

(1990) 12 AHC CK 0003

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 33385 of 1990

Salik Ram

APPELLANT

Vs

District Panchayat Raj Officer and Others

RESPONDENT

Date of Decision : 12-12-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Panchayat Raj Act, 1947 — Section 11(2), 14(1)

Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 33B(2)

Citation : (1991) 1 AWC 553 : (1991) RD 209

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : V.K. Nagaich, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Petitioner, who is Pradhan, has, by means of this writ petition, challenged the resolution of the Gaon Sabha passed in meeting held on 26-11-1990 the motion of no confidence has been passed against him. Grievance of the Petitioner is that the impugned resolution is illegal on the ground (i) that the meeting fixed on 26-11-1990 was against Rule 33-B(2) of U.P. Panchayat Raj rules in as much as it was fixed on a date which is later than 30 days from the date of receipt of the notice and (ii) quorum of two third of the members prescribed under Sub-section (1) of Section 14 of the U.P. Panchayat Raj Act was not complete when the meeting commenced on 26-11-1990.

2 Rule 33-B(2) of U.P. Panchayat Raj Rules requires that Prescribed Authority shall fix meeting for consideration of motion of no-confidence on a date "which shall not be later than thirty days from the date of receipt of the notice". According to the averments made in the writ petition the notice is said to have been received by Prescribed Authority on 27-10-1990 and the meeting was fixed and held on 26-11-1990. "Not later than thirty days" means within thirty days. Supreme Court in the case of H.H. Raja Harinder Singh Vs. S. Karnail Singh, has

construed words "not later than fourteen days" to mean "within a period of fourteen days". Rule 33-B(2) shall stand complied with if meeting of Goan Sabha was held within thirty days from the date of receipt of notice. As the period of thirty days is to be counted "from the date of the receipt of the notice" the day on which the notice was received by Prescribed Authority will be excluded when counting the period of thirty days, in as much as when something is required to be done within specified period, the date on which the cause of action arose has to be excluded, while computing the specified period. Supreme Court in the case of Haru Das Gupta Vs. The State of West Bengal, , has laid down that:

There is however a volume of authority in England Showing that where a certain thing has to be done within a specified period, the day on which the cause of action arose is to be excluded from computation and the day on which action is taken is to be included.

X X X X The rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded.

X X X X Thus as a general rule the effect of defining a period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day.

On the principle aforesaid the date on which the notice was received by the Prescribed Authority i.e. 27-10-1990 has to be excluded while counting period of thirty days and on this basis the meeting held on 26-11-1990 is within thirty days. The first contention of learned Counsel for Petitioner as such has got to be rejected.

3. Second contention of learned Counsel for the Petitioner also deserves rejection, because Section 14(1) of the Act does not prescribe quorum of the meeting What is required by this Sub-section is that motion is to be passed "by majority of two third of the members present and voted". This is not the quorum for convening the meeting but number of votes required for passing the motion of no-confidence against the Pradhan. As such it is not necessary that there should be two third of total members of the Gaon Sabha who should be present when the meeting is held. Quorum in fact, has been provided by Section 11(2) of the Panchayat Raj Act which is one fifth of number of members of Gaon Sabha.

4. In this connection it may be mentioned that out of 318 members who had participated in the meeting 244 voted against the Petitioner while only 74 gone in his favour and Petitioner in this manner has been voted out of power by thumping majority. A division Bench of this Court in Om Prakash Yadav v. Collector Etah Writ Petition No. 16848 of 1990, decided on 4-12-1990 1991 AWC 28 has laid down that if motion of no-confidence has been passed by majority this Court should not interfere under Article 226 of the constitution of India. While declaring so this Court has observed that the matter pertaining to the election has to be settled strictly in accordance with the statutes and principles of

equity in such proceedings cannot be imported, But when any order or resolution is challenged under Article 226 of the constitution of India this Court does not deal with the matter pertaining to the election and power under Article 226 being equitable in nature this Court can decline to interfere in such controversy. Relevant passage from the aforesaid judgment is quoted below:

Under Article 226 of the constitution of India this Court does not exercise any power pertaining to the election matters and its jurisdiction is confined only to see as to whether any action of the authorities is in conformity with law and equity. Power of this Court under Article 226 of the constitution of India being supervisory in nature equitable principles are enshrined in it....

As mentioned above motion of no confidence has been passed against the Petitioner by over whelming majority and interference by this Court against such a resolution will amount to restoring office to a person against the will of the majority of the people. In a democretic set up where right to an office depends on the will of the people a person who has lost majority cannot be permitted to hold the office.

As the Petitioner has lost by over whelming majority it is not a fit case to be interferred with by this Court under Article 226 of the constitution of India.

5. The writ petition lacks merit and is accordingly dismissed.

6. Certified copy of this order may be given to the learned Counsel for parties on payment of usual charges within a week.