
(2019) 06 UK CK 0011

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1385, 1571 Of 2019

Prakash Chandra Ramola & Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 11-06-2019

Acts Referred:

Uttarakhand Panchayati Raj Act, 2016 — Section 90, 90(4), 99, 103

Citation : (2019) 06 UK CK 0011

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Dharmendra Barthwal, Paresh Tripathi, Sanjay Bhatt, Rakesh Thapliyal, Anil Joshi

Final Decision : Allowed/ Disposed Of, Respectively

Judgement

Sudhanshu Dhulia, J

1. In the above two writ petitions, primarily the order challenged is common and therefore both the petitions are being decided by this common order. However, for the sake of convenience, the facts of Writ Petition (M/S) No. 1385 of 2019 will be referred in this order.

2. The petitioner before this Court in Writ Petition (M/S) No. 1385 of 2019 is the Vice Chairman of Zila Panchayat, Uttarkashi. He has been functioning as Vice Chairman consequent to the elections held of the local bodies in the year 2014, when he was elected as Vice Chairman.

3. Meanwhile, respondent no. 8 who was the elected Chairman of Zila Panchayat, Uttarkashi wanted to contest for the coming election of Nagar Palika Parishad, Barkot, District Uttarkashi and for that reason under requirement of law, she moved an application for deletion of her name from the electoral rolls of Village Panchayat, Kanseru. Consequent to her application, her name was deleted from the electoral rolls of Village Panchayat, Kanseru, although on her consequent application for inclusion of her name for Nagar Palika Parishad Barkot, no action

has been taken.

4. Now the provisions of sub-section (4) of Section 90 of the Uttarakhand Panchayati Raj Act, 2016 come into play. Sub-section (4) of Section 90 of the Uttarakhand Panchayati Raj Act, 2016 reads as under:-

"90. Disqualification for membership of Zila Panchayat -

(1).....

(2).....

(3).....

(4) Cessation of membership-

(1) A member of 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 Zila Panchayat.

(2) Where any person ceases to be a member of a Zila Panchayat under sub-section (1) he shall also cease to hold any office to which he may have been elected, nominated or appointed by reasons of his being a member thereof."

5. A bare perusal of sub-section (4) of Section 90 shows that once the name of a member of Zila Panchayat is deleted from the electoral roll for a territorial constituency of Zila Panchayat, his name will automatically be deleted from the Chairmanship of Zila Panchayat as well.

6. A curious situation has now cropped up inasmuch as although the name of respondent no. 8 was deleted from the electoral rolls of Village Panchayat, Kanseru, but no action was taken by the concerned authorities for inclusion of her name for Nagar Palika Parishad, Barkot, although there was a recommendation of the District Magistrate in favour of respondent no. 8. Consequently, respondent no. 8 Ms. Yashoda Rana filed a writ petition being Writ Petition (M/S) No. 3277 of 2018 with the following reliefs:

"I. Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 to 4 not to initiate any process for filing the post of Adhyaksh Zila Panchayat Uttarkashi till the decision of the State Election Commission Uttarakhand on the application for restoration of the name of the petitioner in the voter list of Village Panchayat Kanseru, District Uttarkashi.

II. Issue a writ, order or direction in the nature of mandamus commanding the State Election Commission Uttarakhand to pass the order on the application of the petitioner dated 27.10.2018 for restoration of her name in the voter list of Village Panchayat Kanseru, District Uttarkashi.

II-A. Issue a writ, order or direction in the nature of certiorari quashing the order dated 28.10.2018 (Annexure No. 10 to the writ petition).

II-B. Issue a writ, order or direction in the nature of mandamus directing the respondents to permit the petitioner to continue to hold the post of Adhyaksha, Zila Panchayat, Barkot, Uttarkashi till her name is restored to the rural area as per her request for restoration."

7. This Court vide order dated 13.03.2019 allowed the writ petition, with the following observations:

"8. Considering the impact of the impugned order dated 28th October, 2018, this Writ Petition is being disposed of with the direction to the Director, Panchayati Raj, Uttarakhand, Dehradun to take a decision in the voter list of Village Kanseru, as referred by the District Magistrate by his letter dated 28.10.2018. The Director Panchayati Raj is directed to take a decision on the application of the petitioner as well as on the communication made by the District Magistrate on 28th October, 2018, within a period of two months from the date of service of the certified copy of the order to him."

8. The said decision of the learned Single Judge was challenged by the petitioner Prakash Chandra Ramola in Special Appeal before a Division Bench of this Court, where the Special Appeal was allowed vide order dated 3.04.2019 with the following observations:-

"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 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, Uttarkashi was, therefore justified in issuing necessary directions, to the Director, Panchayati Raj, vide proceeding 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."

9. In other words, there was a clear observation of the Division Bench of this Court that the office of the Chairman, Zila Panchayat, Uttarkashi has become vacant under the facts and circumstances of the case.

10. In pursuance of the order dated 03.04.2019 passed by the Division Bench of this Court, the Additional Secretary, Panchayati Raj, Government of Uttarakhand vide order dated 10.05.2019 declared the office of Chairman as vacant and by the subsequent order of the same date i.e. 10.05.2019 a three-member committee was appointed by the Additional Secretary, Panchayati Raj,

Government of Uttarakhand to discharge the functions of the Chairman of Zila Panchayat, Uttarkashi. This second order dated 10.05.2019 by which a three-member committee has been appointed by the Additional Secretary, Panchayati Raj, Government of Uttarakhand has been challenged by both the petitioners i.e. erstwhile Chairman and present Vice Chairman of Zila Panchayat, Uttarkashi.

11. Mr. Dharmendra Barthwal, learned counsel for the petitioner in Writ Petition (M/S) No. 1385 of 2019 has placed reliance on the two provisions of the Uttarakhand Panchayati Raj Act, 2016 i.e. Section 99 and Section 103. Section 99 and Section 103 of the Uttarakhand Panchayati Raj Act, 2016 read as under:-

"99. Arrangement of Chairman of Zila Panchayat - When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, and the office of Vice Chancellor is vacant, or when the Vice Chairman, if any, acting under the provisions of this Act, during a vacancy in the office of Chairman is unable to discharge his functions owing to absence, illness or any other cause, the State Government by order, make such arrangement, as it thinks fit, for the discharge of the functions of the Chairman, until the date on which the Chairman or Vice Chairman, as the case may be resumes his duties."

"103. Meetings of Zila Panchayat -(1) (a) A Zila Panchayat shall meet for the transaction of business at least once in every two months.

(b) The Chairman or in his absence, the Vice Chairman may convene a meeting of the Zila Panchayat whenever he thinks fit and shall, upon a requisition made in writing by not less than one-fifth of the members of Zila Panchayat and served on the Chairman or sent by registered post acknowledgment due, addressed to the Zila Panchayat at its office, convene a meeting of the Zila Panchayat within a period of one month from the date of the service or receipt of such requisition.

(c) A meeting may be adjourned until the next or any subsequent day, and an adjourned meeting may be further joined in like manner.

(d) Every meeting shall be held at the office of the Zila Panchayat or at some other convenient place of which notice has been duly given.

(e) The quorum for the meeting of Zila Panchayat shall be one third of elected members. For any adjourned meeting the quorum shall be one third but on incomplete quorum of meeting also in second time than the quorum for next meeting shall be one fifth;

Provided that for convened meeting agenda shall be as it is;

Provided further that in case of necessity the special meeting of the Zila Panchayats may be conducted.

(2) Procedure of etc. meetings of the Zila Panchayat-

The following matters relating to meetings of Zila Panchayat shall be governed by rules:-

- (a) transaction of business at the meeting;
 - (b) quorum for transaction of business;
 - (c) presiding over the meeting in the absence of Chairman and the Vice Chairman;
 - (d) asking of questions by members;
 - (e) notice of meeting;
 - (f) maintaining the order at the meeting;
 - (g) decision by vote;
 - (h) minute book and resolutions;
 - (i) right of government servants, persons authorized by the State Government and other persons to attend and take part in discussions:
 - (j) right of Zila Panchayat to require attendance of servants of the State Government to attend its meetings;
 - (k) right of officers of the Zila Panchayat in regard to meetings;
 - (l) right of the Zila Panchayat to require reports, returns, etc. from the Kshettra Panchayat Secretary, Block Development Officer and Chief Officer; and
 - (m) other incidental matters which need or ought to be prescribed.
- (3) The Zila Panchayat may require the Chairman or the Chief Officer may require the produce of any of its meetings-
- (a) any return, statement, estimate, statistics or other information regarding any matter pertaining to the administration of the Zila Panchayat as the case may be;
 - (b) a report or explanation of any sub-committee; and
 - (c) any report, correspondence or plan or other document or a copy thereof which is in his possession or control as Chairman, Kshettra Panchayat secretary, block development officer and Chief Officer or which is recorded or filed in the office of the Zila Panchayat or of any servant of the Zila Panchayat, as the case may be.
- (4) entitle a Kshettra Panchayat or Zila Panchayat to exercise within the limits of any Nagar Mahapalika, municipality, notified area, cantonment or town area any authority which is vested in the Nagar Mahapalika, municipal board, notified area committee, cantonment board, District Magistrate, any other magistrate or town area committee, as the case may be, provided that the Zila Panchayat may nevertheless-
- (a) construct, maintain and control any school, library, hospital, dispensary, poor house, asylum, orphanage, inspection house or other building or institution

within the aforesaid limits which is not maintained exclusively for the benefit of persons residing within the aforesaid limits, and

(b) do anything within the aforesaid limits the doing of which is necessary for the efficient discharge of its functions under this Act."

12. As per Section 99 of the Uttarakhand Panchayati Raj Act, 2016, it is clear that when the office of the Chairman becomes vacant and there is no one functioning as a Vice Chairman, then the State Government in that event can make arrangement for proper functioning of the office of Chairman. However, this has to be read in the light of Section 103 of the Uttarakhand Panchayati Raj Act, 2016 which is very clear that where the office of Chairman is lying vacant, the functions of the Chairman have to be discharged by the Vice Chairman. This has also been the finding of this Court in the case of Lakhapat Singh Butola v. State of Uttarakhand and others (Writ Petition (M/S) No. 2453 of 2018) decided on 26.09.2018.

13. In view thereof, Writ Petition (M/S) No. 1385 of 2019 succeeds and is hereby allowed. The G.O. No. 244/ XII(2)/2019-70(45)/2018 dated 10.05.2019 (Annexure No. 9) is hereby quashed and set aside. The petitioner Prakash Chandra Ramola shall be given charge of the Chairman, Zila Panchayat, Uttarkashi forthwith within twenty-four hours of the production of a certified copy of this order by the Secretary, Panchayati Raj, Government of Uttarakhand.

14. Having made the above determination, it is also made clear that since the removal of the name of respondent no. 8 has been done under very unique circumstances, the respondent no. 8 shall meanwhile make a representation before the Director, Panchayati Raj for restoring her name in the electoral rolls and for the consequential restoration of her status. The Director, Panchayati Raj shall take a decision on the representation of respondent no. 8 within two weeks thereafter.

15. It is made clear that subsequent to the decision of the Director, Panchayati Raj, due process will follow. It is also made clear that since we are in the last lap of the term of the Chairman, the petitioner Prakash Chandra Ramola shall meanwhile not take any major financial or administrative decision, except with the approval of the Director, Panchayati Raj.

16. Writ Petition (M/S) No. 1571 of 2019 stands disposed accordingly.

17. Let a certified copy of this order be issued within twenty-four hours on payment of usual charges.