

(1997) 05 AHC CK 0138

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14191 of 1997

Smt. Ram Beti

APPELLANT

Vs

District Panchayat Raj Adhikari and Others

RESPONDENT

Date of Decision : 07-05-1997

Acts Referred:

Constitution of India, 1950 — Article 243(C)(5)
Uttar Pradesh Panchayat Raj Act, 1947 — Section 14
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 33B

Citation : AIR 1998 All 80 : (1997) AWC 157 : (1998) RD 176 : (1997) 3 UPLBEC 1583

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : A.K. Sachan and Sunita Sharma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Singh, J.—Genesis giving rise to the present petition is the order dated 11-4-1997 passed by the District Panchayat Raj Officer, Budaun whereby the meeting of the Gram Panchayat was convened u/s 14 of the U. P. Panchayat Raj Act 1947 read with Rule 33-B of the U. P. Panchayat Raj Rules as amended up to date, on 30th April, 1997 for discussion and voting on the motion of no confidence moved against the petitioner, who happens to be the Pradhan of Gram Panchayat Sichauli in district Budaun.

2. The learned counsel for the petitioner began his arguments, convasing that resort to proceeding of no confidence motion against the petitioner was barred by Section 14(3) of the Act, which postulates 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. A perusal of the record bespeaks that previous notice of intention to move a motion for removal of the

petitioner could not culminate into a meeting for discussion and voting on the motion. As a matter of fact, the earlier proceeding appears to have been dropped as a result of preliminary enquiry held at the behest of the Distt. Panchayat Raj Officer, Budaun. In this perspective, the bar created by Sub-section (3) of Section 11 of the Act would not come into play.

3. The next question of law raised in this petition, is whether Section 14 of the U. P. Panchayat Raj Act, 1947, as it stands amended by U. P. Act 9 of 1994, providing for removal of the Pradhan of Gram Panchayat infringes upon any tenets of the basic principle of self-Government as enshrined in Part IX of the Constitution which has been inserted by the Constitution (Seventy-Third Amendment Act, 1992).

4. The submission advanced by the learned counsel for the petitioner is that since the Pradhan of Gram Panchayat is elected by the persons enlisted in the electoral roll prepared for the territorial constituency of the concerned Panchayat Area from amongst themselves, his removal by members of the Gram Panchayat would be impermissible. It is urged by the counsel for the petitioner that according to the scheme visualised by the Constitution (73rd Amendment) Act, 1992, the Gram Panchayat has exalted itself to be a self-Govt. at the village level and since the term of the Pradhan of the Gram Panchayat is co-terminus with that of the Gram Panchayat, his removal by the members of the Gram Panchayat, would be fraught with the insidious consequences of striking at the very basic feature of the self-Government. In opposition, the learned standing counsel propounded that removal of Pradhan by Gram Panchayat is legally permissible vis-à-vis Section 14 of the Act which is a constitutionally valid provision.

5. I have bestowed my thoughtful consideration to the submission advanced across the Bar. Section 14 of the Act being relevant for the specific purpose of discussion on the controversy involved in the instant petition is excepted below :

" 14. Removal of Pradhan or Up-Pradhan (1) The (Gram Panchayat) 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.

(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."

6. The procedure for removal by no confidence motion is prescribed by Rule 33-B

of the U. P. Panchayat Raj Rules, 1947, Rule 33-B as amended by the U. P. Panchayat Raj (14th Amendment) Rules, 1996 in so far as it is germane to the controversy involved in this petition, may be extracted below :

"33-B.(1) Procedure for removal of Pradhan or Up-Pradhan--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 Gram Panchayat and shall state the reasons for moving the motion and it shall be delivered in person by at least three members signing the notice to the District Panchayat Officer. Before proceeding further on the notice, the District Panchayat Raj Officer shall satisfy himself regarding genuineness of signatures of the members signing the notice.

(2) The District Panchayat Raj Officer shall convene a meeting of the Gram Panchayat 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 District Panchayat Raj Officer or the person authorised by him in writing in this behalf. The Presiding Officer may take such clerical assistance for conducting the proceedings of the meeting for the consideration of the motion as he may deem necessary.

(3) The Presiding Officer shall read to Gram Panchayat 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.

(4) The Presiding Officer shall not speak on the merit of the motion, nor shall he be entitled to vote thereon....."

7. Section 14 of the Act seems to have been enacted in recognition of the right of recall indwelling the electorate and this right of recall embodied in Section 14 of the Act is, in fact, one of the "direct popular checks on the actions of Pradhan of a Gram Panchayat. The recall gives dissatisfied electors the right to propose between elections, that their representative be removed and replaced by another more in accord with the popular Will. (See Modern Political Constitutions by C. P. Strong (8th Edn. p. 206)). In American Jurisprudence, 2nd Edn. it has been observed at page 770 as under :

"Recall is a procedure by which an elective official may be removed at any time during his term, or after a specified time, by vote of the people at an election called for such purpose by a specified number of citizens, and the general control which the legislature has over the subject of the removal of public officers is usually considered sufficient to permit the enactment of a system for their recall. The principle of recall has been defined as an effective speedy remedy to remove an official who is not giving satisfaction to the public and whom the electors do not want to remain in office, regardless of whether he is discharging his full duty

to the best of his ability and as his conscience dictates."

8. It is a truism that as a result of the Constitution (73rd Amendment) Act, 1992, Gram Panchayat is regarded as an institution of self-Government at the grass root level. Gram Panchayat, according to Section 12(1)(c) of the Act comprises a Pradhan and specified number of members ranging from nine to thirteen depending upon the total population of the Gram Panchayat. Clause (5) of Art. 243-C of the Constitution provides that the Chair-person of a Panchayat at the village level shall be elected in such manner as the State legislature may, by law, provide. Section 11-B of the U. P. Panchayat Raj Act, 1947 as substituted by U. P. Act 9 of 1994, provides that the Pradhan of Gram Panchayat shall be elected by persons registered in the electoral rolls for the territorial constituency of the Panchayat Area from amongst themselves and Section 14 of the Act provides that Gram Panchayat 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. Section 14 of the Act does not contemplate a matter which may be said to be beyond the periphery of the matters referred to at item No. 5 of List II of the Seventh Schedule of the Constitution and therefore, it is well within the legislative competence of the State Legislature and is not in any manner incompatible with any provision embodied in Part IX of the Constitution. It would thus crystallise that removal of Pradhan by Gram Panchayat u/s 14 of the U. P. Panchayat Raj Act, 1947 as it stands amended by U. P. Act 9 of 1994 is legally permissible as it is not inconsistent with the Constitution (73rd Amendment) Act, 1992.

9. In *Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others*, , the Supreme Court has lent countenance to the doctrine of recall and maintained the validity of similar provision contained in the U. P. Municipalities Act, 1916 in the following words :

"Therefore, the validity or otherwise of a no confidence motion for removal of a President, would have to be examined on a pliability of statutory provision and not on political philosophy. The Municipality Act provides in detail the provisions for election of President, his qualification, resignation, removal etc. Constitutional validity of these provisions was not challenged and rightly as they do not militate, either against the concept of democracy or the method of electing or removing the representatives. The recall of an elected representative therefore, so long it is in accordance with law cannot be assailed on abstract notions of democracy.

x x x x Misapprehension appeared to be the foundation for vehement submission that removal of a President elected by the electorate, by the Board would be substituting confidence of people by a much smaller body which would, apart from violating the basic norm of recall of an elected representative by the same body which elected him would be unreasonable, irrational and against public interest. Vote of no confidence against elected representative is direct check following from accountability. Today democracy is not a rule of "Poor" as said by

Aristotle or of "Masses" as opposed to "Classes" but by the majority elected from out of the people on basis of broad franchise. Recall of elected representative is advancement of political democracy ensuring true, fair, honest and just representation of the electorate. Therefore, a provision in a statute for recall of an elected representative has to be tested not on general or vague notions but on practical possibility and electoral feasibility of entrusting the power of recall to a body which is representative in character and is capable of projecting views of the electorate."

10. The argument that the Pradhan can be removed only by the persons registered in the electoral roll of the Gram Panchayat does not commend itself for acceptance in view of the express provision contained in Section 14 of the Act. That apart, it would be evident from Article 243-C(2) of the Constitution that all the seats in a Panchayat are necessarily to be filled by persons chosen by direct election from territorial constituencies in the Panchayat Area and for this purpose, each Panchayat Area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it, shall, as far as practicable be the same throughout the Panchayat Area. This ensures representation of a every segment of the Panchayat Area, the electorates of which elect the Pradhan of the concerned Gram Panchayat. In other words, the electorate of the Panchayat Area are duly represented through the members of the Gram Panchayat at the meeting fixed for discussion of the no confidence motion u/s 14 of the Act read with Rule 33-B of the Rules.

11. In Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others, it was held as under :

".....A person removed from office of President for loss of confidence, from the very nature of the Constitution of Board, is recall by the electorate themselves. An elected representative is accountable to its electorate. That is the inherent philosophy in the policy of recall. For the President his electorate, to exercise this right, is the Board as it comprises representatives of the same constituency from which the President is elected. Purpose of Section 48-A of the Act is, to remove elected representative who has lost confidence of the body which elected him. It may be by people themselves or they may entrust their power through legislation to their representatives. In the Act it is the latter. Members of the Board are elected from smaller constituencies. They represent the entire electorate as they are representatives of the people although smaller in body. A President who is elected by the entire electorate when removed by such member's of the Board who have also been elected by the people is in fact removal by the electorate itself. Such provision neither violates the spirit nor proposes of recall of an elected representative. Rather, it ensures removal by a responsible body. It cannot be criticised either as irrational or arbitrary or violative of any democratic norm."

12. In writ petition No. 32238 of 1996, Daya Shankar v. Panchayat Raj Officer

and another decided on 15th October, 1996 and C. M. Writ Petition No. 3481 of 1996, Smt. Prema Wati v. State of U. P. and others decided on 5-11-96, the constitutional validity of Section 14 of the Panchayat Raj Act as amended by U. P. Act 9 of the 1994, has been upheld by this Court and I am in respectful agreement and subscribe to the view expressed in the said judgments with regard to the constitutional validity of Section 14 of the Act. In the circumstances of the case, therefore, the submission that the removal of the Pradhan by the Gram Panchayat as distinguished from Gram Sabha is constitutionally impermissible, carries no force.

13. It may however be aptly observed that albeit "the recall statutes do not contemplate a judicial enquiry into the truth of specific charges of misconduct but are designed to afford relief from popular dissatisfaction with the official conduct" of the Pradhan, it would be advisable, having regard to the objection that "there is a danger of turning the representative into a mere delegate, making him the victim of the corrupt attacks of any active and intriguing clique and this would tend to drive public spirited men out of public life," if the provisions of no confidence are made a bit more stringent by suitably amending the same in such a way as to make the submission of the motion for removal/recall contingent upon some act of omission amounting to malfeasance or misfeasance while in office or violation of oath of office or otherwise by restoring the old provisions of recall by Gram Sabha i.e. by the electors themselves. If the Panchayats at the appropriate levels are to function as institution of self-Government as envisioned by Article 243-G of the Constitution, it would be desirable to give some security of tenure to their chairpersons. It cannot be gain-said that the office of the Chairperson of a Panchayat at the appropriate level is of pivotal importance vis-a-vis the powers, functions, and responsibilities of the Panchayat ceded by Article 243-G of the Constitution and those envisaged under the appropriate legislative enactments. Disgruntled and/or corrupt members of the Panchayat should not be allowed to drive an honest and public spirited Chairperson out of office by making him/her "the victim of the corrupt attacks of any active and intriguing clique."

14. No other points have been pressed into service.

15. As a result of foregoing discussion, the petition fails and is accordingly dismissed. The interim order dated 25-4-96 passed by this Court, is hereby discharged.