
(2015) 08 AHC CK 0194
In the Allahabad High Court
Case No : Writ Petition No. 2238 (MS) of 2015

Shiv Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 3 UPLBEC 2035

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : Ramesh Kumar Srivastava, for the Appellant

Final Decision : Allowed

Judgement

Rajan Roy, J.—Heard. By means of this writ petition petitioner has challenged the final notification dated 20.2.2015 issued by the State Government under Section 11(f) of the U.P. Panchayat Raj Act 1947.

2. Contention of the learned Counsel for the petitioner is that more than 400 villagers of Revenue Village Kapoorpur, Bariagodhi and Lakhnipur submitted a proposal for re-organising the Gram Panchayat Kapoorpur comprising of the aforesaid three revenue villages and separating revenue village Hisampur which should be recognized as a separate Gram Panchayat or part of a separate Gram Panchayat.

3. Further contention of the learned Counsel for the petitioner is that this proposal was accepted vide proposed Roop-patra-I. The same was also finalised by the Committee at the Block level and District level. Thereafter, this proposal was sent back to the Block level and also to the lower levels for invitation of objections. Two objections were received, both of which were rejected, a fact which is not in dispute. Thereafter the matter again came back to the District Level Committee. At the District Level Committee while finalizing the matter and issuing the final notification the proposal which had been accepted earlier was

changed without any justification on account of which a separate Gram Panchayat namely Hashimpur was constituted comprising of revenue villages Kapoorpur, Bariagodhi and Lakhnipur whereas Kapoorpur was re-organized as a separate Gram Panchayat which was not the proposal accepted earlier. In these circumstances, the petitioner filed the instant writ petition. Earlier counter affidavits filed by the opposite parties are absolute irrelevant, therefore, this Court vide order dated 18.8.2015 passed the following order:

"Original record has been produced.

Prapatra-1 reveals that the request made by the villagers, the first name being that of Ms. Aaradhana was accepted, however, the official who is present i.e. the District Panchayat Raj Officer on being asked informed that there was an error in preparation of Prapatra-1 and in fact the proposal of Ms. Aaradhana had not been accepted in toto, but the record which has been produced, does not reveal so, nevertheless, the alleged final determination reveals that contrary to the decision as recorded in Prapatra-1, the Gram Panchayat Kapoorpur was constituted separately but another Gram Panchayat Hisampur was constituted comprising of the revenue villages Hisampur, Lakhnipur and Bariagothi. He is unable to explain the said discrepancy.

Let counter affidavit be filed by 24.8.2015.

List this case on 24.8.2015 as fresh.

In the meantime the opposite parties shall explain the averments made by opposite parties in the earlier counter affidavit as they appear to be not relevant whatsoever to the case made by the petitioner. The original record be also produced by the learned standing Counsel on the next date of listing."

4. In pursuance to the aforesaid, supplementary counter affidavits have been filed, to which response has been filed by the petitioners today, which is taken on record.

5. From a perusal of the counter affidavit and the submissions of the learned Addl. Chief Standing Counsel appearing for the State it appears that as far as an initial proposal which was approved by the District level Committee and crystallized in the form of Roop-patrap-I and thereafter the final Roop-patra, the proposal submitted by Aaradhna and others of which the petitioner herein was also a party was accepted in toto and as per the said Roop-patra-I, a copy of which has been filed with the counter affidavit and the original file has been produced before the Court, Gram Panchcyat Kapoorpur was carved out comprising of revenue village Kapoorpur, Bariagodhi and Lakhnipur, whereas Gram Panchayat Hashimpur was constituted separately. When the matter was sent to the lower levels for invitation of objections, two objections were filed by Mohd. Akhtar and Shamim Ahmad, however, none of them was accepted. As none of the objections was accepted, there was no reason to change the proposal which had already been accepted, as mentioned hereinabove. However, when the

matter came back at the Block level and District Level Committee, based on a misreading of the proposal submitted on account of last three lines mentioned therein which was not in juxta position with the contents of the entire proposal, specially paragraph 9 thereof which clearly proposed the constitution of a Gram Panchayat namely Kapoorpur comprising of revenue village Kapoorpur, Bariagothi and Lakhnipur, a wrong impression was gathered as if a proposal was for treating Kapoorpur as a separate Gram Panchayat viz-?-viz. Lakhnipur and Bariagodhi. Based on this misreading and misunderstanding change was made at the level of District level committee, which is reflected in the final notification.

6. During the course of arguments, the Court specifically confronted the learned Standing Counsel on this issue and he fairly accepted the fact that there was a misreading, however, he also added that there are other factors also which are required to be considered if a fresh decision is to be taken.

7. Normally this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India does not interfere with a final notification relating to re-organization of Gram Panchayats under Section 11(f) of the U.P. Panchayat Raj Act 1947, but there is no absolute bar. Moreover, considering the apparent illegality in the matter the Court cannot shut its eyes merely because final notification has been issued.

8. In view of the above discussion, the impugned notification dated 20.2.2015 insofar as it relates to the re-organization of Gram Panchayat Kapoorpur and Hashimpur, is declared to be illegal and is accordingly quashed. The concerned authorities are directed to take a fresh decision in the matter as per law with regard to reorganization of the aforesaid Gram Panchayats in the light of the proposal received and the objections already finalized, without inviting any fresh objections, with liberty to consider the matter in the light of relevant factors permissible in law.

9. This exercise shall be done within a period of one month from the date a certified copy of this order is produced before the Director, Panchayat Raj, Government of U.P. The writ petition is accordingly allowed.