation, Biplab and others filed their writ petition praying for an order directing the Competent Authority to pre-pone the date of the special meeting. Suresh, in his writ petition, challenged the validity of the notice of the Vice-Chairman, Sudip Karmakar. The impugned order was passed by the learned Judge on those two writ petitions.

The learned Judge held that everybody by now is aware of the Chairman's notice dated October 28, 2022, although the same was not circulated amongst the Councillors. The said notice will be deemed to have been circulated amongst the Councillors and the meeting will be held as fixed by the said notice, on November 21, 2022.

Both the Chairman (Suresh) and the Vice-Chairman (Sudip) have come up in appeal against the aforesaid order.

The Chairman argues that upon the Councillors requesting on October 28, 2022, to convene a special meeting, the Chairman had fifteen days to issue the notice. Hence, the Vice-Chairman acted beyond jurisdiction in issuing the notice dated November 3, 2022.

The Vice-Chairman is aggrieved by the impugned order to the extent that the order directs holding of the meeting on the basis of the Chairman's notice which, as per the learned Judge's direction, is deemed to have been circulated amongst the Councillors.

We have heard learned Counsel for the parties. We are of the view that this is a case which can aptly be described as "much ado about nothing".

The Chairman did sign the notice convening special meeting within the time period allowed under Rule 9 of the 1995 Rules. However, He never sent the notice to the Councillors. Without sending the notice and circulating the notice amongst the Councillors, it cannot be said that the Chairman issued the notice convening special meeting.

Accordingly, upon the expiry of October 29, 2022, it was the duty of the Vice-Chairman to issue a notice convening a special meeting as requisitioned by the Councillors. The Vice-Chairman had seven days to do this. He issued the notice on November 3, 2022, within the prescribed time period.

The Notice issued by the Councillors was obviously bad in law and was rightly set aside in the earlier round of litigation.

In the aforesaid factual matrix, there cannot be any confusion that the only valid notice is that of the Vice-Chairman. To that extent, we disagree with the learned Single Judge that the special meeting should be held on the basis of the Chairman's notice. Otherwise, we see no reason to interfere with the learned Single Judge's order or to stop the meeting scheduled to be held on November 21, 2022.

With the above clarification, the appeals being MAT 1816 of 2022 and MAT 1817 of 2022 and the application connected with MAT 1817 of 2022 are disposed of.

Let urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)