

(1987) 05 AHC CK 0001

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8523 of 1984

Devi Singh

APPELLANT

Vs

District Panchayat Raj Adhikari and Others

RESPONDENT

Date of Decision : 19-05-1987

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 14, 14(4), 2

Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 33B, 33B(2), 36, 37, 37(1)

Citation : (1987) 05 AHC CK 0001

Hon'ble Judges : R.K. Gulati, J;K.C. Agarwal, J

Bench : Division Bench

Advocate : V.D. Ojha, for the Appellant;

Judgement

R.K. Gulati, J.—The Petitioner was holding an office of Pradhan of Gaon Sabha Nagala Aliya, Post Office Gangchauli, Tahsil Hathras, District Aligarh. A notice of an intention to move a motion of non-confidence against the Petitioner was delivered to District Panchayat Raj Adhikari, the Respondent No. 1. This notice was given by the Respondents Nos. 5 to 9 by their application dated 9.3.1984. On receipt of the said notice the District Panchayat Raj Adhikari fixed 6.4.1984 as the date for the meeting of the Gaon Sabha at 10 A.M. at Basic Primary Pathshala Nagala Aliya. He directed the Vikas Khand Adhikari, the Respondent No. 2 to enquire into the matter and further that due information be given about the meeting, its place and date by affixing notices at conspicuous places in the area of Gaon Sabha and publicity should also be made by beat of drums. The Respondent No. 2 was required to report compliance by 23.3.1984. Ultimately the motion was carried out by the requisite majority. Consequently the Respondent No. 1 passed an order dated 7.4.1984 by which he removed the Petitioner from the office of Pradhan and directed that charge be handed over to the Respondent No. 4 the Up-Pradhan. The Petitioner has filed this writ petition seeking a writ of certiorari against the order dated 7.4.1984 and a further relief, by making an amendment application praying that resolution dated 6.4.1984 by which the motion was carried out be also quashed.

2. This writ petition is opposed by the Respondents. Once counter affidavit has been filed on behalf of Respondents Nos. 1 to 3, by Sri Sugriv Singh who was the Presiding Officer in the meeting held on 6.4.1984. Another counter affidavit has also been filed by Respondent No. 4.

3. A number of grounds have been raised in this writ petition. We have heard the learned Counsel for the parties.

4. Provisions relating to the removal of Pradhan are contained in Section 14 of the U.P. Panchayat Raj Act (hereinafter referred to as " the Act ") Sub-section (4) of Section 14 says that subject to the provisions of this section, the procedure for the removal of a Pradhan, including that to be followed at such meeting, shall be such as may be prescribed. The term " Prescribed " has been defined in Clause (p) of Section 2. According to the definition contained in that clause, it means prescribed by the. Act or rules made thereunder. Rules 33B and 37 of the Rules are relevant for the purposes of this case. Sub-rule (2) of Rule 33B, so far as relevant for our purposes, reads as under:

The Prescribed Authority shall convene a meeting of the Gaon Sabha, u/s 14 of the Act, on a date to be fixed by him which shall not be later than thirty days from the date of receipt of the motion.

5. Relying upon the aforesaid rule and the expression " which shall not be later than thirty days " contained therein the learned Counsel for the Petitioner urged that the motion of non-confidence could not have been carried out unless a period of thirty days had expired from the date when the notice was given, namely, on 9.3-.984. The meeting which was held on 6.4.1984 was illegal and invalid.

6. We are unable to accept this contention. In our opinion the expression " not later than thirty days " suggests an outer terminus, meaning thereby that it should be before thirty days. In " Words and Phrases " Permanent Edition, it is stated Phrase " not later than " is synonymous with phrase " at any time prior to." *Hastings v. Nash* 219 SW 225, 226, 215 Ark. 38. At another place, it has been defined as " By " as indicating a terminal point of time, means " not later than ; as early as. " *Goldman v. Broyles, Tax.*, 141 SW 283, 285. Since the meeting was held within the period of thirty days from the daje of notice there is nothing wrong with it.

7. Rule 33B(1) had been the subject matter of consideration before this Court in *Dayashanker v. District Panchayat Officer, Fatehpur*, 1968 ALJ 753. The facts in that case were converse to that of the present case. The meeting of Gaon Sabha in that case was convened beyond a period of thirty days from the date of notice. It was contended that the meeting could only be convened within the period of thirty days. This contention was repelled. The view taken was that the provision about convening of the meeting of the Gaon Sabha not later than thirty days from the receipt of the notice is not compulsive or mandatory. It is merely directory. It is to be complied with substantially but its infraction would not

nullify the proceedings at the meeting. For this additional reason also, we reject the argument of the learned Counsel.

8. The learned Counsel then urged that notified venue for the meeting was changed to another place, therefore there was no meeting in the eye of law which was held on 6.4.1984. The Petitioner's allegation is that in the meeting which began at the scheduled time and place till 11.30 A.M. only 66 members turned up out of the total membership of 656. As the quorum was not complete the Petitioner along with six other members moved an application before the Respondent No. 2 to postpone the meeting. At about 12 noon the Respondents Nos. 5 to 9 filed an application for change in the place of meeting from Basic Primary Pathshala (the scheduled place) to Bamba Pul on the ground that it was a central place and some voters had gathered there. The place was changed without any information to the members of the Gaon Sabha. That the Petitioner informed the Respondent No. 1 about this illegality both by telegram and a letter under registered cover. It is further asserted that the meeting was conducted only on paper in connivance with the Respondents Nos. 5 to 9.

9. All these assertions have been stoutly denied in the two counter affidavits filed on behalf of the Respondents. Paragraphs 13, 14 and 15 of the counter affidavit, filed on behalf of the Respondents Nos. 1 to 3, are very relevant. It is stated that no application for change of place as alleged by the Petitioner was ever moved by the Respondents Nos. 5 to 9. The meeting was held at the scheduled place in which 385 members of the Gaon Sabha were present. The total strength of the members of the Gaon Sabha being 643, the members present constituted more than 1/5th of the total number of voters. As such the quorum was complete and in accordance with the provisions of the Act the meeting was declared in order. No telegram or registered letter was received from the Petitioner. Further as required by Rule 36 of the Rules framed under the Act, minutes of the meeting were duly recorded which sets out the correct facts, a copy of which is Annexure 14 to the writ petition. The motion was supported by 334 members while it was opposed by 39 members, 12 votes were declared as invalid. As the motion was carried out by a majority of 2/3rd of the persons voting and present, by an order dated 7.4.1984 the Petitioner was removed from the office of Pradhan and was directed to hand over the charge to Up-Pradhan.

10. Learned Counsel for the Petitioner drew our attention to a note appended to the resolution. The said note is to the following effect:

Adhikansh sadasyon ke anurodh par school se bamba ke pul tino gaonon ke beech sthan badalna anivarya ho gaya

11. The claim made by the Petitioner before us is strongly resisted by the mRespondents. Their claim is, it is a later manipulation. We were referred to the relevant paragraphs of the writ petition where mention of annexure 14 has been made. In these paragraphs there is no averment worth the name about the disputed note relied upon, during the course of argument before us. No valid

reason could be given by the learned Counsel appearing for the Petitioner for such an omission particularly when the disputed note could have been a sheetanchor of Petitioner's case. It was pointed out that the note runs contrary to minutes and the resolution by which the motion was carried out. The resolution clearly states that the meeting was held at the scheduled place. On the face of this assertion in the resolution it would be not an imprudent act on the part of any one to append such note except that it is a later insertion. The note finds place at a very innocuous place. It appears at the top left hand margin under the column "upasthitb sadasyon ke nam". In ordinry course of business such a note could not have been given on the place where it has been given. As stated earlier the meeting was presided over by the Respondent No. 2 who has filed his own affidavit controverting the claim of the Petitioner. He is a Government officer and had no personal interest in the matter. We are inclined to accept the case of the Respondents, and are not prepared to attach any importance to the said note. That apart there are other reasons which impel us to reject the Petitioner's case. The claim set up by the Petitioner at best could be treated as a highly disputed question of fact which cannot be resolved on the basis of the affidavits filed in these proceedings. For its proper decision further evidence would be necessary. We do not consider it a fit case in which while exercising our jurisdiction under Article 226 of the Constitution we should go into this matter. In taking this view we have in the back of our mind the legislative intent in enacting Section 14 of the Act,; namely to provide, primarily a method for obtaining the wishes of the members of the Gaon Sabha in relation to the motion of non-confidence against the Pradhan or Up-Pradhan as the case may be. Having regard to the fact that the resolution was carried out by an overwhelming majority i. e. out of 385 members present and voting 334 voted in favour of the motion. We accordingly reject this contention.

12. The learned Counsel for the Petitioner then argued that the Petitioner had made a representation on 21.3.1984 to the Respondent No. 1 by an application stating that the signatures of 125 persons appended to the notice of no confidence were forged He had also filed three affidavits on 24.3.1984 each jointly sworn by two persons. The Petitioner's request to grant further time for filing affidavit of other persons was orally rejected by the Respondent No. 1. According to the Petitioner his complaint was not investigated therefore he is entitled to relief as claimed in the writ petition.

13. We are not impressed by this submission. By order dated 22.3.1984 the Petitioner was required to substantiate his allegations by filing affidavits of 125 persons whose signatures were alleged to have been forged. No affidavit or any other evidence was filed by the Petitioner to support bis assertion. The Petitioner was allowed ample opportunity to prove his point which he did not avail of. In these circumstances he cannot be heard to say that the Respondent No. 1 had failed to scrutinise his complaint and thus the proceedings taken in pursuance of the notice given for non-confidence motion were illegal. In Mathura Prasad Tewari v. Assistant District Panchayat Officer, 1966 AWR"765(I) a Full Bench of

this Court held that the Prescribed Authority was not obliged by law to make an enquiry into the genuineness or otherwise of the signatures appended to the notice. The Full Bench decision has been followed by a learned single Judge of this Court in the case of Dayashanker v. District Panchayat Officer (supra). We are bound by these decisions. For these reasons also the Petitioner cannot succeed.

14. The last contention raised on behalf of the Petitioner is that he was not given any personal notice of the motion moved against him.

15. In *Om Prakash v. State of U.P.* 1984 AWC 745 a Division Bench of this Court had an occasion to deal with similar contention. The contention was repelled. The Court contrasted the provisions contained in Sub-rule (1) of Rule 37 which provide for a notice in respect of the meeting relating to the Gaon Sabha with those contained in Sub-rule (2) of Rule 37 which provide for a notice for meetings relating to Gaon Panchayat. The Court observed:

A bare perusal of Rule 37 of the Rules indicates that the rule itself has made a distinction in the procedure to be followed in regard to notice of a meeting of a Gaon Sabha vis-a-vis notice of a meeting of a Gaon Panchayat, whereas Sub-rule (2) of Rule 37 of the Rules which deals with the notice of a meeting of the Gaon Panchayat prescribes that notice shall be sent to each member through a chowkidar or a peon at least five days before the meeting no such requirement is to be found in regard to a notice for a meeting of Gaon Sabha in Sub-rule (1) of Rule 37 of the Rules. In regard to a meeting of a Gaon Sabha the requirements of Sub-rule (1) of Rule 37 is that a notice to attend the meeting of the Gaon Sabha shall be given by affixing it at conspicuous places in the area of Gaon Sabha and by communication of date, time and place of the meeting by beat of drum.

Admittedly the procedure provided under Sub-rule (1) of Rule 37 was followed in the instant case. We agree with the view expressed in *Om Prakash's* case (supra) and hold that it was not necessary to give any formal notice to the Petitioner. We accordingly reject the last contention of the Petitioner as well.

16. In the result this writ petition fails and is dismissed with costs.