
(2000) 03 AHC CK 0125
In the Allahabad High Court
Case No : Writ Petition No. 58 (MS) of 2000

Smt. Brij Rani Singh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 16-03-2000

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 11(5), 11A, 12(5), 12A, 14
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 33B, 33B(1)
Uttar Pradesh Panchayat Raj Act, 1947 — Section 11(5), 11A, 12(5), 12A, 14
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 33B, 33B(1)
Uttar Pradesh Panchayat Raj Act, 1947 — Section 11(5), 11A, 12(5), 12A, 14
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 33B, 33B(1)

Citation : (2000) 2 AWC 1775

Hon'ble Judges : Pradeep Kant, J

Bench : Single Bench

Advocate : H.K. Misra, for the Appellant; C.S.C. and J.P. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Kant, J.—Heard learned counsel for the petitioner as well as learned State counsel.

2. Certain facts which were not pleaded in the writ petition have been brought on record by means of supplementary-affidavit filed today. The petitioner is an elected Pradhan of Gaon Sabha concerned having been elected from the constituency reserved for women in the year 1995. A notice of no-confidence motion was moved by eight members of Gram Panchayat before the District Panchayat Raj Officer, Unnao on 22.12.99 and the District Panchayat Raj Officer, Unnao issued a notice u/s 14 of the U. P. Panchayat Raj Act (hereinafter referred to as the Act) fixing 13.1.2000 as a date for consideration of motion of no-confidence at a given time and place. The petitioner initially challenged the said proceedings solely on the ground that no reasons have been given in the notice of no-confidence for making no-confidence motion against Pradhan and,

therefore, no meeting can be held for the purpose on such a vague notice. The Court vide order dated 11.1.2000 passed an order that the meeting of no-confidence motion may be held but the result of the same shall not be given effect to and the State Counsel was directed to produce the record at the time of hearing.

3. The record has been produced before this Court. Learned counsel for the petitioner by means of supplementary affidavit filed today alleged that the petitioner being a woman having been elected as Pradhan from women's constituency cannot be removed by a motion of no-confidence as in her absence the charge will be taken by Up-Pradhan who does not belong to the women's category being a male member and, therefore, the very purpose of reservation would be frustrated. The contention is that the Up-Pradhan will act as Pradhan in a constituency which is otherwise reserved for women and for which he is not eligible to contest for the seat of Pradhan. The first submission of learned counsel for the petitioner is that it was obligatory upon the members giving notice of no-confidence motion to give some reasons for moving the motion and in absence of such reasons being defined, the District Panchayat Raj Officer should have rejected the request of the members and should not have fixed any date for consideration of the motion. In support of this contention, learned counsel has relied upon the provisions of Rule 33B (1) of U. P. Panchayat Raj Rules, 1947. The relevant provision reads as under :

"33B (1). A written notice of the intention to move a motion for removal of the Pradhan or Up-Pradhan u/s 14 of the Act shall be necessary. It shall 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 five members signing the notice to the prescribed authority."

The emphasis has been laid that the rule specifically provides that the notice of the intention to move a motion for removal of the Pradhan or Up-Pradhan u/s 14 of the Act shall be necessary which shall 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,. The argument need not be scrutinised on the strength of submission made as from the record, it is clear that the notice of no-confidence motion contains various reasons for moving the motion. The reasons for moving the motion are that the husband of the petitioner is a Government teacher and as a matter of fact, he looks after the work of the petitioner as Pradhan : neither any open meeting has been called for by the petitioner as Pradhan nor any meeting of Gaon Panchayat has been summoned. The Pradhan is acting on his own will without taking any consultation or taking the opinion of the members of Gaon Panchayat ; the money given to her for Jawahar Rojgar Yojana has been misutilised and misappropriated for her own ends and no development work has been done the allotments have been made on taking certain gratification under Indira Avas Scheme. In my opinion, the reasons for moving no-confidence motion are apparent in the notice itself. The learned counsel submitted that

these are vague allegations for which no evidence has been adduced. This argument deserves to be rejected on the face of it.

4. Rule 33B does not require that the allegations or the reasons on the basis of which no-confidence motion has been moved, should be substantiated by means of any evidence and said proof has to be considered by the District Panchayat Raj Officer. The scheme of the Act itself indicates that Gaon Panchayat shall be constituted in accordance with Section 12 of the Act soon after the establishment of Gaon Sabha. Section 12A of the Act deals with the manner of election of Pradhan or Up-Pradhan of a Gaon Sabha. Section 14 of the Act is relevant for the purpose of dealing with the removal of Pradhan or Up-Pradhan ; Section 14 reads as under :

"14. Removal of Pradhan or Up-Pradhan.--The Gaon Sabha may, at a meeting specially convened for the purpose and of which at least 15 days" previous notice shall be given, to remove the Pradhan by a majority of two- thirds of the members present and voting.

(2) A meeting for the removal of a Pradhan shall not be convened within one year of his election.

(3) 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.

(4) Subject to the provisions of this section, the procedure for the removal of a Pradhan. Including that to be followed at such meeting shall be such as may be prescribed."

From a perusal of Section 14 of the Act, it is clear that a meeting has to be convened specially for the purpose of consideration of motion of no-confidence against Pradhan for which at least 15 days" previous notice has to be given and the Pradhan can only be removed if the motion is carried through by a majority of two thirds of the members present and voting. A protection has been given to a duly elected Pradhan by putting an embargo for moving such a motion within a period of one year from his election. Further in case the motion could not be taken up for want of quorum or fails due to lack of majority, no subsequent meeting for the removal of the same Pradhan shall be convened within a year of the date of the previous meeting. Subsection (4) of Section 14 of the Act prescribes that the procedure for the removal of a Pradhan including that to be followed at such meeting shall be such as may be prescribed. The word "prescribed" would necessarily mean either as prescribed by the Act or the Rules made thereunder in accordance with the definition given in Section 2, sub-clause (p) of the Act. Rule 338 is a self-contained procedure prescribed under the Rules for the removal of Pradhan or Up-Pradhan. Rule 33B (1) requires for a written notice of the intention to move a motion for removal of the Pradhan or Up-Pradhan u/s 14 of the Act which should 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 five members signing the notice to the prescribed authority.

5. The prescribed authority 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 thirty days from the date of the receipt of the notice. The meeting so convened shall be presided over by the prescribed authority or the person authorised by him in writing in this behalf.

6. Sub-rule (3) makes it obligatory upon the Presiding Officer that he shall read to Gaon Sabha the notice received by him. He shall then allow the motion to be moved and discussed. Such discussion shall terminate on the expiry of two hours appointed for the commencement of the meeting unless it is concluded earlier. Upon the conclusion of the debate or upon the expiry of said period of two hours, as the case may be, the motion shall be put to vote. Voting shall be by secret ballot. Sub-rule (4) provides that the presiding officer shall not speak on the merits of the motion, nor shall he be entitled to vote thereon.

7. The reasons for moving no-confidence motion are to be brought before the members who are to vote either in favour or against the motion and they are allowed by the presiding officer either to speak in favour of the motion or against it. Sufficient time has to be provided for the discussion to be made on the motion which gives an opportunity to the members including Pradhan who is to face the no-confidence motion to challenge the allegations made against him. The members are at liberty to discuss the grounds for which the motion has been moved and then to vote according to their own conviction and view.

8. The procedure of making known the contents of the motion to all the members by the responsible officer, namely, presiding officer and then giving time to all the members including Pradhan to discuss the motion is in consonance with the democratic principles and offers ample opportunity to all concerned to judge the veracity of allegations/reasons for moving no-confidence motion and to either adopt the same or defeat the same by expressing their opinion by means of casting their vote by a secret ballot. The genuineness and the authenticity of the reasons for no-confidence motion are tested in the meeting itself and, therefore, also the prescribed authority is not required to dwell upon the reasons. Neither there is any such requirement under the provisions of the Act or the Rules.

9. In view of aforesaid provisions and also in view of fact that the principle of moving no-confidence motion cannot be equated with a criminal trial or the disciplinary proceedings and it is only the mandate of the people which has to be respected particularly in the democratic set up. I do not find any reason to hold the present notice of no-confidence motion is not a notice moved in accordance with the provisions of Section 14 or Rule 33B of the Rules framed under the Act. The first argument, therefore, is not tenable.

10. On the strength of averments made in the supplementary-affidavit, the

petitioner's counsel urged that since the petitioner belongs to the reserved category constituency for women and, therefore, in case she is discharged by means of no-confidence motion from the office of Pradhan, the seat of Pradhan cannot be filled in by Up-Pradhan who admittedly is a male member and as such is not entitled to hold the office of Pradhan and in case such proceedings are permitted to be allowed against the petitioner, that would defeat the very purpose of reservation of constituency provided under the Act.

11. Section 11A of the Act provides that there shall be a Pradhan and a Up-Pradhan of the Gaon Sabha. Section 11B provides that the Pradhan shall be elected by the members of the Gaon Sabha from among themselves in such manner as may be prescribed. The proviso attached to Section 11B reads as under:

"Provided that when a Gaon Sabha has failed to so elect, it shall be called upon to elect the Pradhan, but if it again fails. It shall be lawful for the State Government or the prescribed authority to nominate as Pradhan, a member of the Gaon Sabha qualified to be chosen as Pradhan and the person so nominated shall be deemed to have been duly elected."

The term of Pradhan shall commence from the date of the constitution of Gaon Sabha or from the date of his election or nomination, whichever is later, and unless otherwise determined under the provisions of this Act, shall expire with the term of the Gaon Panchayat.

12. Section 11C deals with the election of Up-Pradhan and his term which reads as under :

11C. Election of Up-Pradhan and Ms term.--(1) The Up-Pradhan shall be elected by the members of the Gaon Panchayat from amongst themselves in such manner as may be prescribed.

Provided that if a Gaon Panchayat falls to so elect an Up-Pradhan within the time fixed by or under the rules in that behalf, the prescribed authority may nominate as Up-Pradhan any member of the Gaon Panchayat, and the person so nominated shall be deemed to have been duly elected.

(2) The term of office of the Up-Pradhan whether elected or nominated before or after the commencement of the Uttar Pradesh Rural Local Self Government Laws (Amendment) Act, 1972 shall commence from the date of his election or nomination, as the case may be, and unless otherwise determined under the provisions of this Act, shall expire with the term of the Gaon Panchayat.

(3) The provisions of Section 14 shall apply to the removal of Up-Pradhan as they apply to the removal of Pradhan with the substitution of references to Gaon Sabha and Pradhan by references to Gaon Panchayat and Up-Pradhan respectively.

The proviso attached to Section 11B deals with a situation where a Gaon Sabha

has failed to elect its Pradhan even after being asked to do so and for meeting this contingency, powers have been given to the State Government or to the prescribed authority to nominate as Pradhan any member of Gaon Sabha qualified to be chosen as Pradhan. Thus, it is clear that even if a Gaon Sabha fails to elect its Pradhan in the manner prescribed, the State Government or the prescribed authority can nominate only that member of the Gaon Sabha who is otherwise eligible to be elected as Pradhan and not any member of Gaon Sabha. This restriction obviously is co-related to the eligibility criteria of a candidate who can be elected as Pradhan in a given constituency, i.e.. the constituency which may be reserved constituency either for women or any other category. Any member who does not belong or does not fall within the eligibility criteria of a particular constituency cannot be nominated as a Pradhan of Gaon Sabha and cannot be termed to be duly elected as Pradhan even though Gaon Sabha has failed to elect its Pradhan in accordance with the rules.

13. Section 12H of the Act deals with the casual vacancies and lays down that if a vacancy in the office of the Pradhan, Up-Pradhan or of a member of a Gaon Panchayat arises by reason of his death, removal, resignation, avoidance of his election or refusal to take oath of office, it shall be filled for the remainder of his terms in the manner, as far as may be, provided in Sections 11B, 11C or 12 as the case may be.

14. The scheme of the Act, therefore, protects the democratic set up of the Gaon Sabha and Gaon Panchayat at the village level and also provides that only the eligible candidates or eligible members of the Gaon Sabha or Panchayat can either be elected or nominated which in any case would be treated to be a duly elected Pradhan or Up-Pradhan, as the case may be.

15. Section 12 of the Act deals with the constitution of Gaon Panchayat and provides for reservation for women members, scheduled caste women members and reservation for other categories.

16. The Uttar Pradesh Panchayat Raj (Reservation and Allotment of Seats and Offices) Rules, 1994 have been enforced by the Government in exercise of powers u/s 110 of Uttar Pradesh Panchayat Raj Act. 1947 read with sub-section (5) of Section 11A, and clause (a) and clause (c) of sub-section (5) of Section 12 making provision for number of seats or offices of Pradhan to be reserved and also for allotment of offices by rotation.

17. The learned counsel for the petitioner has placed reliance upon the decision of Hon''ble Supreme Court in the case of Ram Bali etc. v. District Panchayat Raj Adhikari and others 1998 (1) JCLR 695 (SC), in support of his submission that a reserved category seat occupied by a woman cannot be replaced by any other candidate who does not belong to that category of reservation. In that case, their Lordship of the Hon''ble Supreme Court have upheld the validity of Section 14 of the Act and observed that removal of Pradhan by two-third members of Gaon Panchayat is not unconstitutional and is not violative of the concept of democracy

nor it is arbitrary and unreasonable so as to hit by Article 14 of the Constitution of India. Their Lordships further observed that by way of safeguard against any arbitrary exercise of the power of removal it is necessary that the motion must be passed by a majority of two-thirds of the members present and voting.

18. In respect of the submissions made on the basis of Section 12H of the Act that there is no provision in the Act or the Rules which requires that a fresh election should be held to elect Pradhan within a particular period which may lead to defeat the purpose of reservation as in the given case the seat of Pradhan would be occupied by Up-Pradhan who does not belong to that category of reservation. Their Lordships observed as under:

"It was urged by the learned counsel for the petitioners that in the event of removal of a Pradhan by a motion of no-confidence, the Up-Pradhan takes over as Pradhan u/s 12H of the Act and that there is no provision in the Act or the Rules which requires that a fresh election be held to elect a new Pradhan within a particular period. It is submitted that u/s 11A of the Act provision is made for reservation of the officers of Pradhans for the Scheduled Castes, the Scheduled Tribes and the backward classes and for women and that the said policy of reservation would be frustrated if a Pradhan of a Gram Sabha belonging to a reserved category is removed and another Pradhan belonging to the said category is not elected before the expiry of the term fixed for the Pradhan belonging to the said category. It has also been urged that in the event of the removal of a Pradhan belonging to a reserved category, the Up-Pradhan has, who takes over as Pradhan, may be a person who does not belong to that reserved category and that the removal of the Pradhan in such a case would result in the object underlying the policy of reservation contained in Section 11A would be defeated by the members of the Gram Panchayat. Though these submissions do not touch upon the question of validity of Section 14 of the Act, but they raise issues which need consideration by the authorities at the proper level."

Learned counsel for the petitioner submitted that in the instant case also, the Up-Pradhan does not fall within the category of women and, therefore, the petitioner cannot be ousted as it would defeat the very purpose of the reservation of constituency. Learned counsel further submitted that this aspect of the matter has not been considered by the authorities till date and that the observations made by Hon'ble Supreme Court are to be given due respect by one and all including the authorities. In this regard, I find that once the constitutional validity of Section 14 of the Act, having upheld by the Supreme Court and in the absence of any relief being given to the appellant before the Supreme Court on this ground, it may not be possible for this Court to hold the proceedings for no-confidence motion as invalid.

19. Besides this, in view of Section 12H of the Act, it is inherently obligatory upon the concerned authorities to fill up the casual vacancy of Pradhan or Up-Pradhan or a member of Gaon Panchayat expeditiously without any delay in accordance with Sections 11B, 11C or Section 12 of the Act, as the case may be.

The argument that since no particular period, has been prescribed for filling up the casual vacancies, the authorities may not fill the vacancy at all permitting the ineligible person to continue in the office of Pradhan, is not based on correct interpretation of the provision and would not be sufficient to hold that the provisions of Section 12H of the aforesaid Act defeats the very purpose of reservation of constituency under the Act. Even though no particular period has been prescribed for filling up the casual vacancy, a reasonable period of time, could only be permitted to lapse in filling up such vacancies. Where power is conferred by statute without mentioning the period within which it could be invoked, the same has to be done within a reasonable time. The Supreme Court in the case of Regional Provident Fund Commissioner Vs. M/s. K.T. Rolling Mills Pvt. Ltd., , observed that where no period has been prescribed under the statute the power has to be invoked, within a reasonable period as all powers must be exercised reasonably, and exercise of the same within reasonable period would be a facet of reasonableness.

20. "Reasonable period" is not an inflexible term and its meaning depends upon the circumstances of a particular case. It is such length of time as may fairly, properly and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances. The question that what is "reasonable time" is usually, if not always, to be determined by character of the act contemplated considered with its purpose and the attendant facts and circumstances. The term of the office of Pradhan is co-terminus with the term of Gaon Panchayat. The term of office of Pradhan, and Up-Pradhan has been prescribed under Section's 11B and 11C of the Act respectively. Normally the period of five years which term, if is not determined under the provisions of the Act, earlier, shall expire with the term of Gaon Panchayat. It is, therefore, incumbent upon the authorities to see and keep a watchful eye on the date of removal of Pradhan or occurrence of casual vacancy and take appropriate action expeditiously within a reasonable time in accordance with the Act and the Rules for filling up the casual vacancy in accordance with the provisions of Section 12H of the Act so that in case of reserved constituency, the seat of Pradhan should not be permitted to be occupied for the entire remaining period by an Up-Pradhan, unless the remaining period is too short or is such that the casual vacancy cannot be filled in by following the rules within the said period and the term of the Pradhan is likely to come to an end. The provisions of the Act which give a right for removal of Pradhan or Up-Pradhan by means of a prescribed procedure should not be made a tool or device for ousting Pradhan or Up-Pradhan or any member of Gaon Sabha, as the case may be particularly in a reserved constituency for permitting the non- eligible candidate to continue permanently for the remainder terra. But this provision for filling up casual vacancy, namely Section 12H of the Act cannot be taken to frustrate the very object of the Act of removing Pradhan or Up-Pradhan by moving a no-confidence motion. If Pradhan or Up-Pradhan has violated in performance of his duties and the members of Gaon Panchayat are convinced that permitting the control of the

office of Pradhan to such a person would not be in the interest of Gaon Sabha, they are at liberty to move the motion of no-confidence for his removal in accordance with the provisions of the Act and the Rules framed thereunder. Section 12H, of the Act cannot be extended and given an overriding effect over other provisions of the Act particularly regarding election and removal of Pradhan and Up-Pradhan in accordance with Section 14 of the Act.

21. One more aspect of the matter which is relevant for the present controversy is that u/s 12J of the Act, Up-Pradhan has been given power to exercise all powers and discharge the duties of Pradhan where the office of Pradhan is vacant by reason of death, removal, resignation or otherwise, or where the Pradhan is incapable to act by reason of absence, illness or otherwise. The Up-Pradhan thus in such an eventuality shall exercise all powers and discharge all duties of the Pradhan. This is an arrangement for a temporary vacancy in the office of Pradhan. If the argument of the learned counsel for the petitioner is stretched to this extent that even for short period a Up-Pradhan. If he or she does not belong to the particular reserved category, to which the Pradhan belongs cannot be permitted to take charge, then besides the fact that the functioning of the Gaon Panchayat would be adversely affected, the provisions of Section 12J would also be rendered nugatory. The Legislature was fully conscious of the fact that there may be occasions and reasons for the Pradhan which may incapacitate him from discharging his duties and functions as Pradhan and in such a situation the Up-Pradhan has been permitted to exercise such powers and the exercise of such powers by Up-Pradhan is only an arrangement in temporary vacancy in the office of Pradhan which would not mean that Up-Pradhan has been elected as Pradhan. The Up-Pradhan still remains as Up-Pradhan and by virtue of his being Up-Pradhan, he only exercise all powers and duties of Pradhan by way of an arrangement made in a temporary vacancy through a statutory provision. The office of Pradhan still remains vacant and unfilled and, therefore, the argument that discharging of functions by Up-Pradhan in absence of Pradhan would negate the object of reservation under the Act cannot be sustained. How the casual vacancy of Pradhan has to be filled in has been specifically provided u/s 12H of the Act. The casual vacancy in the office of Pradhan or Up-Pradhan cannot be filled in otherwise. A Pradhan who has lost faith and has obtained a mandate against him cannot be permitted to stick to the office of Pradhan on the ground that temporary vacancy will be occupied by the Up-Pradhan.

22. In this view of the matter, it is apparent that the arrangement made for filling up temporary vacancy in the office of Pradhan which may cause, because of certain factors including removal of Pradhan would not mean that the office of Pradhan is filled up by a person or member or Up-Pradhan who is otherwise not eligible or was not eligible to contest for the seat of Pradhan in a particular reserved constituency. This being only a simple arrangement during a temporary vacancy, no exception of the same can be taken and it cannot be read in derogation with the provisions regarding reservation made under the Act and prescribed under the rules.

23. For the reasons stated above, I do not find any ground for interference or for quashing the proceedings of no-confidence motion. The writ petition is accordingly dismissed, but no order as to costs. The interim order stands discharged.