
(2019) 04 UK CK 0016

In the Uttarakhand High Court

Case No : Special Appeal No. 285 Of 2019 With Application For Leave to Appeal
No. 4379 Of 2019

Prakash Chand Ramola

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 03-04-2019

Acts Referred:

Uttarakhand Panchayat Raj Act, 2016 — Section 90, 90(1), 90(2), 90(3), 90(4), 90(4)(1), 90(4)(2), 91(1), 133, 133(1), 133(1)(a)

Citation : (2019) 04 UK CK 0016

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : A.S. Rawat, Ravi Bisht, Kanchan Singh Rangarh, B.M. Pingal, B.S. Parihar, Sanjay Bhatt, Rakesh Thapliyal

Final Decision : Allowed

Judgement

Ramesh Ranganathan, CJ

Application for Leave to Appeal No. 4379 of 2019

1. Since the appellant herein had filed an intervention application in the writ petition, which was allowed by the learned Single Judge, he is entitled to prefer an appeal against the said order. The application, seeking leave to appeal, is ordered and the application is disposed of.

Special Appeal No. 285 of 2019

2. This appeal is preferred by the intervenor, in Writ Petition (M/S) No. 3277 of 2018, aggrieved by the order of the learned Single Judge dated 13.03.2019. The seventh respondent in this appeal filed Writ Petition (M/S) No. 3278 of 2018 seeking a writ of mandamus commanding respondent nos. 1 to 4 not to initiate any process for filling up the post of Adhyaksh, Zila Panchayat, Uttarkashi till a decision is taken by the State Election Commission, Uttarakhand on the application for restoration of the name of the seventh respondent-writ petitioner

in the voters list of Kanseru Village Panchayat, District Uttarkashi; a mandamus commanding the State Election Commission, Uttarakhand to pass an order, on the seventh respondent-writ petitioner's application dated 27.10.2018, for restoration of her name in the voters list of Village Panchayat Kanseru; a writ of certiorari to quash the order dated 28.10.2018; and a writ of mandamus directing the respondents to permit her to continue to hold the post of Adhyaksha, Zila Panchayat till her name is restored to the rural area, as per her request for restoration.

3. Facts, to the limited extent necessary, are that the name of the seventh respondent-writ petitioner was included in the electoral roll of Kanseru Gram Panchayat at Serial No. 155. She moved an application on 12.10.2018 for inclusion of her name in Ward No. 3-Patel Nagar Ward for Barkot Nagar Palika Parishad, District Uttarkashi. On receipt of the seventh respondent-writ petitioner's application, the Electoral Registration Officer sent his recommendation, to the District Magistrate, for inclusion of the seventh respondent-writ petitioner's name in the electoral roll of Barkot Nagar Palika Parishad, Ward No. 3, and for deletion of her name from the electoral roll of Kshetra Panchayat, Kanseru. The District Magistrate, Uttarkashi, by his letter dated 18.10.2018, recommended to the Secretary, State Election Commission, Uttarakhand for deletion of the name of the seventh respondent-writ petitioner from the voters list of Kanseru Village Panchayat. The seventh respondent-writ petitioner claims that the District Magistrate did not, however, recommend her name for inclusion in the voters list of Nagar Palika Parishad, Barkot till 22.10.2018. As no action was taken on the recommendation of the District Magistrate, vide letter dated 22.10.2018, for inclusion of the name of the seventh respondent-writ petitioner in the voters list of Nagar Palika Parishad, Barkot, the seventh respondent-writ petitioner filed Writ Petition (M/S) No. 3147 of 2018 before this Court and, by order dated 22.10.2018, this Court directed the State Election Commission to take a decision forthwith.

4. The State Election Commission, by its order dated 23.10.2018, rejected the seventh respondent-writ petitioner's application for inclusion of her name in the voters list of Ward No. 3 of Nagar Palika Parishad, Barkot on the ground that her name was included in Ward No. 10 of Nagar Nigam, Dehradun; and, therefore, her name could not be included in Ward No. 3 of Nagar Palika Parishad, Barkot. Claiming ignorance of inclusion of her name in the Nagar Nigam, Dehradun, the seventh respondent-writ petitioner submitted a representation to the State Election Commission on 27.10.2018. She filed yet another representation to the State Election Commission to direct the Electoral Registration Officer, Dehradun to delete her name from the electoral roll of Nagar Nigam, Dehradun, to recall its earlier order dated 20.10.2018, and restore her name in the electoral roll of Kanseru Gram Panchayat.

5. On the ground that no action was taken on her representation, and that she continued to hold the post of Adhyaksha, Zila Panchayat, Uttarkashi (having been

elected as a member of the Zila Panchayat, Uttarkashi-Ward No. 17), the seventh respondent-writ petitioner invoked the jurisdiction of this Court contending that respondent nos.1 to 4 were trying to give the charge of Adhyaksh, Zila Panchayat, Uttarkashi to the Upadhyaksh, Zila Panchayat, Uttarkashi. She contended before this Court that though, on the removal of the name of a person from the voters list, an elected member may acquire disqualification, the question of disqualification was required to be determined, in the first instance, by the prescribed authority i.e. the Director, Panchayati Raj; since no such determination has been undertaken by him till date, the post of Adhyaksh, Zila Panchayat, Uttarkashi cannot be said to be vacant in the eye of law; her application, for restoration of her name in the electoral roll of Kanseru Gram Panchayat, was pending consideration before the State Election Commission; and the post of Adhyaksha, Zila Parishad, Uttarakashi cannot be held to be vacant till a decision is taken by the prescribed authority regarding her disqualification, and by State Election Commission on her application seeking restoration of her name in the electoral list of Kanseru Gram Panchayat.

6. The District Magistrate, Uttarkashi, by letter dated 28.10.2018, informed the Director, Panchayati Raj that, due to deletion of the name of the seventh respondent-writ petitioner from the Kanseru Gram Panchayat, she could not be permitted to continue in the post of Adhyaksh. The Director, Panchayati Raj was directed to take action. The validity of this order dated 28.10.2018 was questioned by the seventh respondent-writ petitioner by way of an amendment both to pleadings in the writ affidavit, as also to the prayer in the writ petition. The seventh respondent-writ petitioner had contended that, after having lost in her attempt to contest the election for the Nagar Palika Parishad because of non-inclusion of her name in the urban area, she had immediately moved an application for restoration of her name in the rural area from where she was elected as Adhyaksha; and the said representation had not been considered by the State Election Commission.

7. In the order under appeal, the learned Single Judge observed that, in terms of Section 133(1)(a) of the Uttarakhand Panchayat Raj Act, 2016 (hereinafter called the "Act"), the prescribed authority is the authority competent to decide the controversy pertaining to the membership of a person, or continuance of his/her membership in the voters list of a particular village; the same was required to be discharged by the Director, Panchayati Raj who has been defined as the prescribed authority, under the Act, to decide the controversy; in terms of Section 133(1)(a), it is the Director, Panchayati Raj who is competent to decide the issue pertaining to the continuance or non-continuance of the name of the member in the voters list; the letter of the District Magistrate dated 28.10.2018, to the Director, Panchayati Raj, can only be treated as a reference of the dispute to the competent authority; it was not a decision itself as was apparent from the language of the letter dated 28.10.2018; the District Magistrate had not issued any positive direction either for inclusion or deletion of the name of the seventh respondent-writ petitioner from the voters list, but had only made a reference to

the competent authority, statutorily created under Section 133(1)(a) of the Act, to take a decision on the application submitted by the seventh respondent-writ petitioner for revival of her membership in the voters list of Kanseru Gram Panchayat; and no decision was taken, by the competent authority under the Act, pertaining to continuance or non-continuance of the seventh respondent-writ petitioner's name in the voters list of Kanseru Gram Panchayat.

8. The writ petition was disposed of directing the Director, Panchayati Raj to take a decision on the seventh respondent-writ petitioner's application for revival of her membership in the voters list of Kanseru Gram Panchayat as referred by the District Magistrate, Uttarkashi by his order dated 28.10.2018. The Director, Panchayati Raj was directed to take a decision on the seventh respondent-writ petitioner's application, as well as on the communication of the District Magistrate, Uttarkashi dated 28.10.2018, within a period of two month's from the date of service of a certified copy of the order. Aggrieved thereby, the intervenor (whose intervention application in the writ petition was allowed by the learned Single Judge) is now in appeal before us.

9. Mr. A.S. Rawat, learned Senior Counsel appearing on behalf of the appellant, would place reliance on Section 90(4) of the Act to submit that a member of the Zila Panchayat would cease to be a member, if the entry relating to that member is deleted from the electoral roll of a territorial constituency of a Zila Panchayat; and when a person ceases to be a member, consequent on her/his name being deleted from the electoral roll, he/she would cease to hold office to which he/she may have been elected by reason of his/her being a member thereof; in terms of Section 91(1) an electoral roll is required to be prepared for each territorial constituency of a Zila Panchayat; since the seventh respondent-writ petitioner had herself got her name deleted from the electoral roll of the Kanseru Gram Panchayat, and her application for restoration of her name in the voters list is still pending consideration before the State Election Commission and no orders have yet been passed directing inclusion of her name in the voters list as on date, her name is not to be found in the voters list of Kanseru Gram Panchayat; and, consequently, she cannot hold the office of Adhyaksha of Uttarkashi Zila Panchayat.

10. Learned Senior Counsel would further submit that the learned Single Judge had erred in holding that the Director, Panchayati Raj was the competent authority, and in relying on Section 133(1)(a) in this regard; Section 133(1)(a) has no application; and the letter of the District Magistrate is not an intimation to the Director, Panchayati Raj, but is a direction for him to take action in accordance with Section 90 of the Act.

11. On the other hand Mr. Rakesh Thapliyal, learned counsel for the seventh respondent-writ petitioner, would submit that the question as to whether the seventh respondent-writ petitioner suffered a disqualification, on her name being deleted from the electoral roll (albeit at her request), was a matter which necessitated examination by the prescribed authority i.e. the Director, Panchayati

Raj; till the Director takes an appropriate decision in this regard, the seventh respondent-writ petitioner cannot be said to have suffered any disqualification; she is, therefore, entitled to continue to hold the office of an Adhyaksha till an order is passed by the Director, Panchayati Raj holding her ineligible; and, in such circumstances, the District Magistrate was wholly unjustified in directing the Director, Panchayati Raj to take a decision to the contrary.

12. Section 90 of the Act relates to disqualification from membership of a Zila Panchayat. Under sub-section (1) thereof, a person shall be disqualified for being chosen, and for being a member of the Zila Panchayat, if he is disqualified in terms of clauses (a) to (p) thereunder. Besides the disqualifications enumerated in clauses (a) to (p) of Section 90(1), other disqualifications are also prescribed in sub-sections (2) and (3) of Section 90. Section 90(2) relates to disqualification due to corruption and, thereunder, the authority, competent to decide an election dispute, may declare any candidate, found to have committed any corrupt practice, to be incapable, for any period not exceeding five years, of being chosen or to be appointed or retained in any office or place in the gift or disposal of a Zila Panchayat. Section 90(3) relates to disqualification for not having any toilets and, under sub-section (a) thereof, a person, who is convicted under the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, shall be disqualified from fighting Panchayat election; and under sub-clause (b) of Section 90(3), if a person does not have toilet in his/her house, he/she shall be disqualified from contesting the Panchayat elections.

13. Unlike the disqualifications aforementioned, Section 90(4) relates to cessation of membership and, under sub-section (1) thereof, a member of the Zila Panchayat shall cease to be such member if the entry relating to that member is deleted from the electoral roll for a territorial constituency of a Zila Panchayat. Section 90(4)(2) stipulates that, where any person ceases to be a member of a Zila Panchayat under Section 90(4)(1), he shall also cease to hold any office to which he may have been elected, nominated or appointed by reason of his being a member thereof.

14. Section 90(4)(2) is unambiguous. It provides for cessation of membership of a Zila Panchayat in cases where an entry, relating to that person, is deleted from the electoral roll of a territorial constituency of the Zila Panchayat; and that he/she shall, consequently, cease to hold any office to which he/she may have been elected by reason of his/her being a member thereof. In effect a person would cease to be a member, of a territorial constituency of a Zila Panchayat, if his/her name is deleted from the electoral roll. Under Section 90(4)(2), consequent on cessation of membership of a territorial constituency of a Zila Panchayat under sub-section(1), the said person would also cease to hold office to which he may have been elected by reason of his being a member of the territorial constituency.

15. It is not in dispute that the seventh respondent-writ petitioner's request, for deletion of her name from the electoral roll of Kanseru Gram Panchayat, was accepted by the State Election Commission vide proceedings dated 20.10.2018.

It is also not in dispute that, despite a representation being made by the seventh respondent-writ petitioner to the State Election Commission, her name has not till date been included in the electoral roll of the Kanseru Gram Panchayat. Therefore, in terms of Section 90(4)(1) of the Act, the seventh respondent-writ petitioner ceases to be a member of "17 Ponti territorial constituency" of the Uttarkashi Zila Panchayat; and, as a consequence of her ceasing to be a member of a territorial constituency of the Uttarkashi Zila Panchayat, the seventh respondent-writ petitioner ceases to hold office as the Adhyaksha of the Uttarkashi Zila Panchayat in terms of Section 90(4)(2) of the Act.

16. We must, however, examine the contention of the seventh respondent-writ petitioner, which found acceptance with the learned Single Judge in the order under appeal, that it is only on a dispute, regarding her disqualification being determined against her by the Director, Panchayati Raj, under Section 133(1)(a) of the Act, would she, thereafter, cease to be a member, and only thereafter would she cease to hold office as the Adhyaksha of the Uttarkashi Zila Panchayat.

17. Since reliance is placed heavily, by the learned counsel for the seventh respondent-writ petitioner, on Section 133(1)(a) of the Act in this regard, it is necessary to refer to the said provision. Section 133 of the Act relates to inspections etc. of the prescribed authority over Gram Panchayat, Kshetra Panchayat and Zila Panchayat. Section 133(1)(a) stipulates that within the limits of its or his jurisdiction or district boundaries, as the case may be prescribed by the State Government, the Director, within the jurisdiction of the State Director, shall be the designated authority of the Zila Panchayat and shall inspect, or cause to be inspected, any movable property used or occupied by a Zila Panchayat or any committee or joint committee thereof, or any work in progress under the directions of any of them. It is unnecessary to refer to clause (b) of Section 133(1) since the learned Single Judge has placed reliance only on clause (a) of Section 133(1) of the Act to hold that the Director, Panchayati Raj has been conferred the power to adjudicate on whether or not the seventh respondent-writ petitioner suffered a disqualification.

18. As noted hereinabove, Section 133(1)(a) of the Act merely confers power on the Director to inspect, or cause to be inspected, any movable property used or occupied by a Zila Panchayat or any committee or joint committee or any work in progress under the directions of any one of them. The power conferred by clause (a), of Section 133(1) of the Act, is only of inspection of a movable property of the Zila Panchayat, or any work in progress, and nothing more. Such power of inspection would not take within its fold the power to adjudicate on the disqualification of the seventh respondent-writ petitioner. In this context it is relevant to note that, unlike other disqualifications enumerated in Section 90 of the Act which may involve determination of disputed questions as to whether or not the candidate had suffered a disqualification, Section 90(4) is specific and unambiguous. It provides for the consequences of deletion of the name of a member from the electoral roll of a territorial constituency of the Zila Panchayat.

19. In the present case, it is the seventh respondent-writ petitioner who, herself, sought deletion of her name from the electoral roll of Kanseru Gram Panchayat; and her request was acceded to by the State Election Commission on 20.10.2018. The consequence of her name being deleted, from the said electoral roll, are specified in clauses (1) and (2) of Section 90(4). In terms of clause (1) of Section 90(4) of the Act, she firstly ceases to be a member of the territorial constituency of the Zila Panchayat; and in terms of clause (2) of Section 90(4) of the Act, as a result of her cessation from membership of the Zila Panchayat territorial constituency in view of her name being deleted from the electoral roll, she also ceases to hold office as the Adhyaksha of the Zila Panchayat. The District Magistrate, Uttarakashi was, therefore, justified in issuing necessary directions, to the Director, Panchayati Raj, vide proceedings dated 28.10.2018.

20. The order under appeal is set-aside, and the order of the District Magistrate dated 28.10.2018 is upheld. The appeal is allowed. However, in the circumstances, without costs.