
Brij Raj Singh Vs State of U.P.

C.M.W.P. No. 44226 of 2014

Court: Allahabad High Court

Date of Decision: Aug. 25, 2014

Citation: (2014) 125 RD 212

Hon'ble Judges: Vivek Kumar Birla, J; Amreshwar Pratap Sahi, J

Bench: Division Bench

Advocate: H.N. Singh and S.R. Singh, Advocate for the Appellant; Ashish Kumar Srivastava and Vivek Rai, Advocate for the Respondent

Judgement

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Amreshwar Pratap Sahi and Vivek Kumar Birla, JJ.

Heard Sri H.N. Singh, learned senior Counsel for the petitioner, learned Standing

Counsel for the respondents No. 1, 2 & 3, Sri Ashish Kumar Srivastava, learned Counsel for the respondent No. 4 and Sri Vivek Rai, learned

counsel, who has appeared on behalf of the respondent No. 5. The petitioner is aggrieved by the procedure adopted by the respondents for grant

of licence of fair price shop to respondent No. 5.

2. Sri H.N. Singh, learned Senior Counsel, contends that according to the Government Order, the allotment has to be made in the open meeting of

the Gram Sabha. The Gram Sabha did pass a resolution but according to Sri Singh it was only by 207 members. He further contends that the total

membership of the Gram Sabha is 3542 and in view of section 11 of the U.P. Panchayat Raj Act, 1947, the quorum for convening a meeting of

the Gram Sabha should have at least 700 of the total number of members. Therefore, there should have been at least a little more than 700

members to complete the said quorum, which is the minimum requirement. He, therefore, contends that the meeting and the resolution are invalid

for want of quorum and it was not an adjourned meeting.

3. The contention is that had it been an adjourned meeting, quorum would not have been a problem but in the instant case it appears that the entire

papers were manipulated at the instance of the respondent No. 5, in the background of the earlier writ petition filed by Rajesh Yadav in Writ-C

No. 39684 of 2014.

4. The order passed in the aforesaid Writ Petition No. 39684 of 2014 arose out of the fact that the licence of Rajesh was cancelled at the instance

of Avinash Yadav, husband of the respondent No. 5.

5. The said writ petition was rejected on 2.8.2014 inasmuch as the appeal of Rajesh Yadav had already been dismissed and a writ petition is said

to have been filed by him which is pending.

6. Thus, in the aforesaid background, the contention appears to be that without following the correct procedure of observing the quorum of the

meeting, the allotment in favour of the respondent No. 5, is a clear paper manipulation.

7. Learned Counsel for the respondent No. 5 has urged that whenever there is a disturbed meeting or a meeting which cannot be held then it is the

SDM who will finalise the said allotment. This issue is absolutely irrelevant inasmuch as in the instant case it is admitted that the meeting was

actually held. The aforesaid argument therefore need not be considered by us.

8. Having considered the submissions raised and having heard the learned Counsel for the parties, we are of the opinion that this being a factual

dispute with regard to the exact number of participants for completion of quorum and other related matters with regard to convening of the

meeting, it would be appropriate for the petitioner to approach the respondent No. 3 along with a certified copy of this order, who shall proceed

to make an enquiry and after hearing the respondent No. 5 as well as the Gram Pradhan of the village and any other officials involved in the same,

proceed to pass appropriate orders within three weeks from the date of production of a certified copy of this order. The writ petition stands

disposed of with the said observations.