
(2011) 06 UK CK 0048
In the Uttarakhand High Court
Case No : Special Appeal No. 112 of 2011

Smt. Lajwanti Aswal

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 21-06-2011

Acts Referred:

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 15(3)

Citation : (2011) 1 UD 545

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—A requisition was submitted seeking removal of the Pramukh. Executive Officer issued a notice convening a meeting to consider the resolution for which the said requisition was given. Appellant, who is the Pramukh and whose removal was sought, filed a writ petition challenging the legality and the validity of the said notice. When the writ petition was considered at the threshold and when notice of the writ petition was not given to the Respondents and, in particular, to those who had submitted the requisition, a learned Single Judge, noticing the provisions contained in the Rules framed under the Act, prima facie felt that the law required notices of the meeting are to be sent by registered post to every Member, and that, in addition to that a copy thereof shall be affixed on the notice-board and also that there shall be clear 15 days notice. Having noticed that the notices in question were not sent by registered post and there is doubt as to whether 15 clear days notice had been given, the learned Single Judge passed an order and thereby stayed holding of the requisition meeting. Subsequently, the writ petition was heard on merits and by the judgment and order under appeal the writ petition has been dismissed and at the same time a direction has been given for holding of the said requisition meeting. In the present appeal, Appellant is contending that construction of the subject Rule, as given by the learned Single Judge, is contrary to two Division Bench judgments of the Hon'ble Allahabad High Court, and that, reliance placed by the learned Single Judge on the judgment of the Full Bench of the Hon'ble Allahabad High

Court was misplaced, inasmuch as, in that judgment the Full Bench of the Hon"ble Allahabad High Court was considering the provisions pertaining to service of notice in relation to Municipalities and the language in the Rules in that regard are substantially different from the language used in the Rule dealing the matter in controversy in the writ petition. We feel that inasmuch as the meeting, as was convened, could not be held in view of the interim order and, inasmuch as, there is no challenge to the requisition, a meeting to consider the resolution as requisitioned is required to be held, and as such for the purpose of the present litigation, it would not be a requirement on our part to answer the question of law raised in the appeal. We, however, declared that the law pronounced in the judgment under appeal is still *res integra*. In the writ petition four contentions were raised, namely, (i) the notice must be sent by registered post; (ii) a copy thereof must be affixed on the notice-board (iii) there shall be 15 days clear notice, i.e. 15 days must be counted after excluding the date of receipt of the notice and the date of the meeting and (iv) the notice must accompany the requisition.

2. We think that when the notice has been directed to be sent by registered post and not by hand delivery against receipt, it is contemplated in the Rules that all the notices may not be received by the addressees on the selfsame date. At the same time, Section 15(3)(ii) of the U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 directs that notice of the meeting shall not be less than fifteen days. In the circumstances, in order to ensure that notice of 15 days is given to the Members, it would be appropriate to post the notice through registered post at least 20 days before the meeting is convened.

3. In the circumstances, we dispose of the appeal by directing the Collector to send the notices re-convening the meeting by registered post, annexing therewith a copy of the requisition and to post the same at least 20 days before the date of the meeting. The Collector, in addition to the above, shall also paste a copy of the notice on the notice-board. Learned Counsel appearing on behalf of the requisitionists has submitted that the Collector has already sent the notices. He has further submitted that such notice has been received by the Appellant on 19th June, 2011, and that, the meeting pursuant to that notice has been convened on 5th July, 2011. If the submissions, thus made, which the learned Counsel for the Appellant without any specific instruction to that effect is neither in a position to deny or to accept, is correct then the Appellant has received 15 clear days notice. We, accordingly, proceed on the basis that the Collector has posted the notices in question within the time as specified by us above. In the event the Collector has not done, as has been provided above, it shall be open to the Collector to re-convene the meeting after complying with the aforementioned directions.