

(1976) 05 AHC CK 0007
In the Allahabad High Court
Case No : Writ Petition No. 1378 of 1975

Shyam Lal

APPELLANT

Vs

District Panchayat Raj Officer and Others

RESPONDENT

Date of Decision : 11-05-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Municipalities Act, 1916 — Section 87A(3)
Uttar Pradesh Panchayat Raj Act, 1947 — Section 14, 14(2), 14(3), 14(4)
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 33B

Citation : (1976) AWC 532

Hon'ble Judges : D.N. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Jha, J.—Shyam Lal has filed this petition under Article 226 of the Constitution praying that the proceedings of the meeting dated 20-5-1975 in which the motion of no confidence was passed be quashed along with the notice dated 8-5-1975 convening the aforesaid meeting. He has also prayed for an issue of mandamus forbearing the opposite parties from giving effect to the proceedings which took place on 20-5-75 in which the motion of non confidence against the Petitioner is said to have been passed.

2. The Petitioner was elected in May/June 1972 as Pradhan of Gaon Sabha Jagdishpur, Pargana Jhaltar Ajgain, Tahsil Hasanganj District Unnao for a period of five years. On 23-4-1975 some members presented a motion of no confidence before the District Panchayat Raj Officer. It is said that about 437 members of the said Gaon Sabha were signatories to this resolution. A notice of the meeting was issued on 8-5-1975 to call a meeting of the members of Gaon Sabha on 20-5-1975 in the Primary Pathshala for consideration of the motion of no confidence against the Petitioner. In pursuance of this instruction a notice was served on the Pradhan by affixation, as he was not present in the house and by a beat of drum on 5-5-1975 the Petitioner asserts that in the meeting held on

20-5-1975 he was not allowed to address the members and a quarrel took place in the said meeting and on account of pendemonium the police intervention had to be sought and the voting was not free. However, a resolution was passed in the meeting. One hundred and ninty seven votes were cast in favour of the motion of no confidence and seven votes were declared invalid. The Petitioner feeling aggrieved moved this Court by means of this petition challenging the said notice issued for convening the meeting on the ground that there was violation of Section 14 of the U.P. Panchayat Raj Act inasmuch as 14 days notice for convening the meeting was not given. As, according to him, the notice was issued under signatures of the District Panchayat Raj Officer, Unnao on 8-5-1975 and it was on 15-5-1975 that the Block Development Officer had written on its margin that this letter may be sent to the Petitioner. This has been attached as Annexure 1. He has also questioned that the procedure prescribed in Rule 33B(iii) had not been complied with and the members who came to participate in the proceedings were not allowed to enter the campus in the circumstances the entire proceedings held on 20-5-1975 were illegal and without jurisdiction.

3. The petition has been contested on behalf of the opposite parties and a counter affidavit has been filed on behalf of opposite party No. 1, District Panchayat Raj Officer and the opposite party no, 2 the Block Development Officer. Another counter affidavit has been filed by one Changa. In these affidavits the allegations contained in the writ petition with respect to the notice and the notice convening the meeting have been denied. It is stated that on 23-4-1975 a written notice of intention to move a motion of no confidence against the Pradhan signed by more than one half of the total members of the Gaon Sabha stating the reason was delivered in person by Changa, Desh Raj Singh, Sri Shankar Singh, Baba Din and Kedar, resident of jagdishpur to the District Panchayat Raj Officer Unnao. This notice had the signatures and thumb impressions of 437 members of the Gaon Sabha. The meeting of the Gaon Sabha was fixed for 20-5-75 at 8 A.M. in the Primary School Jagdishpur. The Block Development Officer Nawabganj was directed to inform the members of the Gaon Sabha vide letter dated 1-5-75 copy of which is Annexure A-I. The Panchayat Sewak of the circle informed the members of the Gaon Sabha by beat of drum on 5-5-1975. It is thus asserted that 15 days previous notice for the meeting was given under Panchayat Raj Act. It is stated that the letter of 8-5-1975 was. actually an instruction regarding the procedure and conducting the meeting and it was not a notice for the meeting.. The notice issued on 1-5-1975 was complied with on 5-5-1975. It is stated that when the meeting had started on 20-5-1975 at 8 A.M. the police was already present there and no disturbance in the meeting took place. The Presiding Officer read to the Gaon Sabha the charges and then allowed the motion to be moved and discussed The Petitioner had verbally denied the charges but he could not produce any documents in his defence. Full opportunity was thus provided. The voting was done by secret ballot. After half an hour the Petitioner left the polling station and the polling continued peacefully. Thus in short, it is asserted that the vote of no confidence waspassed without

violating any of the rules provided in the U.P. Panchayat Raj Act (hereinafter referred to as the Act).

4. I have heard the learned Counsel for the parties. The controversy between the parties lies in a very narrow ambit. It is contended by the learned Counsel for the Petitioner that requisite notice of 15 days as contemplated u/s 14 of the U.P. Panchayat Raj Act 1947 (hereinafter to be referred as the Act) had not been given in the case. Hence the meeting was not convened in accordance with law and the vote of no confidence passed against the Petitioner could not be given effect. It is stated in the writ petition that no confidence motion as required under law was presented to the District Panchayat Raj Officer on 23-4-1975 which was signed by 437 members of the said Gaon Sabha and had been presented by 5 members as prescribed. The learned Counsel argued that notice for convening the meeting on 20-5-1975 was circulated on 8-5-1975. On behalf of opposite parties a counter affidavit has been filed and it is categorically asserted that the District Panchayat Raj Officer, on receipt of the resolution of vote of no confidence, ordered on 1-5-1975 that Panchayat Sewak of the circle be directed to inform the members of the Gaon Sabha by beat of drum and a 15 days" notice for the meeting to be held at Primary School Jagdishpur on 20-5-1975 at 8 A.M. be circulated. It appears from the counter affidavit that the beat of drum was carried out in the village in the constituency on 5-5-1975. The learned Counsel for the Petitioner maintain that assuming the notice to have been circulated on 5-5-1975, still the provision of 15 days" notice had not been complied in accordance with Section 14. Section 14 reads as under;

REMOVAL OF PRADHAN OR Up-PRADHAN--(1) The Gaon Sabha may, at a meeting specially convened for the purpose and of which at least 15 days" previous notice shall be given, remove the Pradhan by a majority of two thirds of the members present and voting.

This section contemplates that Gaon Sabha may at a meeting specially convened for the purpose of consideration of no confidence motion of which at least 15 days" previous notice shall be given. The word "at least" has come for interpretation before this Court as well as Hon"ble Supreme Court, in Jai Charan Lal Vs. State of U.P. and Others, . The Supreme Court while considering Section 87-A(3) of the U.P. Municipalities Act interpreted "at least" to mean that there should be a clear notice excluding the date of notice and the date of meeting. It is, therefore, clear that 5-5-1975, the date on which it was notified that meeting would be held on 20-5-1975 has got to be excluded. The meeting of 20-5-1975 thus was held on 15th day and 15 days as contemplated u/s 14 had not clearly lapsed between the date of notice and the date of holding of the meeting. It would, therefore appear that there was no sufficient compliance of Section 14 of the Act in the instant case.

5. The learned Counsel for the opposite parties argued that the provision of Section 14 was only directory in nature and not mandatory and as such if 15 days had not clearly lapsed with meeting could not be held to be illegally

convened. To support his view reliance was placed on K. Narasimhiah Vs. H.C. Singri Gowda, . The learned Counsel maintained that the meeting thus could not be said to be illegally convened and he further argued that the office being of a representative nature could not be held by a person against whom a mandate of the electorate had been passed and signified. I have given my anxious consideration to the argument advanced by the learned Counsel for the opposite parties and I am of the opinion that the case relied upon by the learned Counsel is not of any avail to him. The Supreme Court in that case while interpreting the Mysore Town Municipalities Act observed:

To ascertain the information the Court has to examine carefully the object of the statute, the consequence that may follow from insisting on a strict observance of a particular provision and above all the general scheme of the other provisions of which it forms a part.

Applying these tests the court in that case held that the provision of Section 27(2) of the Mysore Municipalities Act envisaging three clear days notice was directory and not mandatory. I have gone through the provision contained in Section 14 of the Act and I have no hesitation in holding that this provision contained in Section 14 is mandatory in nature. It is not provided anywhere in the Act or in the section that a notice of shorter period could be given in order to consider the resolution of vote of no confidence. The Pradhan could be removed by a majority to two thirds of the members present and voting at the meeting specially convened for the purpose of considering the no confidence motion. This section also provides that a meeting for removal of the Pradhan shall not be convened within one year of his election. In Sub-section (3) of Section 14 it is provided that if the motion is not taken up for want of quorum or fails for lack of requisite majority at the meeting, no subsequent meeting for the removal of the same Pradhan shall be convened within a year of the date of the previous meeting. Sub-section (4) provides that procedure for the removal of a Pradhan shall be such as may be prescribed under rules.

6. The relevant rule prescribed is 33-B. This rule shows that written notice of the intention to move a motion for removal of the Pradhan u/s 14 of the Act would be necessary. This notice has to be signed by not less than one half of the total number of members of the Gaon Sabha and shall state the reasons for moving the motion and it shall be delivered in person by at least 5 members signing the notice to the Prescribed Authority. Sub-section (2) of this rule prescribes that the authority concerned shall convene a meeting of the Gaon Sabha u/s 14 of the Act on a date to be fixed by him which shall not be later than 30 days from the date of the receipt of the notice. On consideration of the entire statutory provision it is clear that the intention of the Legislature was, that there should be at least clear 15 days notice from the date it was signified to hold a meeting. The provision as observed above is mandatory in nature and its non-observance would in my opinion, be fatal. That being so, admittedly in this case, there was no clear 15 days" notice and the meeting thus held on 20-5-1975 could not be held to have

been validly convened in accordance with law. The resolution accordingly passed in the meeting cannot be given effect to, as it was passed in contravention of the provision of Section 14.

7. The learned Counsel for the opposite parties, however, vehemently argued that the elected office should not be allowed to be held by a person who had lost the confidence of the electorate. This is no doubt true that, against the mandate a person has no right to hold the office, but it is also well settled that observance of law has to be fulfilled before an elected person can be thrown out of office. I have already held that meeting called on 20-5-1975 was not in accordance with the requirements of law. As such it would be manifestly erroneous to uphold that the no confidence resolution was passed in a validly convened meeting; but," however, looking to the peculiar circumstances and the facts of the present case it would not be out of place to mention that opposite parties Nos. 1 and 2 have been extremely negligent in violating the provision. It was their duty to see that the resolution of no confidence submitted to them was placed for consideration before the meeting of the Gaon Sabha in accordance with law. The two officers in the instant case behaved in a most reckless manner as they after issuing the orders on 1-5-1975 did not take any proper steps to see that notice was circulated properly so that there was a lapse of clear 15 days. It is on account of technical error committed by the opposite parties that the Will of the people cannot be given effect to. I would, however, direct in the circumstances that after a clear 15 days notice the opposite party No. 1 shall convene a meeting and the resolution of no confidence moved against the Petitioner shall be considered in accordance with the prescribed procedure.

8. The result is that in view of observations made above the writ petition because of technical error succeeds and is accordingly allowed. The resolution passed in the meeting dated 20-5-1975 held in Primary Pathshala, Jagdishpar shall not be given effect to as observed above. I further direct that the meeting shall be convened by opposite party No. 1 and 2 after due observance of law immediately to consider the resolution of the vote of no confidence moved against the Petitioner. I, however, make no order as to costs in the circumstances of the case.