

(2007) 07 AHC CK 0175

Allahabad High Court (Lucknow Bench)

Case No: None

Rajeev

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: July 23, 2007

Acts Referred:

- Uttar Pradesh Panchayat Raj Act, 1947 - Section 12J(2)

Citation: (2008) 2 AWC 1630

Hon'ble Judges: A.N. Varma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

A.N. Varma, J.

One Nasrat Ali Khan, was elected as a Pradhan of the concerned Gram Panchayat. He died on 1.5.2007. Consequent upon his death, the vacancy to the office of Pradhan occurred. The District Magistrate, vide order dated 25.5.2007 exercising the powers conferred u/s 12J(2) of U.P. Panchayat Raj Act, 1947 (hereinafter to be referred as an Act) nominated the petitioner as Pradhan. It appears that thereafter certain complaints were made by as many as 9 members of Gram Panchayat, with regard to functioning of the petitioner as a nominated Pradhan, whereupon the opposite party No. 3, vide his order dated 12.7.2007 cancelled the order dated 25.5.2007 and nominated Shri Avtar Singh, i.e., opposite party No. 5, as a Pradhan. It is the order dated 12.7.2007 that is being assailed by the petitioner through the instant writ petition.

2. I have heard Shri Shobhit Mohan Shukla, learned Counsel for the petitioner as well as Shri Rakesh Srivastava, learned standing counsel.

3. Shri Shukla vehemently argued that the petitioner being a Pradhan of the Gram Panchayat having been duly nominated in exercise of powers conferred u/s 12J(2) of the Act, by the District Magistrate, he could not have been removed unless the

procedure prescribed u/s 95(1)(g) and Rules framed thereunder are complied with.

4. He further argued that the impugne Girder is a result of oblique intentions of nine members of the Gram Panchayat to divest the petitioner of the powers of Pradhan. He submitted that before passing of the impugned order, the petitioner ought to have been afforded an opportunity of hearing. As per his submission, in utter violation of the provisions of the Act and Rules framed thereunder, the powers of the petitioner have been withdrawn.

5. Shri Srivastava, in opposition argued that the petitioner was not an elected Pradhan but rather a person nominated under Sub-clause (2) of Section 12J of the Act, to discharge the duties and exercise the powers of Pradhan until such time the vacancy to the office of Pradhan is filled in. He argued that merely by virtue of nomination under the aforesaid provision, the petitioner does not acquire the status of an elected Pradhan, and as such, he has no right to continue, as such. According to him, there arises absolutely no question for following the provision of Section 95(1)(g), of the Act and Rules framed thereunder inasmuch as the same applies to an elected Pradhan and not to a person who is nominated u/s 12J(2) of the Act. He has also drawn the attention of this Court towards Annexure-2 to the writ petition by which the petitioner was nominated as Pradhan, vide order passed by the District Magistrate dated 25.5.2007, which clearly stipulates that his nomination was subject to proper functioning of the office of Gram Pradhan. In case, there was any misutilization or misappropriation of the Government Funds, his powers shall be withdrawn.

6. Section 12J of the U.P. Panchayat Raj Act, 1947 reads as follows:

Arrangement in temporary vacancy in office of Pradhan.--Where the office of Pradhan is vacant by reason of death, removal, resignation or otherwise, or where the Pradhan is incapable to act by reason of absence, illness or otherwise, the Up-Pradhan shall exercise all powers and discharge all duties of the Pradhan.

Where the offices of both, Pradhan and Up-Pradhan, are vacant for any reason whatsoever, or when both, Pradhan and Up-Pradhan are incapable to act for any reason whatsoever, the prescribed authority shall nominate a member of the (Gram Panchayat) to discharge the duties and exercise the powers of the Pradhan until such vacancy in the office of either the Pradhan or the Up-Pradhan is filled in, or until such incapacity of either of the two is removed.

7. Perusal of the aforesaid provision reveals that where the office of a Pradhan is vacant by reason of a death, removal or resignation or otherwise or where the Pradhan is incapable to act as such by reason of absence, death or otherwise the Up-Pradhan shall exercise the powers and discharge the duties of Pradhan. Sub-section (2) contemplates that where the office of both, Pradhan and Up-Pradhan are vacant by any of the aforesaid reasons, the prescribed authority shall nominate a member of the Gram Panchayat to discharge the duties and

exercise the powers of Pradhan until such time the vacancy is filled in.

8. The provision thus is only for an interim period, i.e., until such time fresh elections take place and vacancy to the office of Pradhan is filled in, the person nominated, as such, u/s 12J(2) of the Act shall only discharge the duties and exercise powers of the Pradhan. By virtue his nomination he does not acquire any right to hold the office of elected Pradhan.

9. Section 95(1)(g) of the Act prescribes the procedure for removal of Pradhan or Up-Pradhan or a member of Gram Panchayat. Proviso 2 appended to the aforesaid Section lays down that no action shall be taken under Clause (f), Clause (g) except after giving to the body or person concerned a reasonable opportunity of showing cause against the action proposed.

10. On the strength of the aforesaid provision, learned Counsel submitted that since the petitioner was not afforded an opportunity to show cause against the action proposed, the impugned action stands vitiated and the impugned order runs in utter violation of the said provision.

11. The argument is totally misconceived. The provision of Section 95(1)(g) is attracted only where State Government intends to remove a Pradhan, duly elected when any of the conditions as contemplated in Clause (i) to (v) of Clause (g) of Section 95 exists.

12. Throughout the entire fabric of the Act, the word "Pradhan" connotes a person duly elected as a Pradhan under the provisions of the Act, and not a person nominated u/s 12J(2). By virtue of nomination a member of Gram Panchayat, only acquires right to discharge the duties and exercise the powers of Pradhan so as to manage the affairs of Gram Panchayat only for such period till the vacancy to the office of Pradhan is filled in. As soon as, fresh elections take place and a person is elected to the office of Pradhan, the nomination automatically vanishes.

13. Section 12C talks about questioning of the election of a person as a Pradhan. Section 14 provides for procedure to be adopted for the removal of Pradhan. Sub-section (2) of Section 14 contemplates about a meeting to be called for removal of a Pradhan which shall not be convened within two years of his election.

14. Thus, from the perusal of the various sections of the Act, it is clearly decipherable that the office of Pradhan means an elected pradhan and not otherwise. The petitioner having been nominated u/s 12J(2) was only to exercise powers of Pradhan, as such, only for Interregnum period and, therefore, by his nomination he cannot be said to have acquired any right to the office of Pradhan.

15. In view of the fact that the petitioner was not discharging his duties properly, the order passed nominating him u/s 12J(2) was withdrawn. No opportunity was required to be given to him before passing such an order. The proviso appended to Section 95(1)(g) of the Act has absolutely no application in so far case at hand is

concerned. The argument of the learned Counsel for the petitioner is absolutely misconceived.

16. Thus, this Court does not find any illegality or infirmity in the order passed by the opposite parties impugned as Annexure-1, to the writ petition.

17. In the circumstances, the writ petition being totally devoid of merits is, hereby, dismissed.

18. No order, however, as to costs.