
(2019) 11 RAJ CK 0075

In the Rajasthan High Court

Case No : Civil Writ Petition No. 17534 Of 2019

Lalita Samdani

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 26-11-2019

Acts Referred:

Uttar Pradesh Kshetra Samitis And Zila Parishad Adhiniyam, 1961 — Section 2(19), 15(3)(i), 15(3)(ii), 236
Rajasthan Municipalities (Motion Of no confidence against the Chairperson or Vice Chairperson) Rules, 2017 — Rule 3, 3(2)

Citation : (2019) 11 RAJ CK 0075

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Manoj Bhandari, Sunil Beniwal, Rajesh Joshi, Rishabh Shrimali, Chandraveer Singh

Final Decision : Dismissed

Judgement

By way of this writ petition, the petitioner has challenged the notice of no confidence motion moved by 44 members of the Municipal Council,

Bhilwara.

The petitioner's basic ground of challenging the notice dated 20.11.2019 issued by the District Collector, Bhilwara convening meeting for

consideration of the no confidence motion is that the notice issued by the District Collector, Bhilwara is not accompanied with the motion of no

confidence moved by such members.

Mr. Manoj Bhandari, learned counsel appearing for the petitioner inviting the Court's attention towards Rule 3 of Rajasthan Municipalities (Motion

of no confidence against the Chairperson or Vice Chairperson) Rules, 2017 (hereinafter to be referred as 'the Rules of 2017') submitted that a

notice issued by the Collector is required to be accompanied by a no confidence motion moved by the members.

In support of his arguments, learned counsel for the petitioner has relied upon the judgment dated 07.05.1999 passed by Allahabad High Court

rendered in Dr. Mahendra Pal Vs. Collector, District Hardoi & Ors. and submitted that the issue involved in the present case is exactly identical; the

notice in question convening meeting on 28.11.2019 is not accompanied with the copy of the motion, hence, the meeting convened to consider no

confidence motion against the petitioner is invalid and the same deserves to be declared as such.

Mr. Sunil Beniwal, learned Additional Advocate General appearing on behalf of the respondent-State submitted that a simple look at Sub-rule (2) of

Rule 3 of the Rules of 2017 shows that it does not require proposed motion of no confidence to accompany the notice and that the rules are required

to be read as they exist. Mr. Beniwal cited judgment dated 16.05.2019 passed by a Coordinate Bench of this Court rendered in Shweta Choudhary

Vs. State & Ors. (S.B. Civil Writ Petition No.1134/2019) in his support.

Whereas Mr. Rajesh Joshi, learned Sr. Advocate appearing for the respondent-intervenor submits that a simple look at the Rules under consideration

shows that the notice issued by the Collector is not required to be accompanied by the proposed motion. In support of his submission, Mr. Rajesh

Joshi, learned Sr. Advocate has invited Court's attention towards the judgment dated 13.05.2004 passed by Division Bench of this Court rendered

in case of Ramu Ram Vs. Chief Executive Officer, Sriganganagar & Ors. (D.B. Civil Special Appeal No.558/2003) reported in RLW 2004(3) Raj.

1947 and submitted that Ramu Ram's case (supra) relates to no confidence motion under Panchayati Raj Act and the provisions are quite

difference and the same cannot be applied in case of motion issued under the provisions of Rajasthan Municipalities Act, 2009. He alternatively

argued that even if it is assumed that a notice issued by the Collector is supposed to accompany the proposed motion, the same is only a technical

breach, particularly when the substance of the motion has been incorporated in the notice. He argued that the requirement of enclosing the proposed

motion with the notice, deserves to be ignored.

He further relies upon the judgment dated 19.12.2017 passed by a Coordinate

Bench of this Court rendered in case of Indira Kumari Vs. State & Ors.

(S.B. Civil Writ Petition No.16703/2017) and added that considering this fact a Coordinate Bench of this Court has dismissed the similar writ petition,

while refusing to exercise discretionary jurisdiction in Indira Kumari's case (supra).

Heard learned counsel for the rival parties, perused the statutory provisions so also the judgment passed by the Allahabad High Court rendered in the case of Dr. Mahendra Pal (supra).

This Court finds a significant distinction between the provisions as are applicable in the present case i.e. Sub-rule (2) of Rule 3 of Rules of 2017 and

Section 15(3)(i) of the U.P. Kshetra Samitis and Zila Parishad Adhiniyam, 1961 (hereinafter to be referred as 'the Act of 1961').

Sub-rule (2) of Rule of 3 of Rules of 2017 is reproduced hereunder :-

“(2) The collector shall send by registered post not less than seven clear days before the date of the meeting a notice of such meeting and of the

date and time fixed therefor to every eligible member of the Municipality.”

Sub-sections (i) and (ii) of Section 15(3) of the Act of 1961 is reproduced hereunder :-

“(i) convene a meeting of Kshetra Samiti for the consideration of the motion at the office of the Kshetra Samiti on a date appointed by him, which

shall not be later than thirty days from the date on which the notice under sub-sec. (2) was delivered to him and

(ii) give to the members of the Kshetra Samiti notice of not less than fifteen days of such meeting in such manner as may be prescribed.”

If the above quoted provisions are read in justa position, a significant distinction, comes to fore that is that Sub-rule (2) of Rule 3 of the Rules of 2017

postulates that the Collector shall give at least 7 days notice before the day of convened such meeting whereas Sub-section (i) of Section 15(3) of the

Act of 1961 that the Collector shall convene a meeting for consideration of the motion at the designated date and while considering such provisions

and the exercise prescribed, which has been duly define, in Section 2(19) of the Act of 1961 has held that Rule 2 of the aforementioned Rules framed

in exercise of Section 236 of the Act of 1961, Form-II itself contains the following stipulation:-

“A copy of the motion is annexed hereto.”

It is such stipulation in the prescribed Form-II, which has laid the High Court of Allahabad to hold that a notice sans proposed motion was invalid. As

against this, neither the provisions of Municipal Act nor the Rules framed thereunder require motion of no confidence to be annexed with a notice

convening a meeting to be sent by the Collector. Such being the position, the judgment of Allahabad High Court heavily relied upon by Mr. Manoj

Bhandari, is of little avail.

That apart, considering the fact that the notice dated 20.11.2019 contains substance of the motion, it cannot be said that the notice dated 20.11.2019

convening the meeting for consideration of no confidence motion is illegal.

The writ petition, therefore, fails.

The stay petition is also dismissed.