

(2012) 07 AHC CK 0202
In the Allahabad High Court

Pramila Devi

APPELLANT

Vs

State of U.P.Thru Secy.Panchayat Raj & 4 Others

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Citation : (2012) 07 AHC CK 0202

Hon'ble Judges : Vishnu Chandra Gupta, J

Final Decision : Disposed Of

Judgement

Vishnu Chandra Gupta, J.

Heard, the learned Counsel for the petitioner and learned Counsel for the respondent nos. 1 to 4 and Sri Padmakant Mishra, learned Counsel for respondent no.5.

Counter Affidavit filed by Madhuahin Devi, respondent no.5 and the same is taken on record.

In this writ petition the impugned order dated 15.6.2012 was sought to be quashed on several grounds mentioned in the writ petition and also for appointing the petitioner to function on the post of Gram Pradhan as a officiating Pradhan till the election conducted for the said post. It has been contended on behalf of petitioner that by judgment of this Court in Digvijay Nath Pathak Vs. State of U.P. & Others delivered in Civil Misc. Writ Petition NO.4222 of 2011 on 25.1.2011, this Court interpreted the provision of Section 12J of U.P. Panchayati Raj Act and held that the stop gap arrangement of the vacant post of Gram Pradhan, in the absence of UpPradhan shall be made on the basis of an open meeting convened of all the members of particular Gram Panchayat.

The authorities, if violate this procedure as laid down in Udai Veer Vs. State Election Commission, 2009, (106) RD 151 and Smt. Usha Singh Vs. District Magistrate Gorakhpur 1992 RD 337 the appointment under Section 12 J Panchayat Raj Act by the authority would be illegal and liable to be set aside.

Paragraph 6 of the judgment of Smt. Usha Singh is reproduced as under:

"A perusal of Section 12J of U.P. Panchayat Raj Act shows that if the office of Pradhan becomes vacant then the UpPradhan would exercise the function of Pradhan. SubSection (2) of Section 12J of the Act states that if the office of both Pradhan and UpPradhan are vacant, or if for any reason both Pradhan and UpPradhan are incapable to act, the prescribed authority shall nominate a member of of Gaon Panchayat to discharge the functions of the Pradhan until the office of Pradhan or UpPradhan is filled up. SubSection (2) does not state which member of the Gaon Panchayat should be nominated by the Prescribed Authority to discharge the functions of the Pradhan.

Literally construed the said provisions gives absolute discretion to the Prescribed Authority to nominate any member of the Gaon Panchayat for this purpose. Such an interpretation, however, would make the provision arbitrary and also unconstitutional since no guiding principles has been laid down as to how the discretion of the prescribed authority is to be exercised and in various of which members of the Gaon Panchayat. However, it is a settled principle of interpretation that the Courts should as far as possible try to avoid holding a statute to be unconstitutional, and if an interpretation can be found which makes the statute constitutional, such an interpretation should be accepted. In my opinion, since the Gaon Sabha and Gaon Panchayat are democratic bodies elected by the people, the proper interpretation of subsection (2) of section 12J would be that in case where the offices of both Pradhan and UpPradhan are vacant, or when both Pradhan and UpPradhan are incapable to act, the Prescribed Authority should ask the members to act, the Prescribed Authority should ask the members of Gaon Panchayat to hold a meeting, and such members should decide among themselves which member should be nominated as Pradhan for the interim period until regular election, and such member should be nominated as officiating Pradhan under Section 12(2). Such an interpretation would be inconsonance with the democratic principle underlying the U.P. Panchayat Raj Act, and would also make the statute."

The view expressed in Smt. Usha Singh's case was approved by Division Bench of this Court in Udaiver's case Supra. The view expressed by Division Bench of this Court is reproduced hereunder.

? Considering the basic concept of democracy set up for the Pancyat Raj under the provisions of Article 243 of the constitution, we are of the opinion that respondent No.3, i.e. District Magistrate Aligarh ought to have ascertained the wishes of the elected members of the Gram Pancyat, as to who should be officiating Pradhan for the period till the regular election of Gram Pradhan is held. Further every attempt should be made to elect the new Pradhan at the earliest possible.

In View thereof, we dispose of this special appeal with a request upon the District Magistrate,i.e. respondent no.3 to convene a meeting of the elected members of

Gram Panchyat within a period of two weeks from the date of certified copy of this order is filed before him, nomination some responsible officer not below the rank of Sub Divisional Magistrate, to chair the meeting of the elected members so as to ascertain the wishes qua nomination of officiating Pradhan. Person so nominated would be handed over the charge forthwith. We also request the District Magistrate to ensure that the election of Gram Pradhan of the village concerned be held in accordance with law at the earliest possible.?

It has been contended on behalf of learned Counsel for respondent no.5 that seven members of Gram Panchayat out of 13 recommended the appointment of the respondent no.5 as an officiating Pradhan in the light of Section 12J. Hence the appointment is based on majority and cannot be set aside even in view of dictum laid down in Digvijay Nath Pathak's case Supra.

Admittedly no meeting has been convened of all the members of Gram Panchayat before making appointment of respondent no.5 as a Gram Pradhan in view of Section 12 J. Therefore, the order cannot be allowed to sustain and is liable to be set aside.

On the contrary the counsel for the petitioner submitted that 10 out of 13 members of Gram Panchyat opposed the officiating appointment of respondent No.5 as officiating Pradhan.

The question of consent or of opposition could not be gone into in this writ petition but could only be decided by convening the open meeting of elected members of Gram Panchyat.

So far as another relief for appointment of the petitioner as officiating Gram Pradhan is concerned, has not been pressed by the petitioner before this Court.

Considering all the facts and circumstances of the case the impugned order is liable to be quashed.

Consequently, in view of the facts and circumstances of this case, the impugned order dated 15.6.2012, Annexure1 to the writ petition nominating respondent No.5 Madhuahini Devi as officiating Pradhan by District Panchyatraj Adhikari, Pratapgarh is set aside. The respondent no. 2, the District Magistrate, Pratapgarh is hereby directed to convene a meeting of the elected members of Gram Panchyat within a period of two weeks from the date of certified copy of this order is filed before him, nomination some responsible officer not below the rank of Sub Divisional Magistrate, to chair the meeting of the elected members so as to ascertain the wishes qua nomination of officiating Pradhan. Person so nominated would be handed over the charge forthwith. The District Magistrate to ensure that the election of Gram Pradhan of the village concerned be held in accordance with law at the earliest possible. The writ petition is finally dispose of.