
(2010) 08 AHC CK 0181
In the Allahabad High Court

Smt. Heerawati	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 28-08-2010

Acts Referred:

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 7, 7(3), 82, 83, 9

Citation : (2010) 08 AHC CK 0181

Hon'ble Judges : Virendra Kumar Dixit, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Sri Rakesh Kumar Mathur, learned Counsel for the petitioner, Sri S.K. Verma, learned Senior Advocate assisted by Sri Siddharth Verma has been heard for respondent No. 7 and learned Standing Counsel for the respondents No. 1 to 6.

2. This writ petition is being finally decided with the agreement of the learned Counsel for the parties as the writ petition raises only legal issues.

3. Brief facts giving rise to this writ petition are; that the petitioner was elected as Member of Block Development Committee from Kshettra Panchayat Sujanganj, district Jaunpur. Subsequently according to the provisions of Section 7 of the Uttar Pradesh Kshettra Panchayat & Zila Panchayats Adhiniyam, 1961 (hereinafter referred to as Act of 1961), the petitioner was elected as Senior Up-Pramukh on 27.2.2006. Thereafter the petitioner has been continuing as Senior Up-Block Pramukh. Against Smt. Bindu Devi, who was elected as Pramukh, a no confidence motion was passed which was challenged by her before the Lucknow Bench of this Court by filing writ petition No. 3457 MB of 2008 Bindu Devi v. State of U.P. challenging the provisions of U.P. Panchayat Laws Amendment Act, 2007 (U.P. Act No. 44 of 2007). The writ petition was dismissed along with bunch of cases vide judgment and order dated 6.2.2009, leading case being Mamta Kanaujia v. State of U.P. and Ors. Against the judgment in the case of Smt.

Mamta Kanaujia and Ors. connected matters, SLP was filed in the Supreme Court, which too has been dismissed by the apex Court on 4.5.2010. The District Magistrate, Jaunpur passed an order on 19.7.2010 noticing the passing of no confidence motion against Smt. Bindu Devi on 6.5.2008 and dismissal of the writ petition on 6.2.2009 and further dismissal of the SLP on 4.5.2010. The District Magistrate in the order dated 19.7.2010 held that office of the Block Pramukh has become vacant and in view of the orders passed by the Division Bench as aforesaid, the respondent No. 7 is nominated to discharge the functions of Block Pramukh. The writ petition has been filed by the petitioner praying for following reliefs.

i. Issue a writ order or direction in the nature of certiorari quashing impugned order dated 19.07.2010 (Annexure No. 3) passed by the District Magistrate, Jaunpur (respondent No. 2) and all further proceeding consequent thereto.

ii. Issue a writ order or direction in the nature of mandamus commanding the respondents to give the charge of vacant post of Block Pramukh Kshetra Panchayat Sujapur District Jaunpur to the petitioner.

4. Learned Counsel for the petitioner challenging the order passed by the District Magistrate contended that the petitioner being senior Up-Block Pramukh and being still continuing as such even after the amendment of the Act by U.P. Act No. 44 of 2007 is entitled to discharge the functions of the Pramukh by virtue of provisions of 1961 Act as amended by U.P. Act No. 44 of 2007 and the District Magistrate on misconstruction and misinterpretation of provisions of 1961 Act as amended, has nominated the respondent No. 7 to discharge the functions of the Pramukh, whereas the respondent No. 7 is only an elected member of the Block Development Committee. Learned Counsel for the petitioner referring to the order dated 22.7.2010 passed by the District Magistrate with regard to Kshetra Panchayat Machhali Shahr has submitted that the District Magistrate has authorized in the said Panchayat, the duties of Pramukh to senior Up-Block Pramukh Smt. Urmila. Learned Counsel for the petitioner submits that by virtue of Section 7(3) as added by U.P. Act No. 44 of 2007, the petitioner, who was elected to the office of the Up-Pramukh before the commencement of U.P. Panchayat Laws amendment Act, 2007 is entitled to continue to discharge the function of Block Pramukh along with its duties and the petitioner has right to discharge functions of Block Pramukh when the office of the Block Pramukh is vacant. He submits that the District Magistrate in the impugned order has relied on the Division Bench judgment dated 6.2.2009 in writ petition No. 3457 of 2008, decided along with case of Mamta Kanaujia, which judgment has no relevance with regard to not giving charge to Senior Up-Block Pramukh in the event the office of Pramukh being vacant.

5. Sri S.K. Verma, learned Counsel for the respondent No. 7 refuting the submissions of learned Counsel for the petitioner contended that by virtue of U.P. Act No. 44 of 2007, the provisions of Sections 82 and 83 of 1961 Act having been omitted, Senior Up-Pramukh cannot claim to discharge the functions of the

Pramukh and it is the power of the District Magistrate as provided u/s 9(2) and 9A, to make arrangement for discharge of the functions of the Pramukh and the respondent No. 7 being elected member of the Block Development Committee is fully entitled to discharge the functions of Block Pramukh. He submits that the provisions in 1961 Act which authorized Senior Up-Pramukh to discharge the functions of Block Pramukh shall be treated to have been impliedly repealed. Reliance has been placed on the judgment of the apex Court in *Yogender Pal Singh and others Vs. Union of India* others, Sri S.K. Verma further contended that the provisions of 1961 Act as amended by U.P. Act No. 44 of 2007 has to be harmoniously construed to give effect to the provisions which now authorize the District Magistrate to make arrangement in case the office of Pramukh is vacant. In support of his contention, he relied on the judgment in the case of *Cantonment Board, Mhow and Another Vs. M.P. State Road Transport Corpn.*, Learned Standing Counsel has also supported the order of the District Magistrate and contended that the District Magistrate has rightly authorized the respondent No. 7, who is an elected member of the Block Development committee to discharge the duties of the Block Pramukh.

6. Two judgments relied by Sri S.K. Verma need to be considered. Sri S.K. Verma has placed reliance on the judgment of the apex Court in the case of *Yogender Pal* (supra) for the proposition that when two provisions are totally inconsistent, it must be construed that earlier law has been repealed by necessary implication. In the said case, the apex Court was considering the provisions of the Delhi Police Act, 1978 and Delhi Police (Appointment and Recruitment) Rules, 1980 and the Punjab Police Rules, 1934. The case before the Apex Court was a case of implied repeal since the provisions of Punjab Police Rules, 1934 were inconsistent with the 1980 Rules. The Apex court laid down following in paragraph 15:

It is not disputed that Rule 12.14 and Rule 12.15 of the Punjab Police Rules, 1934 and the rules promulgated on December 31, 1980 dealt with the identical subject, name-ly, the appointment and recruitment of Constables to the Delhi police service. Therefore, on the promulgation of the Rules on December 31, 1980 which covered the subject dealt with by Rule 12.14 and Rule 12.15 of the Punjab Police Rules, 1934 had the effect of repealing by necessary implication Rule 12.14 and Rule 12.15 of the Punjab Police Rules, 1934 even though initially there was no express provision in the Rules to the effect that Rule 12.14 and Rule 12.15 of the Punjab Police Rules, 1934 stood repealed with effect from December 31, 1980. It is well-settled that when a competent authority makes a new law which is totally inconsistent with the earlier law and that the two cannot stand together any longer it must be construed that the earlier law had been repealed by necessary implication by the later law. Applying the above test it has to be held in this case that Rule 12.14 and Rule 12.15 of the Punjab Police Rules, 1934 stood repealed with effect from December 31, 1980 and Rule 32 of the Rules which was introduced by way of amendment on May 2, 1983 had not the effect reviving Rule 12.14 and Rule 12.15 of the Punjab Police Rules, 1934 and keeping them alive beyond December 31, 1980 upto May 2, 1983.

7. The said case was a case of inconsistency between the two statutory provisions wherein principles of implied repeal was pressed into service. The present is not a case of implied repeal. By U.P. Act No. 44 of 2007 several provisions of 1961 Act have been amended by amending the Sections 7, 9, 9A and Sections 82 and 83 have been specifically omitted. However, there is a specific provisions incorporated u/s 7(3), which begins with non-obstante clause. Present is a case of express repeal with overriding clause as contained in Section 7(3). Thus, the above case does not help the respondent No. 7 in any manner. The next case relied by Sri Verma is Cantonment Board, Mhow and Anr. v. M.P. State Road transport Corpn. (supra). The apex Court in the said case was considering the inconsistency in the provisions of M.P. Motor Vehicles Taxation Act, 1947 and M.P. Municipalities Act, 1961. The Court in the said case laid down about the harmonious construction. The Court held that it is duty of the Court to adopt such construction which harmonises two conflicting Acts. Following was laid down in paragraph 8.

In other words if the Taxation Act would have contained a provision authorising imposition of Entry Tax on Motor Vehicle than certainly the later general Act, namely the municipalities Act even if by making a provision of imposition of entry tax on Vehicles entering in to the Municipal limits would not have operated. But since the special law, namely, the Taxation Act does not have any provision authorising imposition of tax on entry of Motor Vehicles. The said provision would remain valid and would be applicable and there would be no bar for the municipality to impose entry tax on all vehicles including Motor Vehicles including Motor Vehicles for entering in to the limits of the Municipalities. This Construction being the only harmonious construction by which both the provisions remain operative it is the duty of the court adopt such construction. There is no dispute with the proposition advanced by Mr. Lekhi, learned senior counsel with regard to theory of implied repeal. This theory the learned the senior counsel advanced since the Municipalities Act did not repeal the provisions of the Motor Vehicles Taxation Act. It was held by this Court in the Case of Yogender Pal Singh and others Vs. Union of India others,

It is well settled that when a competent Authority makes a new law which is totally inconsistent with the earlier law and the two cannot stand together any longer it must be construed that the earlier law has been repealed by necessary implication by the later law.

8. There cannot be any dispute that as far as possible, the court's duty is to harmonise two statutes which appear to be inconsistent to each other so as to give effect to the provisions of both the statutes as far as possible. The present is a case where amendments have been brought into by U.P. Act No. 44 of 2007, doing away with the office of the senior Up-Pramukh and omitting Sections 82 and 83 and at the same time enacting a non-obstante clause u/s 7(3) providing for continuance of the office of the Senior Up-Pramukh. The present case is a case where Section 7(3) has to be interpreted along with amendments which

have been brought into in 1961 Act. When the intendment of provisions of the one Statute is clear, the Court has to decipher and find out the purpose and intendment of the Amendment specially of Section 7(3) of the Act as amended by U.P. Act No. 44 of 2007 in the present case. The case of Cantonment Board (supra) was a case where the Court was considering two different State enactments and inconsistency between the two statutes which was harmonised to give effect to the provisions of the both the Statutes. The said case is clearly distinguishable and does not help the respondent No. 7 in the present case.

9. A Division Bench of this Court has occasion to consider the similar issue in Civil Misc. Writ Petition No. 40262 of 2010 Shamsheer v. State of U.P. and Ors., decided on 26.8.2010. After considering the provisions of Act of 1961 and U.P. Act No. 44 of 2007, the Division Bench laid down following:

In view of the aforesaid discussions, we are of the view that Up Pramukh is entitled to function as Pramukh when the office of Pramukh is vacant due to temporary absence, illness or any other cause. In the present case, the District Magistrate taking an erroneous interpretation of the provisions of Section 9(2) and 9A has passed an order authorising the respondent No. 6 to discharge the functions of Pramukh in presence of Up-Pramukh continuing in the office who has right to function in the office of Adhyaksha in his absence.

10. The issues raised in this writ petition are fully covered by the ratio of the Division Bench judgment in Shamsheer v. State of U.P. and Ors. (supra). Following the Division Bench judgment of the aforesaid case, this writ petition is allowed. The order dated 19.7.2010 is quashed. The respondents are directed to permit the petitioner to discharge the functions of Block Pramukh, Kshetra Panchayat, Sujanganj District Jaunpur till the office of the Block Pramukh is filled up.