

(2014) 04 AHC CK 0187

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition Nos. 2658 and 3077 of 2012 (M/B)

Promod Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: April 7, 2014

Citation: (2014) 125 RD 216

Hon'ble Judges: Sunil Ambwani, J; Devendra Kumar Upadhyaya, J

Bench: Division Bench

Advocate: D.K. Singh, Kapil Muni Dubey and Dhirendra Kumar Dubey, Advocate for the Appellant; N.A. Siddiqui and Shrawan Kumar, Advocate for the Respondent

Judgement

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Sunil Ambwani and Devendra Kumar Upadhyaya, JJ.

We have heard Sri Kapil Muni Dubey, learned Counsel appearing for the petitioner and learned Standing Counsel appearing for the State-respondents. The petitioner was elected as Pramukh of Kshettra Panchayat Ram Nagar, District Ambedkar Nagar on 22.12.2010. He assumed the office of Pramukh on 18.03.2011 i.e. the date on which first meeting of Kshettra Panchayat was held. In Writ Petition No. 2658 (MB) of 2012, the petitioner has challenged the notice of no confidence motion which was given by the 60 members of the Kshettra Panchayat. The Collector, Ambedkar Nagar in view of section 15(3), (1) of U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 had fixed the date 10.4.2012 at 11.00 A.M. to convene the meeting for consideration of no confidence motion.

2. The show cause notice has been challenged by the petitioner on the ground that it is not in a prescribed proforma. The motion was carried out against the petitioner, against which the petitioner has filed Writ Petition No. 3077 (MB) of 2012 in which he has prayed for quashing of the order dated 10.4.2012.

3. The result of meeting was declared by the Sub Divisional Magistrate, Alapur, District Ambedkar Nagar in which out of 77 members of the Kshettra Panchayat who casted their votes in the meeting 71 members voted were against the petitioner.

4. The result of the no confidence motion has been challenged on the ground that procedure for holding meeting as prescribed under section 15(1), (2), (3) of the U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 was not followed. The written notice of intention to make the motion was not given to him. Out of the 77 persons who had participated in the meeting, majority of them had given in writing that the meeting was not held in free and fair atmosphere.

5. In writ petition No. 10539 (MB) of 2013, the petitioner has prayed for quashing of the impugned order dated 02.11.2013 and Government Order dated 28.10.2013, by which the District Panchayat Raj Officer, Ambedkar Nagar has appointed the Sub Divisional Magistrate, Ambedkar Nagar as Administrator of Kshettra Panchayat, Ram Nagar and the Principal Secretary, Government of U.P. has directed the District Magistrate, Ambedkar Nagar to take steps in accordance with section 9(2) of the U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961.

6. It is submitted by the learned Counsel appearing for the petitioner that since the notice was not given in prescribed proforma and majority of the members had stated that the meeting was not held in free and fair atmosphere and further the casual vacancy could not be filled in by appointing Administrator, the order passed by the District Panchayat Raj Officer, Ambedkar Nagar be quashed and the petitioner may be allowed to function as Chairman of Kshettra Panchayat, Ram Nagar.

7. Learned Counsel for the petitioner has relied upon the judgment in the case of Ram Nath Tripathi v. Commissioner, Lucknow Division, Lucknow and others (1992) 2 UPLBEC 1181 in which it was held that notice is required to be given on prescribed proforma and it is mandatory. The judgment in the case of Ram Nath Tripathi (supra) was considered by the Full Bench of this Court in the case of Vikas Trivedi and Others Vs. State of U.P. and Others, in which it has been held that observation of this Court in Ram Nath Tripathi's case (supra) that notice in prescribed proforma is mandatory, does not lay down the correct law. Paragraph 79 of the judgment in the case of Vikas Trivedi (supra) is as follows:--

"79. Our answers to the questions referred including the question No. 1, which has been re-framed by us, are as follows:--

(i) The requirement of giving notice by the Collector under section 15(3)(ii) in the prescribed form as required by Rule 2 and Form-2 is held not to be mandatory and on substantial compliance of the provisions the proceeding shall not be vitiated. Whether there has been substantial compliance of the said provisions, depends on the facts and circumstances of each case.

(ii) The observation of the Division Bench in Ram Nath Tripathi's case (supra) that notice in prescribed form along with its annexures in complete formate is mandatory does not lay down the correct law. The judgment in Smt. Krishna Jaiswal's case (supra) lays down the correct law and is approved.

(iii) The notice sent by the Collector convening the meeting to consider the motion of no confidence cannot be invalidated on the ground that copy of the notice with the name of the person who had signed the written notice of intention, was not sent along with the notice. When proposed motion of no confidence is signed by the requisite members, the notice convening the meeting cannot be invalidated merely on the ground that some pages of the proposed motion containing signatures of some members only were sent along with the notice."

8. The Full Bench has held that the requirement of giving notice by the Collector under section 15(3)(ii) in the prescribed form as required by Rule 2 and Form 2 is not mandatory. On substantial compliance of the provisions, the proceeding shall not be vitiated. Whether there has been substantial compliance of the said provisions, depends on the facts and circumstances of each case.

9. We have examined the contents of the notice and we find that each and every requirements of the valid notice are complete, if examined on the ground of substantial compliance of the provisions. In the notice, not only the number of the members of the Kshetra Panchayat, but also the intention to bring no confidence motion against the petitioner is given. In the notice, date, time and place of the meeting has also been given. The notices were also served on the members of the Kshetra Panchayat.

10. The petitioner has not given details on the basis of which it is alleged that proceedings were not fair and were not held in free and fair manner. There are no details of the meeting in which motion was passed with overwhelming majority.

11. The District Magistrate has power to appoint the Administrator under section 9(2) of the Act. Now, since the vacancy has been caused, fresh election is required to be held in accordance with section 12 read with sections 6 and 7 of the Act to fill up the vacancy for the remainder period. In view of the above, the writ petition Nos. 2658 (MB) of 2012 and 3077 (MB) of 2012 are dismissed and Writ Petition No. 10539 (MB) of 2013 is disposed of with the direction that the election may be held in accordance with sections 6, 7 and 12 of the Act to fill up the casual vacancy, as early as possible.