

(2015) 03 AHC CK 0047

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 58619 of 2014

Afroz Jahan

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302

Citation : (2015) 3 ADJ 555 : (2015) 4 ALJ 456 : (2015) 2 ESC 1186 : (2015) 127 RD 417 : (2015) 2 UPLBEC 1134

Hon'ble Judges : Tarun Agarwala, J; Satish Chandra, J

Bench : Division Bench

Advocate : Amit Saxena, for the Appellant; Chandra Pal Singh and Umesh Vats, Advocates for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.

1. Sri Yogendra Singh alias Bhura was elected as the Pramukh of the Kshetra Panchayat Dilari, District Moradabad. It transpires that a criminal case, being Case Crime No. 142 of 2013 under Section 147, 148, 149 and 302 of the Indian Penal Code was instituted against this Pramukh who was, subsequently, arrested and sent to jail. At the present moment, the said Pramukh continues to languish in jail and has not been bailed out on account of which a temporary vacancy has occurred in the office of the Pramukh and necessary arrangement is required to be made by the District Magistrate under Section 9-A of the U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 (hereinafter referred to as the "Act"). The District Magistrate, in exercise of his powers under Section 9-A of the Act, issued an order dated 27.1.2014 appointing the petitioner, who an elected member of the kshetra panchayat, as an officiating Pramukh.

2. It transpires that some complaint was given by certain members against the petitioner and, based on this complaint, the District Magistrate passed a fresh

order dated 30.9.2014 removing the petitioner from the post of officiating Pramukh and appointing the Sub-Divisional Magistrate as the officiating Pramukh. Subsequently, by another order dated 15.10.2014 the District Magistrate modified its order dated 30.9.2014 and appointed Smt. Sazida Begum-respondent No. 4 as the officiating Pramukh. The petitioner, being aggrieved by the action of the District Magistrate in removing the petitioner and appointing respondent No. 3 and thereafter, respondent No. 4 as officiating Pramukh has filed the present writ petition.

3. We have heard Sri Amit Saxena, the learned counsel for the petitioner, Sri Umesh Vats, the learned counsel for respondent No. 4 and the learned Standing Counsel for respondent Nos. 1, 2 and 3.

Learned counsel for the petitioner submitted and contended vehemently that once the power has been exercised by the District Magistrate under Section 9-A of the Act, he becomes functus officio and could not pass another order removing the petitioner from the post of officiating Pramukh and appointing another member as the officiating Pramukh. It was contended that power can only be exercised when there is a temporary vacancy and, in the absence of a temporary vacancy it was not open to the District Magistrate to exercise the powers afresh by removing him on some unfounded charges and appointing another member to officiate as the Pramukh. It was further contended that assuming without admitting that the District Magistrate had the powers under Section 9-A, the said order was violative of the principles of natural justice as the impugned order clearly indicated that he was removed on a certain charge made by certain members to which he was entitled to submit a reply and be given an opportunity of hearing, which in the instant case had not been done.

4. On the other hand, the learned Standing Counsel for respondent Nos. 1, 2 and 3 and Sri Umesh Vats, the learned counsel for respondent No. 4 contended that the District Magistrate has the power to make arrangement as he thinks fit and, in this regard, can change the temporary Pramukh if he finds that such arrangement so made was not for the benefit of the kshetra panchayat. The learned counsel contended that the District Magistrate has been given the power to make temporary arrangement to appoint a person as an officiating Pramukh under Section 9-A of the Act where the Pramukh was unable to discharge his functions owing to absence, illness or any other cause and, in view of Clause 16 of the U.P. General Clauses Act, where a power to make the appointment is conferred upon an authority, such power to appoint also includes the power to suspend or dismiss any person so appointed in exercise of that power. It was contended that in the light of Clause 16 of the U.P. General Clauses Act, the District Magistrate had the power to remove the officiating Pramukh.

5. Having heard the learned counsel for the parties, it would be appropriate to have a look at Section 9-A, which was substituted by U.P. Act No. 44 of 2007. For facility, the said provision is extracted hereunder:

"9-A. Temporary arrangement in certain cases.-When the Pramukh is unable to discharge his functions owing to absence, illness or any other cause, the District Magistrate may, by order, make such arrangement, as he thinks fit, for discharge of the functions of the Pramukh until the date on which the Pramukh resumes his duties."

From a perusal of the aforesaid provision, it is apparently clear that where the Pramukh is unable to discharge his functions owing to absence, illness or any other cause, the District Magistrate would make such arrangement as he thinks fit for the discharge of the functions of the Pramukh until the date on which the Pramukh resumes his duty. The said provision makes it apparently clear and explicit without any room for doubt that the District Magistrate has been conferred the power only when a temporary vacancy on the post of Pramukh arises and that such power cannot be exercised where such temporary vacancy is not available.

6. In the instant case, the Pramukh was arrested and sent to jail. Consequently, the said Pramukh could not discharge the functions of the Pramukh and the work of the kshetra panchayat was suffering. Therefore, a temporary vacancy arose and the District Magistrate was justified in exercising the powers and make such arrangement as he thought fit for the discharge of the functions of the Pramukh by appointing the petitioner to officiate as the Pramukh.

7. In our view, once this power has been exercised the District Magistrate becomes functus officio and could not pass any further order, inasmuch as the said temporary vacancy gets filled up. In the event, the temporary Pramukh failed to discharge his functions owing to absence, illness or any other cause, in that scenario, the District Magistrate gets fresh powers to order and make arrangement as he thinks fit for the discharge of the functions of the Pramukh and not otherwise.

8. In the instant case, the petitioner was discharging his duties as officiating Pramukh. There was no occasion for the District Magistrate to exercise further powers under Section 9-A of the Act of 1961 since no temporary vacancy had occurred. Merely because some members had made a complaint against the petitioner will not allow or justify the District Magistrate to pass a fresh order under Section 9-A of the Act. For removal of the Pramukh including an officiating Pramukh, the procedure to be followed would be by bringing a motion of no confidence under Section 15 of the Act.

9. Clause 16 of the U.P. General Clauses Act will not be applicable, inasmuch as the said power can only be exercised, if no different intention appears under the Act. The Act gives power to the District Magistrate to make temporary arrangements. The power to remove a Pramukh lies with the members of the kshetra panchayat by bringing a motion of no confidence against the Pramukh under Section 15 of the Act.

10. Consequently, we are of the opinion that the District Magistrate is denuded of

his powers for removal of an officiating Pramukh appointed by him under Section 9-A of the Act.

11. In view of the aforesaid, the District Magistrate becomes functus officio the moment he passes an order under Section 9-A of the Act and that the District Magistrate can exercise his powers afresh when another temporary vacancy occurs. The respondents concede that the District Magistrate could not have appointed a Sub-Divisional Magistrate and that only a member of the kshetra panchayat could be appointed as a temporary Pramukh as held by a Division Bench of this Court in Smt. Mamta Kanaujia and others v. State of U.P. and others, 2009(2) ADJ 446 (DB)(LB).

In the light of the aforesaid, the impugned orders dated 30.9.2014 and 15.10.2014 cannot be sustained and are quashed.

The writ petition is allowed. The District Magistrate is directed to give the charge of officiating Pramukh to the petitioner forthwith.