

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Before:-

The Hon'ble Justice Moushumi Bhattacharya

The Hon'ble Justice Siddhartha Roy Chowdhury

MAT No. 1 of 2023
With
IA No. CAN 1 of 2023

Ritesh Portel and Anr.
Vs.
The State of West Bengal and Ors.

For the Appellants : Mr. Kunaljit Bhattacharya
Mr. Alok Sah
Mr. Aishwary Pradhan

For the Respondent Nos. 6 to 21 : Mr. Anmole Prasad
Mr. Amar Lama
Mr. Sagar Chettri

For the State : Mr. Subir Kumar Saha, AGP
Mr. Bikramaditya Ghosh

Hearing concluded on : 10.01.2023

Judgment on : 11.01.2023

Moushumi Bhattacharya, J.:

1. The appellants before us are the Chairman and the Vice-Chairman of the Darjeeling Municipality. The appellants are aggrieved by an order passed by the First Court dated 26.12.2022 in a writ petition filed by the appellants. The writ petition of the appellants was dismissed by the impugned order on the ground that the writ petition was devoid of merit.

2. The writ petition was filed by the appellants for a direction on the respondents in the writ petition for restraining a meeting convened on 28.12.2022 for removal of the Chairman (writ petitioner no. 1/ appellant no. 1). The private respondent nos. 6 – 21 before this Court are the Councillors of the Darjeeling Municipality, who requisitioned the meeting dated 28.12.2022 for removing the Chairman / appellant no. 1.

3. According to the appellants, the Resolution dated 28.12.2022 taken by the Councillors of the Darjeeling Municipality is contrary to the provisions of The West Bengal Municipal Act, 1993 read with The West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995. Counsel submits that the learned Single Judge misconstrued the provisions in the Act and the Rules and erred in dismissing the writ petition.

4. Learned counsel appearing for the District Magistrate and Sub-divisional Officer, which is the conducting authority for the process of removal under the Act,

supports the impugned order and submits that the Councillors took the correct statutory approach for removing the Chairman / appellant no. 1 from the said post of the Darjeeling Municipality. Counsel further submits that the Chairman was removed on 28.12.2022 and the vacancy for the post has now been notified under Rule 5 of the 1995 Rules.

5. Learned counsel appearing for the private respondents / the 15 Councillors submits that the Requisition carried by the Councillors for removal of the Chairman was done in accordance with the procedure contemplated under the Act and the Rules and that there is no infirmity in the order impugned before us.

6. The procedure which was challenged by the appellants / writ petitioners in the writ petition before the learned Single Judge relates to the removal of the Chairman of the Darjeeling Municipality which is provided under section 18 of The West Bengal Municipal Act, 1993. Section 18 of the said Act sets out the manner by which the Chairman shall cease to hold office. Under section 18(3), the Chairman may be removed from office by a Resolution carried by a majority of the total number of elected members of the Board of Councillors holding office for the time being at a special meeting to be called for this purpose and in the manner prescribed namely upon a Requisition made in writing by not less than 1/3rd of the total number of elected Members of the Board of Councillors.

7. Section 18 has to be read in conjunction with Rule 9 of The West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995. Rule 9(3)(b) provides for calling of a special meeting after giving no less than 3 days' notice to

the members on a Requisition specifically containing the agenda and signed by not less than 1/3rd of the total number of Councillors of the Municipality. The special meeting is to be convened by the Chairman within 15 days from the date of receipt of such Requisition (Rule 9(3)(b)(i)) or on his failure by the Vice-Chairman within 7 days thereafter (Rule 9(3)(b)(ii)) or any of the three Councillors of the Municipality within a further 7 days thereafter (Rule 9(3)(b)(iii)).

8. The issue before the learned Judge was whether a fresh Requisition was required to be made before the Vice-Chairman if the Chairman fails to convene a meeting after receiving the Requisition under Rule 9(3)(b)(i)). The learned Judge was of the view that the Vice-Chairman can act upon the Requisition made to the Chairman on the failure of the Chairman to convene a meeting under Rule 9(3)(b)(i)). In other words, the learned Judge was of the view that no fresh Requisition is necessary for the Vice-Chairman to act under Rule 9(3)(b)(ii)) since the Vice-Chairman assumes jurisdiction on the failure of the Chairman to act on receipt of the Requisition.

9. The question before us is whether the view of the First Court is supported by section 18 of the Act read with Rule 9 of the Rules. The appellants say that a fresh Requisition was required to be made before the Vice-Chairman for removal of the Chairman while the State and the private respondents / Councillors say otherwise.

10. The documents before us show that the first Requisition was made on 24.11.2022 by more than 1/3rd of the total number of Councillors of the Darjeeling Municipality for removal of the Chairman/appellant no. 1. This Requisition for the

special meeting was made under section 18(3) of the Act which requires the Requisition to be made in writing by not less than 1/3rd of the total number of elected members of the Board of Councillors for removal of the Chairman from Office. The Requisition dated 24.11.2022 was received by the Chairman on 28.11.2022 which would appear from a follow up letter from 5 of the Councillors dated 13.12.2022 noting that the Chairman has failed to convene a special meeting upon receipt of the Requisition dated 24.11.2022. It is clear that the letter dated 13.12.2022 was addressed to the Vice-Chairman and the contents of the letter make it clear that the letter was in the nature of a reminder to the Vice-Chairman to convene a meeting since the Chairman failed to act on receipt of the Requisition dated 24.11.2022. These two documents seen in sequence removes any allegation of procedural error on the part of the Councillors for removal of the Chairman.

11. Even otherwise, section 18(3) read with Rule 9 (3)(b)(i) and (ii) further makes it clear that the Act and the Rules contemplate only one Requisition for convening a special meeting for removal of the Chairman of a Municipality. This Requisition has to specifically mention the agenda and be signed by not less than 1/3rd of the total number of Councillors of the Municipality and the Chairman has to act on such Requisition within 15 days from the date of receipt of such Requisition under Rule 9(3)(b)(i). In the event the Chairman fails to take action upon receiving the Requisition, the Vice-Chairman automatically assumes the jurisdiction and carries the responsibility to act on such Requisition within 7 days after the expiry of 15 days under sub-Clause (i). The wording of Rule 9(3)(b)(i) and (ii) leaves little doubt that the Vice-Chairman automatically comes into the picture upon the Chairman's

failure to act after receiving the Requisition under section (18)(3) of the Act. This would be reinforced by Rule 9(3)(a) which provides that a special meeting may be convened by the Chairman or in his absence by the Vice-Chairman *suo motu* after giving not less than 3 days' notice to the members. The statutory scheme of Rule 9 prevents the formation of a vacuum in the event the Chairman fails to act in terms of convening a special meeting for transaction of important business which cannot wait. There is nothing to suggest in the statutory scheme that a fresh Requisition under section 18(3) of the Act must be made before the Vice-Chairman if the Chairman fails to act within 15 days from receipt of a Requisition.

12. In this respect, we cannot accept the construction given by learned counsel appearing for the appellants that the Statute is silent on this aspect, in fact, a careful reading of Rule 9 can result in no other interpretation but that of a single Requisition which has to be first acted upon by the Chairman, then by the Vice-Chairman and then by three of the Councillors of the Municipality within the time frame fixed under Rule 9(3)(b)(i)(ii) and (iii)). The stages indicate a continuity which are to be followed in sequence.

13. We are hence of the considered view that order of the First Court is correct and that no other view is possible from a conjoint reading of section 18(3) of the 1993 Act and Rule 9(3)(b) of the 1995 Rules.

14. In any event, the Chairman of the Darjeeling Municipality has already been removed on 28.12.2022 and the appellants have not made out any case for

directing the Councillors to turn the clock back for restoring the position as of 27.12.2022 when the appellant no. 1 held Office as the Chairman.

15. We accordingly hold that no grounds have been made out for interference with the impugned order of the First Court. MAT 1 of 2023 and CAN 1 of 2023 are accordingly dismissed without any order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Siddhartha Roy Chowdhury, J.)

(Moushumi Bhattacharya, J.)