
(2019) 07 UK CK 0007
In the Uttarakhand High Court
Case No : Special Appeal No. 672 Of 2019

Mohd. Sarfaraj	Vs	APPELLANT
District Magistrate, Udham Singh Nagar And Others		RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Uttarakhand Panchayati Raj Act, 2016 — Section 17, 130

Citation : (2019) 07 UK CK 0007

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Shakti Singh, Anil Kumar Bisht, Anil Kumar Joshi

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Shakti Singh, learned counsel for the appellant, Mr. Anil Kumar Bisht, learned Standing Counsel for the State of Uttarakhand and Mr. Anil Kumar Joshi, learned counsel for respondent No.5.

2. This appeal is preferred against the order passed by the learned Single Judge in WPMS No.1553 of 2019 dated 20.06.2019. The appellant herein filed WPMS No.1553 of 2019 seeking a writ of certiorari to quash the order dated 21.05.2019 issued by the second respondent, and the consequential order dated 24.05.2019 issued by the third respondent.

3. This case has had a chequered history. The writ petitioner-appellant was elected as the Gram Pradhan of village Barkherapande, Block Kashipur, District Udham Singh Nagar in the year 2014. His election was subjected to challenge before the Election Tribunal, which initially dismissed the election petition. On the Election petitioner filing a review application, the Election Tribunal allowed the review application which, in effect, meant that the appellant's election as Gram Pradhan stood set aside.

4. Aggrieved thereby, the appellant-writ petitioner preferred an appeal to the District Judge, Udham Singh Nagar who, in turn, allowed the appeal. As a result thereof, the appellant-writ petitioner stood restored as the Gram Pradhan. Aggrieved by the order passed by the District Judge, Udham Singh Nagar, the petitioner before the Election Tribunal filed WPMS No.573 of 2019, and an interim order was initially passed on 23.04.2019 granting stay of the operation of the order passed by the learned Single Judge. As a result of the said interim order, and as there was a cloud over the petitioner holding office as the Gram Pradhan, the District Magistrate, Udham Singh Nagar issued proceedings dated 21.05.2019 directing the second respondent to lodge an FIR against the petitioner for forcibly taking the records of the Zila Panchayat from his custody, if he did not hand over charge of the office of the Gram Pradhan of village Barkherapande, District Udham Singh Nagar within three days. Consequent thereto, the Block Development Officer, by his order dated 24.05.2019, directed the Panchayat Raj Officer to take over charge from the petitioner. These two orders were subjected to challenge in WPMS No.1553 of 2019.

5. In the order under Appeal, the learned Single Judge, after taking note of submissions urged on behalf of the respondents, observed that the office of the Gram Pradhan of village Barkherapande, Block Kashipur, District Udham Singh Nagar had become vacant; and in such a contingency, Section 17 of the Uttarakhand Panchayati Raj Act, 2016, required the charge of the office of the Gram Pradhan to be given to the applicant, who was the Up-Pradhan.

6. Section 17 of the Uttarakhand Panchayati Raj Act, 2016 prescribes the arrangement in case of temporary vacancy of the post of the Gram Pradhan and, thereunder, where the office of the Pradhan is vacant, for any reason, then, till the date of his rejoining duties, the Prescribed Authority shall nominate a member of a Gram Panchayat to discharge the duties of the Gram Pradhan.

7. In the order under appeal, the learned Single Judge thereafter observed that the contingency, in the present case, had to be seen in the light of Section 17 of the U.P. Panchayati Raj Act, 2016 and not under Section 130 thereof. While taking note of the submission made by the learned Senior Counsel appearing on behalf of the appellant-writ petitioner that the charge had been given to the Panchayati Raj Officer, the learned Single Judge directed that the matter be listed after three weeks, and directed the Panchayati Raj Officer to pass appropriate orders in accordance with law.

8. It is not in dispute that it is only because there was an interim stay of the operation of the order passed by the District Judge, Udham Singh Nagar, in WPMS No. 573 of 2019, that a vacancy arose in the office of the Gram Pradhan. While an interim order was, no doubt, passed on 23.04.2019, and was extended by the order dated 09.05.2019, the extension of the interim order was only till the next date of listing. Though the matter was listed thereafter on 16.05.2019, the learned Single Judge, while reserving judgment, did not extend the interim order. The appellant-writ petitioner's election as the Gram Pradhan would,

undoubtedly, depend upon the result of WPMS No. 573 of 2019, in which judgment was reserved by the learned Single Judge on 16.05.2019. As the earlier interim order has not been extended, the order of the District Judge, Udham Singh Nagar would revive and remain in force, until and unless it is either finally set aside by the learned Single Judge in WPMS No. 573 of 2019 or the interim order granted earlier is extended further. Since there is no stay of operation in force, the appellant-writ petitioner would, in terms of the order passed by District Judge Udham Singh Nagar, be entitled to continue to hold office of the Gram Pradhan of village Barkherapande, Block Kashipur, District Udham Singh Nagar.

9. While Mr. Anil Kumar Joshi, learned counsel for the fifth respondent, would submit that the impugned orders, passed by the authorities concerned, have not been subjected to challenge, it is not in dispute that all these orders, passed by the authorities concerned, were only in the light of the interim order passed by the learned Single Judge in WPMS No. 573 of 2019 dated 23.04.2019. Since the interim order is no longer in force, the order of the District Judge, Udham Singh Nagar would revive and continue to operate, unless otherwise directed in WPMS No. 573 of 2019 (either by extension of the earlier interim order or a final order being passed setting aside the order of the District Judge, Udham Singh Nagar). The respondents herein shall forthwith restore the appellant-writ petitioner to the office of Gram Pradhan of the village Barkherapande, Block Kashipur, District Udham Singh Nagar.

10. Both Mr. Anil Kumar Bisht, learned Standing Counsel for the State of Uttarkhand and Mr. Anil Kumar Joshi, learned Counsel for the respondent No.5, would submit that the period of five years, of the Gram Pradhan, is scheduled to come to an end on 14.07.2019; and, since proceedings have already been issued appointing an Administrator thereafter, the appellant-writ petitioner cannot, in any case, continue to hold the office of the Gram Pradhan beyond 14.07.2019. While that may be so, the fact remains that the appellant-writ petitioner is entitled to hold office of the Gram Pradhan of village Barkherapande, Block Kashipur, District Udham Singh Nagar till 14.07.2019.

11. The Special Appeal is disposed of directing the respondents to put the appellant-writ petitioner back in office as the Gram Pradhan of village Barkherapande, Block Kashipur, District Udham Singh Nagar, till 14.07.2019, or till the learned Single Judge passes any further orders in the writ petition, whichever is earlier.

12. Let a certified copy of this order be issued to the learned counsel for the parties, on payment of the prescribed charges, by 12.07.2019.