
(2011) 06 AHC CK 0083
In the Allahabad High Court
Case No : Writ Petition No. 486 (M/S) of 2011

Lajwanti Aswal

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 07-06-2011

Acts Referred:

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 15(3)
(ii)

Citation : (2011) 06 AHC CK 0083

Hon'ble Judges : Tarun Agarwala, J

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.

The petitioner was elected as the Block Pramukh of Block Kaljikhali, District Pauri Garhwal in the year 2008. More than 50% of the members of the Kshetra Panchayat filed an application on 23rd February, 2011 before the District Magistrate under Sections 15 and 16 of the U.P. Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961 (hereinafter referred to as "the Act") seeking a motion of the noconfidence against the petitioner. The said application was considered and the Collector passed an order on 26th February, 2011 for the return of the complaint on the ground that a composite application cannot be filed under Sections 15 and 16 of the Act. Consequently, a fresh application dated 28th February, 2011 was moved by 19 members of the Kshetra Panchayat along with their respective affidavits seeking a motion of the noconfidence against the petitioner. The said application was duly considered by the competent authority, namely, the Collector, who after being satisfied on the genuineness of the signatures, issued an order dated 1st March, 2011 directing that a meeting for the consideration of the noconfidence motion would be held on 23rd March, 2011 at 10.00 a.m. under the chairmanship of the SubDivisional Magistrate, Sadar, Pauri Garhwal. The Block Development Officer was directed to ensure that the notices were issued to all the members and that the notice was also pasted on the notice board.

The petitioner, being aggrieved by the issuance of the notice dated 1st March, 2011, has filed the present writ petition. In paragraph 5 of the writ petition, the petitioner has contended that the signatures of various members on the application are forged. In paragraph 10, it is alleged that the Collector failed to record his satisfaction on the genuineness of the signatures appended on the application by the members of the Kshettra Panchayat. In paragraph 11, it is alleged that 15 days previous notice was not given to the petitioner. In paragraph 12, it is stated that the notice dated 1st March, 2011 was not sent by registered post but was sent under cover of posting in gross violation of the prescribed Rules. It is alleged that the notice dated 1st March, 2011 was duly received by the petitioner on 14th March, 2011 and since 15 days clear notice was not provided, the convening of the meeting to be held on 23rd March, 2011 was wholly illegal in violation of Section 15 of the Act and Rule 2 of the Rules. On these allegations, the writ petition was entertained and an interim order dated 18th March, 2011 was passed staying the convening of the meeting to be held on 23rd March, 2011. Respondent nos. 1 and 2 have filed a counter affidavit contending therein that the Collector, after being satisfied on the genuineness of the signatures, issued an order dated 1st March, 2011 directing convening of the meeting for the consideration of the noconfidence motion to be held on 23rd March, 3 2011. The respondents contended that the provision of Section 15 of the Act giving 15 clear days for convening a meeting was thus duly complied with as contemplated under Section 15(3) of the Act. It is also stated that a direction was issued to the Block Development Officer to ensure that the notices were served to all the persons and in pursuance thereof, the notice dated 1st March, 2011 was duly served upon all the members including the petitioner personally on 3rd March, 2011 and that notices were also sent under cover of posting on 3rd March, 2011. The respondents, consequently, contended that the procedure contemplated under Sections 15 and 16 of the Act read with Rule 2 of the Rules was duly complied with. The contesting respondent nos. 3 and 4 also reiterated the same averments and further contended that the application dated 28th February, 2011, annexed as Annexure1 to the writ petition, was not a correct application and that the correct application sent by the members was one provided in the counter affidavit as AnnexureCA3. The respondents further contended that a perusal of the letter of the petitioner dated 14th March, 2011 written to the Collector clearly indicates that the petitioner had received the notice on 14th March, 2011 and accordingly there was substantial compliance of the provision of Section 15 of the Act. In the light of the aforesaid averments, the Court has heard Sri Sharad Sharma, the learned Senior Counsel assisted by Sri Navnish Negi and Sri Pankaj Chaturvedi, the learned counsel for the petitioner, Sri P.C. Bisht, the learned Brief Holder for the respondent nos. 1 and 2 and Sri U.K. Uniyal, the learned Senior Counsel assisted by Sri V.B.S. Negi and Sri Sandeep Kothari, the learned counsel for the respondent nos. 3 and 4.

The learned counsel for the petitioner contended that the notice dated 1st March, 2011 was not pasted on the notice board and consequently, the mandatory

provision contemplated under the Rules was not complied with which vitiates the holding of the meeting for the consideration of the noconfidence motion. The learned counsel further contended that the copy of the noconfidence motion was also not appended to the notice sent by the District Magistrate in its notice dated 1st March, 2011, which was also a mandatory requirement under Section 15(2) of the Act and noncompliance of this mandatory provision vitiated the entire proceedings.

In the opinion of the Court, the submission of the learned counsel for the petitioner on this aspect cannot be considered at this stage and, the reason is, that no such averment with regard to the pasting of the notice on the notice board or with regard to the noconfidence motion not being appended to the notice, has been averred in the writ petition. Unless and until a specific averment is made in the writ petition, the counsel cannot be permitted to argue on such matters. The learned counsel for the petitioner urged that the pleadings on this aspect have been made in the rejoinder affidavit. In the opinion of the Court, new facts cannot be raised in the rejoinder affidavit nor can such pleadings be considered since no opportunity to rebut these allegations was given to the respondents.

In the light of the aforesaid, this Court is further constrained to observe that no arguments were raised by the learned counsel for the petitioner with regard to forged signatures of the members of the Kshettra Panchayat on the application dated 28th February, 2011 nor any arguments were raised with regard to subjective satisfaction recorded by the Collector on the application given by the members of the Kshettra Panchayat on 28th February, 2011 even though such averments have been made in the writ petition. In the absence of any argument being raised, the Court is not dwelling on these aspects of the matter.

The only ground urged is that the Act and the Rules contemplate that the notice is required to be sent to all the members of the Kshettra Panchayat by registered post, which is a mandatory requirement and noncompliance of this provision vitiates the entire proceedings. The learned counsel submitted that since the notice was not sent by registered post, the convening of the meeting to be held on 23rd March, 2011 was wholly illegal in gross violation of the mandatory provision of the Act and the Rules framed therein. It was also urged by the learned counsel for the petitioner that 15 days previous notice was not given. The learned counsel submitted that this was also a mandatory requirement and noncompliance of this provision vitiated the entire proceedings. The learned counsel submitted that admittedly the notice dated 1st March, 2011 was served on 14th March, 2011 upon the petitioner and that the meeting for the consideration of the noconfidence motion was scheduled for 23rd March, 2011. The learned counsel submitted that under Section 15 (3) (ii) of the Act, 15 clear days for holding a meeting was required to be given to the petitioner, which, in the present case, was not done and consequently, the entire proceedings stood vitiated. The respondents, on the other hand, submitted that 15 days notice was

given. The notice is dated 1st March, 2011 and that the petitioner and other members were duly served personally on 3rd March, 2011 and were also served the notice sent Under Certificate of Posting on 14th March, 2011 and consequently, there was a substantial compliance of Section 15 of the Act read with Rule 2 of the Rules. In order to appreciate the submissions of the learned counsel for the parties, it would be appropriate to consider the provision of Section 15 of the Act. For facility, the said provision is extracted hereunder:

15. Motion of nonconfidence in Pramukh or UpPramukh. (1) A motion expressing want of confidence in the Pramukh or any UpPramukh of a Kshettra Panchayat may be made and proceeded with in accordance with the procedure laid down in the following subsections.

(2) A written notice of intention to make the motion in such form as may be prescribed, signed by at least half of the total number of [elected members of the Kshettra Panchayat] for the time being together with a copy of the proposed motion, shall be delivered in person, by any one of the members signing the notice, to the Collector having jurisdiction over the Kshettra Panchayat.

(3) The Collector shall thereupon:

(i) convene a meeting of the Kshettra Panchayat for the consideration of the motion at the office of the Kshettra Panchayat on a date appointed by him which shall not be later than thirty days from the date on which the notice under subsection

(2) was delivered to him; and (ii) give to the [elected member of the Kshettra Panchayat] notice of not less than fifteen days of such meeting in such manner as may be prescribed.

Explanation. In computing the period of thirty days specified in this subsection, the period during which a stay order, if any, issued by a Competent Court on a petition filed against the motion made under this section is in force plus such further time as may be required in the issue of fresh notices of the meeting to the members, shall be excluded.

(4) The subdivisional officer of the subdivision in which the Kshettra Panchayat exercises jurisdiction shall preside at such meeting:

Provided that if the Kshettra Panchayat exercises jurisdiction in more than one subdivision of the subdivisional officer cannot for any reason preside, any stipendiary additional or assistant collector named by the Collector shall preside at the meeting.

[(4A) If within an hour from the time appointed for the meeting such officer is not present to preside at the meeting, the meeting shall stand adjourned to the date and time to be appointed by him under subsection (4B).

(4B) If the Officer mentioned in subsection (4) is unable to preside at the meeting, he may, after recording his reasons, adjourn the meeting to such other date and time as he may appoint, but not later than 25 days from the date

appointed for the meeting under subsection (3). He shall without delay inform the Collector in writing of the adjournment of the meeting. The Collector shall give to the members at least ten days' notice of the next meeting in the manner prescribed under subsection 3.]

(5) [Save as provided in subsections (4A) and (4B), a meeting] convened for the purpose of considering a motion under this section, shall not be adjourned.

(6) As soon as the meeting convened under this section commences, the Presiding Officer shall read to the Kshettra Panchayat the motion for the consideration of which the meeting has been convened and declare it to be open for debate.

(7) No debate on the motion under this section shall be adjourned.

(8) Such debate shall automatically terminate on the expiration of two hours from the time appointed for the commencement of the meeting, if it is not concluded earlier. On the conclusion of the debate or on the expiration of the said period of two hours, whichever is earlier, the motion shall be put to vote [which shall be held in the prescribed manner by secret ballot].

(9) The Presiding Officer shall not speak on the merits of the motion and he shall not be entitled to vote thereon.

(10) A copy of the minutes of the meeting, together with a copy of the motion and the result of the voting thereon, shall be forwarded forthwith on the termination of the meeting by the Presiding Officer to the State Government and to the Zila Panchayat having jurisdiction.

(11) If the motion is carried with the support of [not less than two thirds] of the total number of [elected members of the Kshettra Panchayat] for the time being

(a) the Presiding Officer shall cause the fact to be published by affixing a notice thereof on the notice board of the office of the Kshettra Panchayat and also by notifying the same in the Gazette, and

(b) the Pramukh or UpPramukh, as the case may be, shall cease to hold office as such and vacate the same on and from the date next following that on which the said notice is fixed on the notice board of the office of the Kshettra Panchayat.

(12) If the motion is not carried as aforesaid or if the meeting could not be held for want of quorum, no notice of any subsequent motion expressing want of confidence in the same Pramukh or UpPramukh shall be received until after the expiration of [two years] from the date of such meeting.

(13) No notice of a motion under this section shall be received within [two years] of the assumption of office by a Pramukh or UpPramukh, as the case may be. Section 15 contemplates the procedure for carrying out a motion of the noconfidence against a Pramukh or an UpPramukh of a Kshettra Panchayat. Section 15(2) provides that a written notice of intention for a noconfidence

motion would be given in a form which may be prescribed and should be signed by at least half of the total number of the members together with a copy of the proposed motion, which should be delivered in person, by one of the signatories to the Collector having jurisdiction over the Kshettra Panchayat. Under Section 15(3), the Collector shall convene a meeting of the Kshettra Panchayat for the consideration of the noconfidence motion on a date appointed by him which shall not be later than 30 days from the date on which the notice was delivered to him and shall also give notice to all the members of the Kshettra Panchayat of not less than 15 days of such meeting in such manner as may be prescribed.

Section 15(3) indicates that the manner of service of the notice to the members would be such as may be prescribed. Section 237 of the Act gives power to the State Government to frame rules, and under this power, the rules have been framed. Rule of the Rules, which is relevant for the purpose of the case, is extracted hereunder:

2. Notice under clause (ii) of subsection (3) of Section 15 of the U.P. Kshettra Samiti and Zila Parishad Adhiniyam, 1961 shall be in form III of the Schedule given below and shall be sent by registered post to every member of the Kshettra Samiti at his ordinary place of residence. It shall also be published by affixation of a copy thereof on the notice board of the office of the Kshettra Samiti.

A perusal of the aforesaid Rule 2 indicates that the notice to be given to the members would be in Form 3 and would be sent by registered post to every member and it shall also be published by affixation on the notice board of the office of the Kshettra Samiti. In the light of the aforesaid provision, the learned counsel for the petitioner vehemently contended that the mandatory provision has not been complied with which vitiates the entire proceedings.

The question to be considered is whether the procedure prescribed under Section 15 of the Act read with Rule 2 of the Rules is mandatory or directory in nature. The task of the Court has been made easier as this question has already been settled. A Division Bench of this Court in *Bheem Singh Rana vs. District Magistrate, District Udham Singh Nagar and others*, 2007 (2) U.D. 666, after relying upon a decision of the Allahabad High Court in *Mahesh Chandra and another vs. Tara Chand Modi*, AIR 1958 All. 374 and another decision of the Full Bench of the Allahabad High Court in *Gyan Singh vs. The District Magistrate, Bijnor and others*, AIR 1975 All. 315, held that the provision of Section 15 of the Act is *pari materia* with the provision of Section 87A of the U.P. Municipalities Act. The Court further held that Section 15(3), which poses an obligation upon the Collector to convene a meeting on a date appointed by him which shall not be later than 30 days and that the notice to be given to the members of the Kshettra Panchayat, are mandatory in nature. The manner in which notices have to be sent under Rule 2 has been held by the Court to be directory in nature. The Court held that the mere fact that notices were sent under cover of posting or were served personally will not vitiate the provision since there was substantial

compliance of the provision and that the intention of the legislature was to ensure that the notice is served to the members of the Kshetra Panchayat.

In this regard, it would be appropriate to consider the findings given by the Full Bench of the Allahabad High Court in Gyan Singh's case (supra). The Full Bench held as under:

?8. A careful analysis of subsection (3) would make it clear that the first part which requires the District Magistrate to convene meeting of the Board for considering the motion of noconfidence against the President is mandatory. The District Magistrate is required to perform a public duty in convening a meeting of the Board for consideration of the motion at the office of the Board on the date and time as fixed by him, he has no choice in the matter. He has to convene a meeting on a date within 30 and 35 days from the date of presentation of the motion to him. The District Magistrate is further enjoined to perform a public duty of sending notice of the meeting to the members; this again is a mandatory requirement of law which must be strictly complied with. The second part of the subsection lays down the manner required to be followed in sending notices to the members. It lays down that notice of the meeting shall be sent by registered post to every member of the Board at his place of residence. The essence of this provision is to give information to the members to enable them to avail opportunity of participating in the meeting convened for the purpose of considering the noconfidence motion. The first part of the section requiring the District Magistrate to convene meeting and to send notices to the members is mandatory, any disregard of that provision would defeat the very purpose of the meeting, but the manner of service of notice and publication of the same is directory in nature, therefore a substantial compliance of the same would meet the requirement of law.

The Full Bench further held:

?9. The purpose of service of notice by registered post and publication of the notice otherwise is to ensure that members should get adequate notice of the meeting to enable them to participate in the debate over the noconfidence motion at the meeting. That purpose is not defeated if the notice is sent to the members not by registered post but by other methods and seven clear days are given to the members. The legislature never intended that unless notice is sent by registered post to the members the proceedings of the meeting would be vitiated. The legislature, no doubt, stressed that if the two steps as laid down in the subsection are taken by the District Magistrate, i.e., notice of the meeting is sent to the members by registered post at their place of residence and further if it is published in the manner directed by the District Magistrate, a presumption would arise and every member shall be deemed to have received the notice of the meeting. In that case it will not be open to any member to contend that he did not receive notice of the meeting or that the meeting was illegally constituted for want of notice. The purpose of sending notice can be achieved even without sending the same by registered post. There may be a case where the postal

system may be disorganized and it may not be possible to send notice by registered post. In that situation the District Magistrate may send notice to members of the Board by special messenger giving them seven clear days before the date of the meeting. In that event the legislative intent and purpose requiring sending of notice would be fully achieved, although in that event the rule of presumption as laid down in the subsection would not be available and if a challenge was made by a member that no notice was received by him, the deeming provision will not be applicable and it would require proof that the notice even though sent by ordinary post or by special messenger was actually served on the member. The emphasis on sending notice to members by registered post and for publication of the same in the manner directed by the District Magistrate, is directed to invoke the presumption as contemplated in the last sentence of the subsection. In the absence of presumption, it is always open to a party to prove that notice though sent in a different manner was served on the members. In view of the above discussion, I am of the opinion that even if the notice is not sent to the members by registered post the meeting cannot be held to have been illegally convened provided it is proved that the notice was received by the members and they had knowledge of the meeting.?

In the light of the aforesaid, the Court is of the opinion that Section 15(3) of the Act is mandatory in nature and noncompliance of the mandatory provision would vitiate the entire exercise of carrying out of the noconfidence motion. The Court further holds that the provision of Rule 2 of the Rules with regard to service of the notice is directory in nature and that sufficient compliance would be made if the notice is served upon the members in some form or the other and it is not necessary that the notice has to be sent by registered post in all cases.

In the light of the aforesaid, the Court finds that the Collector, upon the receipt of the notice of the no14 confidence motion from more than half of the members of the Kshetra Panchayat and upon recording its subjective satisfaction on the genuineness of the signatures, issued the order dated 1st March, 2011 directing convening of a meeting for the consideration of the noconfidence motion against the petitioner on 23rd March, 2011.

Section 15(3) of the Act contemplates that the date fixed for convening a meeting should not be later than 30 days from the date of the notice received by the Collector. Consequently, this aspect was duly complied with by the Collector.

This leads to Section 15 (3) (ii) of the Act, namely, the notice of not less than 15 days should be given. From the record, the Court finds that the notice dated 1st March, 2011 was served personally upon the members on 3rd March, 2011. The petitioner has denied this fact in paragraph 6 of the rejoinder affidavit but it has been admitted by the petitioner that he received a copy of the notice which was sent under cover of posting on 14th March, 2011.

The law contemplates that 15 days time has to be counted from the date of the issuance of the notice and the holding of the meeting of the noconfidence

motion. Section 15 (3) (ii) does not contemplate that 15 clear days are required to be given from the date of the receipt of the notice to the petitioner.

The learned counsel for the petitioner has placed reliance upon a decision of this Court in Smt. Bhagwati Devi vs. District Panchayat Raj Officer and others, 2006 (1) U.D. 699, wherein the Court held that since the petitioner was not served with the notice of the noconfidence motion without giving 15 15 days clear notice, the said notice was not as provided under the provisions of Section 14(1) of the U.P.

Panchayat Raj Act, 1947. With profound respect to the learned Judge, the Court disagrees with the said judgment inasmuch as there is nothing under the Act to indicate that 15 days clear notice is required to be given to a member which has to be counted from the date of the receipt of the notice. The Court reiterates that 15 days clear notice is to be counted from the date of the issuance of the notice.

In view of the aforesaid, this Court is of the opinion that 15 days previous notice was given by the Collector as per Section 15(3) of the Act and consequently, the mandatory provision of the Act was duly complied with.

Insofar as Rule 2 of the Rules is concerned, the intention of the legislature is that the notice should be served upon the members so that they may get adequate notice of the meeting to enable them to participate in the debate over the noconfidence motion at the meeting. The Court is of the view that the notice does not become illegal if the same is not sent by registered post but is sent by other methods. Since the Full Bench of the Allahabad High Court as well as the Division Bench of this Court has held that the provision relating to the manner of the service upon the members is directory in nature, the Court is of the opinion that since the petitioner admittedly received the notice on 14th March, 2011, substantial compliance of Rule 2 of the Rules had been done. The fact that the notice was sent under cover of posting is immaterial. The fact remains that the petitioner was duly served and adequate notice was given to him to participate in the debate over the noconfidence motion. In the light of the aforesaid, the Court does not find any merit in the writ petition and is accordingly dismissed.

Since an interim order dated 18th March, 2011 was passed staying the proceedings of the noconfidence motion and the date has now expired, the Court directs the Collector, Pauri Garhwal to fix a fresh date for the consideration of the noconfidence motion against the petitioner.

The registry is directed to send a certified copy of this order to the Collector concerned for information and for necessary action within a week.