

(2016) 08 AHC CK 0249

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 37701 of 2016

Santosh Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 95
Uttar Pradesh Revenue Code Rules, 2016 — Rule 193
Uttar Pradesh Revenue Code, 2006 — Section 225-C

Citation : (2016) 8 ADJ 661 : (2016) 6 ALLJ 152 : (2016) 133 RD 343 : (2017) 1 RJ 210

Hon'ble Judges : Dilip B. Bhosale, CJ. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Shri Krishna Mishra, Advocate, for the Petitioner; C.S.C, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri S.K. Mishra, learned counsel for the petitioner and Sri A.K. Pandey, learned Standing Counsel representing the State respondents.

2. The petitioner has sought the following reliefs:

"A. issue writ, order or direction in the nature of certiorari quashing of notification dated 9.6.2016 (Annexure 2 to this writ petition) and consequential proceedings initiated in pursuance of letter of Chairman, Rajaswa Parishad, Uttar Pradesh, Lucknow dated 20.6.2016 and letter of District Magistrate, Auraiya issued in July, 2016 (Annexure 3 and 4 to this writ petition).

B. issue writ, order or direction in the nature of mandamus declaring amended Section 225 Ga of Uttar Pradesh Rajaswa Sanhita, 2016 as null and void."

3. He is the duly elected Gram Pradhan of Gram Panchayat Dodapur, District Auraiya. The challenge to the notification dated 9 June 2016 and the consequential order dated 20 June 2016 is with respect to the composition of a

"Village Revenue Committee" (hereinafter for the sake of brevity to be referred as "the Committee") constituted in terms of the provisions of Section 225C of the U.P. Revenue Code 2006 (Code). The notification of 9 June 2016 proclaims that the Committee shall stand constituted in each Gram Panchayat in terms of the provisions of Section 225C of the Code for the purposes of assisting in the disposal of cases and redressal of grievances. Pursuant to the said notification, Government Order dated 20 June 2016 has come to be issued requiring the constitution of such committees in each district.

4. The primary submission which have been advanced in support of the challenge to the said notification is that the inclusion of a defeated candidate in and as a member of the committee is arbitrary and violates the provisions of the U.P. Panchayat Raj Act, 1947. Counsel for the petitioner have further placed reliance upon the provisions of Section 95 of the 1947 Act to submit that the constitution of the committee would be in violation of the said provision.

5. We have noted the two primary submissions advanced in order to record and note that the learned counsel did not address any submission touching upon the validity of Section 225C although a relief in this respect is sought in the writ petition. That then leaves us only to consider the validity of the notification dated 9 June 2016 and the consequential Government Order dated 20 June 2016.

6. However, before proceeding to deal with the said issue, it would be apposite to notice the relevant statutory provisions.

Section 225C of the Code reads as follows:

"225C. Constitution of Committee.(1) Notwithstanding anything to the contrary contained in any other provisions of this Code or the Rules made thereunder, the Collector shall 2 1947 Act constitute, such Committee at Gram Panchayat level, as may be notified by the State Government from time to time to assist in the disposal of cases and redressal of grievances in the manner prescribed.

(2) Every committee constituted under subsection (1) shall consist of a Chairman and four other members, who shall be nominated or designated in the manner prescribed:

Provided that in each such committee, there shall be at least one Woman member, one member belonging to the Scheduled Castes or the Scheduled Tribes and one member belonging to the Other Backward Class."

7. As would be evident from a reading of the said provision, it envisages the constitution of a committee at the Gram Panchayat level to assist in the disposal of cases and redressal of grievances in the manner prescribed. Subsection (2) thereof provides that the committee shall be a five member body comprising of a Chairman and four other members to be nominated or designated in the manner prescribed. The Proviso thereto then mandates that in each such committee there shall be at least one woman member, one member belonging to the Scheduled Castes or Scheduled Tribes and one member belonging to the Other

Backward Classes. The constitution of the Committee as noted above, was to be such as may be prescribed by the State Government. We find that the State Government in exercise of powers conferred by Section 233 of the Code have framed Rules titled the U.P. Revenue Code Rules 2016. Rule 193 provides for 2016 Rules the constitution of the Village Revenue Committee and is in the following terms:

"193. Constitution of Village Revenue Committee (Section 225C) (1) There shall be a Village Revenue Committee for each Gram Panchayat and the Committee shall have not more than five members including the Chairman.

(2) The Chairman of the Land Management Committee shall be the Chairman of the Village Revenue Committee.

(3) The first runner, if any, for the post of Pradhan in the election shall be the Deputy Chairman of the Village Revenue Committee. If there is no first runner for the post of Pradhan, the Deputy Chairman shall be elected by the members of the Revenue Village Committee from amongst themselves.

(4) As soon as may be after the commencement of these rules, and every time thereafter when a Land Management Committee is reconstituted, the Chairman of every Land Management Committee shall, by a written order appoint a date on which the members of the Land Management Committee shall meet and elect from amongst themselves, the three members to constitute the Village Revenue Committee under section 225C of the Code.

(5) On the issue of the order under sub-rule (4), the Secretary of the Land Management Committee shall give to the members of the Land Management Committee at least one week's notice stating therein the number of members of the Village Revenue Committee to be elected by Land Management Committee, and the date, time and place of the meeting.

(6) The Quorum necessary for the meeting shall be two third of the total number of the members of the Land Management Committee for the time being.

(7) As soon as the meeting commences, the Chairman shall invite nominations for election for the post of member of the Village Revenue Committee supported by two members of the Land Management Committee one as the proposer and the other as seconder:

Provided that a candidate may propose his own name.

(8) The Chairman shall take down the names of all validly nominated candidates on a register and announce the same immediately.

(9) If the number of the validly nominated candidates is equal to the number of members to be elected, the Chairman shall declare all such candidates duly elected.

(10) If the number of the validly nominated candidates is less than the required

number of seats, the Chairman shall declare all such candidates duly elected. The proceedings shall then be taken a fresh to fill up the remaining seats in accordance with the procedure prescribed in these rules.

(11) If the number of validly nominated candidates exceeds the number of seats, the required members shall be elected by secret voting by all the members of the Land Management Committee present in the meeting.

(12) Votes shall be cast in person and no votes shall be received by the proxy. Every member shall have one vote:

Provided that the Chairman shall not have a right of vote.

(13) The Chairman shall, as soon as may be, after the votes have been cast, prepare in the presence of the members present, a record of the voting and declare, upto the number of the seats, candidates, who are found to have secured, in order, the highest number of votes, to have been duly elected.

(14) In the event of there being an equality of votes between the candidates, the Chairman shall draw lots in the presence of the members and the candidate whose name is first drawn shall be declared to have been duly elected.

(15) For filling a casual vacancy in the membership of the Village Revenue Committee, the procedure to be followed shall, as far as possible, be the same as laid down in the foregoing rules.

(16) The Bhumi Prabandhak Samiti shall forward the proposal along with the list of validly elected candidates for the constitution of Village Revenue Committee to the Collector through the Sub-Divisional Officer for the necessary approval. After approval by the Collector, the Village Revenue Committee shall be deemed to be constituted.

(17) If the direction for submitting the proposal for constitution of the Village Revenue Committee is not complied with by the Bhumi Prabandhak Samiti, the Collector may exercise the power under section 71 of the Code.

(18) The Village Revenue Committee shall discharge the duties and perform the functions, imposed or assigned by the Code or the rules or the regulations or the directions issued from time to time by the State Government or by the Board.

(19) If the Collector, after necessary inquiry, is satisfied from any complaint supported with affidavit or otherwise that the Village Revenue Committee have refused or failed without reasonable cause or excuse to discharge the duties or perform the functions, imposed or assigned by the Code or the rules or the regulations or the directions issued from time to time by the State Government or by the Board, he may dissolve the Village Revenue Committee and may constitute a new Village Revenue Committee in accordance with the provisions of these rules: Provided that the Village Revenue Committee shall not be dissolved without being afforded the reasonable opportunity of hearing.

(20) The resignation of the Chairman or member of the Village Revenue Committee may be accepted by the Collector and the vacancy for the post of Chairman or members shall be filled in, in the manner hereinbefore enumerated in this rule.

(21) If any member of the Village Revenue Committee is not discharging his duties or performing his functions as hereinbefore enumerated, the Land Management Committee may pass a resolution for removal of such member and the same shall be forwarded for approval of the Collector through the Sub-Divisional Officer.

(22) If the resolution submitted by the Land Management Committee for the removal of the member is approved by the Collector, the post of the member concerned shall fall vacant which shall be filled in, in accordance with law.

(23) No act or proceeding of a Village Revenue Committee shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of the same."

8. Rule 193 provides that the Chairman of the Land Management Committee shall be the Chairman of the Committee. In terms of sub-rule (3), the first runner up for the post of Pradhan would be the Deputy Chairman and if there be no first runner up, the Deputy Chairman is to be elected by the members of the Committee from amongst themselves. In terms of sub-rule (4), immediately upon commencement of the 2016 Rules and thereafter whenever a Land Management Committee is constituted, the members of the Land Management Committee are required to meet and elect from amongst themselves the three members entitled to be nominated or designated in order to complete the composition of the Committee. In terms of the provisions of sub-rule (18), the Committee is enjoined to discharge such duties and perform such functions as may be imposed or assigned to it by the Code.

9. We fail to find any conflict in the constitution of the Committee in terms of Section 225C of the Code and the provisions of the 1947 Act. At least no such conflict could be pointed out or established by the counsel during the course of oral submissions. Learned counsel, as noted before, did not address any submission as to how section 225C was unconstitutional. More importantly we note that the impugned notification and Government order have come to be issued in accord with the provisions of section 225 C of the Code read with Rule 193 of the 2016 Rules. The petition as is evident from the reliefs claimed, does not address any challenge to Rule 193. In the absence of any challenge to Rule 193 which provides for the composition of the Committee, we fail to find any substance in the challenge to the consequential notification and Government order.

10. The reference by the counsel to Section 95 of the 1947 Act is only noticed to be rejected. As would be evident from a reading of Section 95, the same confers powers of inspection upon the State Government in respect of the affairs of and

the conduct of business by a Gram Panchayat. The scope and content of Section 95 is further evidenced from its placement under Chapter VII titled "External Control". This provision empowers the State Government to inspect or cause to be inspected any immovable property owned, used or occupied by a Gram Panchayat or any work in progress. The State Government in exercise of powers conferred by this provision may also call upon the Gram Panchayat to present for its inspection such books, documents or records as it may deem fit. It also confers powers upon the State Government to furnish statements, reports or books as also to institute an enquiry in respect of any matter relating to a Gram Sabha, Gram Panchayat or Nyay Panchayat as the case may be. By virtue of clause (f), the State Government is empowered to dissolve a Gram Panchayat if in its opinion the said Gram Panchayat have abused its position or have continuously failed to perform duties entrusted to it or where it forms the opinion that its continuance is not considered desirable in public interest. By virtue of clause (g), the State Government is conferred the power to remove a Pradhan, Up Pradhan or a member of a Gram Panchayat on grounds set forth therein. We fail to appreciate the reference to this provision inasmuch as the constitution of the Committee in no manner conflicts or militates with the provisions of Section 95. The Committee cannot be said to have in any manner usurped the powers and functions vested in and liable to be discharged by a Gram Panchayat or a Gram Pradhan. As noted above, the jurisdiction of the Committee itself is restricted and limited to assisting in the disposal of cases and redressal of grievances. No other submission was addressed or advanced before us.

11. We consequently find no merit in the writ petition which shall consequently stand dismissed.