

In the High Court of Calcutta

(BEFORE KAUSIK CHANDA, J.)

Ritesh Portel and Another

Versus

State of West Bengal and Others

WPA 3430 of 2022

Decided on December 26, 2022

Advocates who appeared in this case:

Ms. Aparajita Rao

Mr. Kunaljit Bhattacharjee

Ms. Ankara Basu for the Petitioners

Mr. Tapan Kr. Mukherjee

Ms. Saheli Mukherjee for the State

Mr. Bikash Ranjan Bhattacharjee

Mr. Amal Lama

Mr. Rajdeep Mazumder

Mr. Reagen Lama

Mr. Pritam Ray

Ms. Sayanti Poddar

Mr. Shakti Halder for the Respondent Nos. 6 to 21.

The Judgment of the Court was delivered by

KAUSIK CHANDA, J :-The petitioners challenge a requisition made on December 13, 2022 (wrongly mentioned as November 13, 2022) for the removal of the Chairman of Darjeeling Municipality. The petitioners urge that the said requisition was made only by five members. Therefore, no meeting can be convened on the basis of such requisition for the removal of the Chairman.

2. Mr. Bikash Ranjan Bhattacharjee, learned senior advocate appearing for respondent NOS. 6 to 21, on the other hand, submits that the said letter dated December 13, 2022, was not a requisition. In fact, on November 24, 2022, a

requisition signed by 16 members out of 31 members of the Municipality was filed before the Chairman for his removal. Only a reminder was given to the Vice-Chairman by the said letter dated December 13, 2022, to convene a meeting since the Chairman did not convene any meeting following the requisition dated November 24, 2022. It was not necessary to make a fresh requisition before the Vice-Chairman again by the majority of members (one-third) seeking the removal of the Chairman.

3. The issue, therefore, that falls for consideration in this writ petition is that if the Chairman fails to convene a meeting being requisitioned by one-third of the total members, whether the Vice chairman has to be approached again by one-third of the total members for convening a meeting for the removal of the Chairman.

4. Section 18 of the West Bengal Municipal Act, 1993 is quoted below:-

" 18. Terms of office of Chairman.- (1) The Chairman shall cease to hold office as such if he ceases to be a Councillor of the municipal area.

(2) The Chairman, may, at any time, by giving a notice in writing to the Board of " Councillors, resign his office, and the procedure for acceptance or otherwise of the resignation shall be such as may be prescribed.

(3) The Chairman may be removed form 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 [present and voting by them] at a special meeting to be called for this purpose in the manner prescribed upon a requisition made in writing by not less than one-third of the total number of [elected members] of the Board of Councillors, and the procedure for the conduct of business in the special meeting shall be as may be prescribed. "

5. The procedure for convening a special meeting has been prescribed under Rule 9 of the West Bengal Municipal (Procedure and Conduct of Business) Rules, 1995.

6. Rule 9 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 giving 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 a requisition SCC Online Web Edition, © 2023 EBC Publishing Pvt. Ltd. Page 3 Monday, March 27, 2023 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, on 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. "

7. The aforesaid provision makes it clear that for removal of the Chairman, notice has to be given by the one-third majority of the members at the first instance to the Chairman, and " on his failure to do so " the Vice-Chairman may be approached to convene the meeting within seven days thereafter. Again if the Vice-Chairman fails to conduct the meeting, any three of the Councillors of the Municipality within a further seven days may convene the meeting for removal.

8. Section 18 has been engrafted in the West Bengal Municipal Act, 1993 to ensure that a Chairman, who no more enjoys the confidence of the majority of the total members, does not hold the post. For his removal, the mechanism has been prescribed under Section 18 (3) of the West Bengal Municipal Act, 1993 read with Rule 9 of the West Bengal Municipal (Procedure and Conduct of Business) Rules, 1995.

9. The interpretation advanced on behalf of the petitioner suggests that in the event of failure of the Chairman to convene the meeting, the Vice-Chairman has to be approached again by one-third of the total members.

10. Reliance has been placed by the petitioners to the judgment reported at (2003) 2 SCC 111 (Bhavnagar University v. Palitana Sugar Mill (P) Ltd.) for the proposition that if a statute requires to a particular thing to do in a particular manner, it has to be in the said manner or not at all.

11. Further reliance has been placed on a judgment reported at 2009 SCC OnLine Cal 871 (Syed Mehdi Alam, Chairman, Murshidabad Municipality v. State of West Bengal).

12. Such interpretation, in my view, is beyond the spirit of the statutory scheme.

13. A plain reading of the relevant provisions, as quoted above, makes it clear that it is the failure of the Chairman to convene the meeting on the basis of a valid requisition that confers the jurisdiction upon the Vice-Chairman to convene the meeting. The rules do not provide for a fresh requisition before the Vice-Chairman in such an eventuality since it is a continuation of the process of removal initiated before the Chairman.

In other words, the Vice-Chairman assumes the jurisdiction due to the failure of Chairman to convene the meeting, not by virtue of a fresh requisition made before him.

14. The fact of the case in Syed Mehdi Alam (supra) was totally different. In that case, the requisition was not made by the one-third majority of the total members.

15. I have no quarrel with the proposition of law as laid down in the said judgments, I, however, do not see any support to the petitioners from the said judgments. I have already indicated that on November 24, 2022, the requisition was made by one-third of the total members. The said fact is not disputed by the petitioner.

16. Accordingly, I am of the view that the writ petition is devoid of merit, and accordingly, WPA 3430 of 2022 is dismissed.

17. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

Circuit Bench at Jalpaiguri

KAUSIK CHANDA, J.