

(1989) 12 AHC CK 0082

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 24028 of 1989

Jayantri Prasad Misra

APPELLANT

Vs

District Panchayat Raj Officer and Another

RESPONDENT

Date of Decision : 06-12-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Panchayat Raj Act, 1947 — Section 11, 11(2), 14, 14(1), 14(3)

Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 33B

Citation : (1990) 1 AWC 439

Hon'ble Judges : M.P. Singh, J;K.P. Singh, J

Bench : Division Bench

Advocate : H.N. Shukla, for the Appellant;

Final Decision : Dismissed

Judgement

K.P. Singh J.

1. This writ petition has been dismissed by us in limine on 8-11-1989. We directed the case to be listed on 13-11-1989 for delivery of reasons. Now we proceed to record our reasons for the dismissal of the writ petition in limine.

2. The Petitioner is the Pradhan of Gaon Sabha, Bhatwar, block Ram Nagar, district Jaunpur. An effort for motion of no confidence in the Petitioner was made and in that connection the opposite party No. 1 after exercising powers u/s 14 read with Rule 33-B of U.P. Panchayat Raj Act fixed 24-9-1989 for the meeting as is evident from Annexure I attached with the writ petition. It appears that the aforesaid date 24-9-1989 was cancelled due to the circumstance that on enquiry it was revealed that 71 persons had not signed the notice of the intention to make the motion for removal of the Petitioner as was required Under Rule 33-B of the U.P. Panchayat Raj Act (see Annexure 2). On 20-10-1989 the opposite party No. 1 again exercising powers u/s 14 read with Rule 33-B of the U.P. Panchayat Raj Act, fixed 9-11-1989 for the meeting regarding vote of no confidence in the Petitioner moved by requisite number of members of the Gaon

Sabha as is evident from Annexure III.

3. Now the Petitioner has approached this Court under Article 226 of the Constitution for a writ in the nature of certiorari for quashing Annexure III dated 20-10-1989. The second prayer made on behalf of the Petitioner is for a writ of mandamus commanding the opposite parties not to give effect to the notice dated 20-10-1989. General relief and costs of the petition have also been prayed for. Three contentions have been raised before us by the learned Counsel for the Petitioner.

4. Firstly, it has been contended that motion for no confidence in the Petitioner failed on 24-9-1989, therefore in view of the provisions of Section 14(3) of U.P. Panchayat Raj Act no subsequent meeting for the removal of the Pradhan can take place on 9-11-1989. Therefore, the notice contained in Annexure III dated 20-10-1989 should be quashed.

5. Secondly, it has been contended that the opposite parties are proceeding arbitrarily and illegally in the matter of second motion for no confidence in the Petitioner therefore, the proceedings should be quashed.

6. Thirdly, it has been contended that the notice dated 20-10-1989 was served upon the Petitioner on 1-11-1989 therefore, 15 days notice as contemplated by Section 14 of the U.P. Panchayat Raj Act has not been given to the Petitioner because the meeting is to be held on 9-11-1989, therefore, the notice contained in Annexure III should be quashed and its operation should be stayed.

7. We have examined the contentions raised on behalf of the Petitioner and we do not find any merit in any of the contentions. As regards the first contention it is proper to mention the provisions of Section 14 Sub-clause(3) of the Panchayat Raj Act which reads as below:

If the motion is not taken up for want of quorum or fails for lack of requisite majority at the meeting no subsequent meeting for the removal of the same Pradhan shall be convened within a year of the date of the previous meeting.

8. It is noteworthy that the learned Counsel for the Petitioner is under wrong notion of law that the previous meeting for motion of no confidence in the Petitioner had failed due to want of quorum or for lack of requisite majority at the meeting. The meeting regarding vote of no confidence in the Petitioner scheduled to be held on 24-9-1989 was cancelled on 23-9-1989 as is evident from Annexure II attached with the writ petition, therefore, the contention raised on behalf of the Petitioner in this regard is wholly wrong and without any merit. In this connection it would be necessary to mention that Section 11 Sub-clause (2) of the U.P. Panchayat Raj Act, 1947 contemplates that for any meeting of the Gaon Sabha 1/5th of the number of the members shall form the quorum and that no quorum shall be necessary for a meeting adjourned for want of quorum. In this case it is necessary to note that the meeting scheduled to be held on 24-9-1989 was cancelled, therefore, no question of quorum arose nor does the

question of lack of requisite majority at the meeting arises. The learned Counsel is under wrong notion that in an enquiry as 71 members had not signed the notice of the intention to move a motion for removal of the Petitioner, there-fore, there was no requisite quorum for the meeting notified. It is enough to mention that the learned Counsel has failed to notice the relevant Section 11(2) of the Act and the decision of this Court 1966 AWR 765 (FB) Mathura Prasad Tiwari v. Assistant District Panchayat Raj Officer, Faizabad. In view of the aforesaid decision it may be said that the action of the opposite party No. 1 may not be quite in consonance with the provisions of law but it was to the benefit of the Petitioner and the Petitioner acquiesced in it. The grievance of the Petitioner that second motion for no confidence in him cannot take place within one year of the date 24-9-1989 is not acceptable to us because the relevant meeting was not held and the provisions of Section 14(3) are not at all attracted in the facts and circumstances of this case.

9. Moreover in Jugul Kishore Paliwal v. District Magistrate 1968 ALJ 704 a learned Single Judge of this Court while interpreting the provisions of Section 87-A(13) has indicated at page 707 that if the original motion has become infructuous for other reasons, the bar to the reception of another notice of a motion of no confidence in the same president would not apply. The aforesaid provision of the Municipality Act is similar to the provision contained in Section 14(3) of the U.P. Panchayat Raj Act. We see no reason to take a different view than the view expressed by the learned Single Judge in the aforesaid case 1968 ALJ 704. Therefore, we do not find any merit in the first contention raised on behalf of the Petitioner.

10. As regards the second contention, it is sufficient to observe that the learned Counsel for the Petitioner has failed to indicate any illegality or arbitrariness in the action of the opposite parties in entertaining the second motion for no confidence in the Petitioner. Rather, we find that their action is quite in consonance with the provisions of Section 14 read with Rule 33-B of the U.P. Panchayat Raj Act. The contention of the learned Counsel for the Petitioner in this regard is without any basis or evidence, therefore, we repel that contention.

11. The learned Counsel for the Petitioner has invited our attention to paras 10 and 17 of the writ petition in support of his third contention. The emphasis laid by the learned Counsel for the Petitioner is to the effect that the notice of the meeting to be held on 9-11-1989 was served upon the Petitioner only on 1-11-1989. Therefore, clear 15 days" notice was not given to the Petitioner. The Petitioner has not attached the copy of the notice alleged to have been served on 1-11-1989 nor has the Petitioner made any averment that he did not get the notice through Duggi in the Gaon Sabha as was directed in Annexure III. For want of necessary allegations and the material attached with the writ petition, we are not impressed by the argument of the learned Counsel for the Petitioner that the Petitioner had not got requisite notice. As the meeting for no confidence in the Petitioner was to be held on 9-11-1989 and the case was heard by us last

time on 8-11-1989, we did not think it proper to adjourn the case and linger the matter any more. Annexure III dated 20-10-1989 and the meeting was scheduled to be held on 9-11-1989, therefore, the aforesaid Annexure did comply with the provisions of Section 14(1) of the Act. According to Annexure III notice was contemplated in the Gaon Sabha through Duggi also by 24-10-1989 and as no averment has been made that no Duggi was done in the Village nor the Petitioner got notice through Duggi, we are not impressed with the argument of the learned Counsel for the Petitioner that the Petitioner had received no notice prior to 1-11-1989. The third contention raised on behalf of the Petitioner is not entertainable in view of the absence of necessary averment in the writ petition as well as for want of filing the alleged notice served on the Petitioner on 1-11-1989.

12. In the result, all the contentions raised on behalf of the Petitioner fail.

13. For what has been said above, we record our reasons for the dismissal of the writ petition in limine on 8-11-1989 to be delivered on 13-11-1989.

14. Reasons delivered.