
(2009) 07 AHC CK 0285
In the Allahabad High Court

Smt. Ruchi Veera

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 4 AWC 3399

Hon'ble Judges : Janardan Sahai, J; Dilip Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Janardan Sahai and Dilip Gupta, JJ.—The petitioner was the Adhyaksha of Zila Panchayat, Bijnor. At the instance of the members of the Zila Panchayat the Collector, Bijnor convened a meeting fixing 29.5.2008 for consideration of a no-confidence motion against her. It is alleged that out of a total of 48 members of the Zila Panchayat 34 members attended the meeting. The motion was carried through by -32 persons voting in favour of the motion one against the motion and there was one invalid vote.

2. After the amendment of Section 28 of the U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam in 2004 a motion of no-confidence against the Adhyaksha can be carried through by half the total numbers of the members of the Zila Panchayat. Before the amendment it could only be passed by 2/3 of the total number of the members of the Zila Panchayat. The petitioner in whose case the motion was passed after the amendment of Section 28, challenged the amendment in Writ Petition No. 4549 of 2008 in the Lucknow Bench of this Court. That petition has been transferred for hearing at Allahabad and is also listed before us today. In that case the Court granted an interim order dated 23.5.2008 that the no-confidence shall not be given effect to, if it is not passed by a majority of 2/3rd or more.

3. In this writ petition the petitioner has challenged the resolution of the Zila

Panchayat passing the no-confidence motion against her.

4. We have heard Sri K.N. Tripathi, learned senior advocate assisted by S/Sri A.K. Gupta and Mukesh Prasad for the petitioner, learned Additional Advocate General, Sri Zafar Naiyar on behalf of the State assisted by Sri M.C. Tripathi, Additional Chief Standing Counsel and Sri W.H. Khan, learned senior advocate assisted by Sri S.C. Dwivedi and Sri Shailendra Kumar Upadhyay for the respondent No. 5 Smt. Gayatri Devi.

5. Sri K.N. Tripathi, learned Counsel for the petitioner pressed four points before us. His first submission is that under Sub-section (8) of Section 28 the debate upon the motion of no-confidence shall automatically terminate after two hours from the time appointed for the commencement of the meeting but in this case the debate went on beyond this time and therefore all subsequent proceedings after the time of two hours was over including the voting which took place thereafter were invalid. According to him the time appointed for the commencement of the meeting was 11 a.m. and therefore the meeting could not have continued beyond 1 p.m. in the notice for convening the meeting issued by the Collector the date and time mentioned was 29.5.2008 at 11 a.m. Sri Tripathi drew our attention to the report of the Presiding Officer, the Additional District Judge, Sri S.S. Mishra that the discussions in the meeting were continuing at 1.10 p.m. when one of the members Smt. Sudha was brought on stretcher. She gave her application at 1.10 p.m. and she was allowed to participate in the meeting. From the report of the Presiding Officer dated 29.5.2008, it is clear that the motion was read out and the meeting was declared to be open for debate at 11.15 a.m. If it is taken that the meeting commenced at 11.15 a.m. the discussion could continue till 1.15 p.m. In the context of these facts Sri Tripathi relied upon Sub-section (8) of Section 28 of the Act, which reads as follows:

(8) Such debate shall automatically terminate on the expiration of two hours from the time appointed for the commencement of the meeting, if it is not concluded earlier. On the conclusion of the debate or on the expiration of the said period of two hours, whichever is earlier, the motion shall be put to vote (which shall be held in the prescribed manner by secret ballot).

6. The submission of Sri K.N. Tripathi is that the time appointed for the commencement of the meeting contemplated in Sub-section (8) would be the time indicated in the notice given by the Collector. In our opinion the contention is not well founded. In the notice for convening meeting the time at which the members are required to be present for attending the meeting is fixed by the Collector. A distinction has to be drawn between the time appointed for convening the meeting and the time appointed for the commencement of the meeting. Clause (i) of Sub-section (3) of Section 28 deals with convening of the meeting for the consideration of the motion and it is in that context that a date and time is appointed by the Collector. Clause (i) of Sub-section (3) of Section 28 is quoted below:

3(i) convene a meeting of the Zila Panchayat for the consideration of the motion at the office of the Zila Panchayat on a date appointed by him, which shall not be later than thirty days from the date on which the notice under Sub-section (2) was delivered to him.

7. The expression used by the Legislature in Sub-section (8) is "the time appointed for the commencement of the meeting." The commencement of the meeting is a stage subsequent to the convening of the meeting. The distinction between convening of the meeting and its commencement is also evident from the language of Sub-section (6) of Section 28.

8. In Sub-section (6) of Section 28 the Legislature has referred to both the stages, namely the convening of a meeting and also the commencement of the meeting. It, therefore, appears that there is a distinction between the time at which the meeting has been convened and the time at which it commences. Sub-section (6) of Section 28 is quoted below:

(6) As soon as the meeting convened under this section commences, the Presiding Officer shall read to the Zila Panchayat the motion for the consideration of which the meeting has been convened and declare it to be open for debate.

9. The expression "commencement of the meeting" is not used in Clause (i) of Sub-section (3) of Section 28. It appears that after the members are required to assemble at the time for which the meeting has been convened indicated in the notice the Presiding Officer would have to determine whether the quorum is complete before the meeting can commence. It is only after such determination that the meeting can commence. If the quorum is not complete the meeting cannot be held. Sub-section (12) of Section 28, which relates to the effect of want of quorum supports the proposition that the meeting can be held only after the determination of the quorum. Sub-section (12) of Section 28 is quoted below:

(12) If the motion is not carried as aforesaid or if the meeting could not be held for want of a quorum, no notice of any subsequent motion expressing want of confidence in the Adhyaksha or the Up-Adhyaksha, as the case may be, shall be received until after the expiration of two years from the date of such meeting.

10. Sub-section (6) of Section 28 makes it clear that as soon as the meeting commences the Presiding Officer shall read to the Zila Panchayat the motion for the consideration of which the meeting has been convened. Sub-section (6) also provides that after the motion has been read out the Presiding Officer shall declare the meeting to be open for debate. Section 28 does not specify the stage when the Presiding Officer is required to determine the quorum. But from the sequence in which the business is to be transacted given in Sub-section (6) of Section 28 it appears that it is to be done before the commencement of the meeting. This follows by implication because Sub-section (6) provides that as soon as the meeting commences the motion has to be read out and immediately thereafter the meeting is to be thrown open to debate. The determination of the quorum must therefore be done before the stage of the commencement of the

meeting. It is settled that a purposeful interpretation has to be given to a provision and where two views are possible the interpretation which advances the intention of the Legislature is the one to be preferred. From a reading of Sub-section (8) it appears that the Legislature has permitted debate on the motion for a time span upto two hours. If as it appears the legislative intent was to permit debate upto two hours it would appear that the proper interpretation to be given to Sub-section (8) is that the meeting would commence at a time subsequent to that at which it has been convened for else if there is delay in the commencement of the meeting the time permitted for debate would have to be cut down. That a delayed commencement of the meeting is permissible can be inferred from the provisions of Sub-sections (4A) and (4B) of Section 28. Sub-section (4A) provides that if within an hour from the time appointed for the meeting the presiding officer is not present to preside at the meeting, the meeting shall stand adjourned. Sub-section (4A) by implication indicates that the meeting shall not stand adjourned before the expiry of one hour from the time fixed in the notice for convening the meeting. It is difficult to accept that the Legislature had intended to cut down the time of the debate in case the meeting commences belatedly on account of the delay in the arrival of the presiding officer. Rather it appears that the expression "time appointed for commencement of the meeting" has been intentionally so that the time for debate is not cut down merely on account of the delay in the commencement of the meeting. In view of this interpretation given by us to Sub-section (8) of Section 28 the two decisions cited by Sri Tripathi upon the point that where a thing is required to be done in a particular manner it must be done in that manner or not at all and that noncompliance with a mandatory provision would be fatal and would invalidate subsequent proceedings and therefore the continuance of the debate beyond the time provided under Sub-section (8) of Section 28 would be fatal do not require consideration.

11. The next submission of the learned Counsel for the petitioner is that at 11 a.m. the time fixed by the Collector for convening the meeting the quorum was not complete. On the application of the petitioner we had summoned the original record from the Zila Panchayat. The attendance sheet and the ballot papers were examined in the Court by the counsel for the parties. In the attendance sheet the members have put their signatures against their names and have also entered the time. Sri K. N. Tripathi pointed out that as many as 10 members had signed between 11 a.m. and 11.08 a.m. and that the petitioner had even put her signatures at 11.25 a.m. On the basis of the time at which the members had signed Sri K.N. Tripathi argued that the quorum was not complete at 11 a.m. Sri K.N. Tripathi submits that as there is no provision under the Act or under the Rules indicating what would be the quorum for a meeting convened for considering a no-confidence motion the quorum would be the minimum member of persons who are required to be present to pass a motion of no-confidence. On this criteria the quorum would be 32 members under the unamended Section 28 and 24 members under the amended Section 28 in view of the fact that the total

number of members of the Zila Panchayat is 48. It has however to be appreciated that where a large number of persons (in this case more than 30 persons) are present who are required to put their signatures it is only turn by turn that this can be done and there has to be some time gap between the first and last signatures. All the 32 members other than the petitioner could not therefore be expected to have signed at 11 a.m. sharp. In the circumstances the mere fact that the members had signed upto 11.08 a.m. is not indicative of the fact that the required quorum was not complete at 11 a.m. the time at which the meeting was convened.

12. Another contention advanced by the learned Counsel for the petitioner was about the error in the counting of votes. The invalidity in the counting suggested is on the basis of the averments made in para 27 of the writ petition. Paragraph 27 of the writ petition is quoted below:

27. That it is also relevant to mention here that during counting of votes the petitioner also raised objection that certain votes are invalid which needs to be declared invalid because these neither contain sign of (?) nor (x), but the respondent No. 2/3 with mala fide intention counted these invalid votes against the petitioner, which is very much clear from the records, which may please be summoned by this.

13. The original ballot papers which had been produced by the Zila Panchayat were inspected in the presence of the Court by the learned Counsel for the petitioner as well as by the learned Counsel for the respondents. The inspection revealed that there are 32 ballot papers bearing clear mark in favour of the motion, one ballot paper bearing clear mark against the motion and one vote was found to be invalid. The mark upon the vote declared invalid is against the column "No" in the ballot paper. The mark is neither a tick mark nor a cross and the Presiding Officer has therefore cancelled the vote in our opinion, rightly. However, even if it is assumed that the vote was erroneously cancelled it would not make any difference to the result inasmuch as there are 32 clear votes in favour of the motion, which would constitute a 2/3 majority even according to the unamended provisions of the Act.

14. We shall now deal with the last contention advanced by the counsel for the petitioner. According to the petitioner the Presiding Officer, Sr. S.S. Misra had allowed certain outsiders to be present in the meeting and was convincing them how a vote could be given against the petitioner. The submission is that the Presiding Officer was canvassing against the petitioner and outsiders were convincing the voters. In support of his contention that interference by outsiders would invalidate the proceedings reliance was placed by the counsel for the petitioner upon a decision of the Apex Court in Amir Ahmad and others Vs. Ram Niwas Agrawal and others, . In that case it was alleged that two officials (Addl. District Magistrate) were sitting on either side of the Presiding Officer and were interfering with the proceedings. The High Court had recorded the finding that the posting of the officials in the meeting which was required to be presided over

by the District Judge was mala fide and that the proceedings were vitiated on account of interference by the two officials. The Apex Court on facts however found that the interference was not proved. The case has been relied upon by the petitioners in support of their contention that unauthorized interference by an outsider would vitiate the proceedings. We shall therefore examine the nature of the allegations regarding interference and their proof. The averments against the Presiding Officer is that he was tutoring the members how a no-confidence motion could be passed against the petitioner and that the Presiding Officer had permitted the outside members to canvass in the meeting hall and to teach the members in what manner the votes are to be cast against the petitioner. In paras 28 and 29 of the petition it has been averred that videography of the proceedings was done at the behest of by the district administration. To appreciate the contention paragraph 30 of the writ petition is quoted below:

30. That it is also stated that if this Hon'ble Court may please summon the videography then it will become clear that the respondent No. 2/3 has how acted like a canvasser of the person who brought "no-confidence motion" against the petitioner, there he will be seen tutoring the members that how no-confidence motion can be passed against the petitioner. The respondent No. 2/3 also permitted the outside members to make canvassing in the meeting hall and teach the members that how and in what manner the votes are casted against the petitioner, he will also be seen convincing the members, which is not permitted under the provisions of Adhiniyam 1961.

15. The averments made in the para are quite vague. The averment that the Presiding Officer was seen tutoring the members how a no-confidence motion can be passed against the petitioner can also be interpreted to mean only that the Presiding Officer was explaining the manner in which a no-confidence motion is to be passed. Similarly the allegation about outside members that they were canvassing and teaching the members how and in what manner the votes are (to be) cast against the petitioner also could mean only that the procedure how the votes are to be cast was being explained. Apart from the fact that the averments about the manner in which the proceedings were being interfered with are vague there also appears to be no material in proof of the averments. The petitioner's case is that videography was done at the behest of the district administration. The respondents have denied that any videography of the proceedings was done. We had therefore called for a report from the Presiding Officer. The Presiding Officer in his report dated 7.11.2008 has stated that he had rejected the petitioner's application for videography and he had permitted none to videograph the proceedings. He has also stated that no videography was done in his presence and that the petitioner did not draw his attention to any other person doing videography and that none was permitted to videography the proceedings and that no videography was done in the room. The Presiding Officer is an Additional District Judge. No motive has been imputed against the Presiding Officer and there is no reason to doubt his report.

16. In this context it is necessary to take notice of the contention advanced by Sri Tripathi that it is not the petitioner who has been improving her case. Rather it is the respondents who have improved their case during the course of the petition. It is submitted that in the original counter-affidavit filed by Ramphal in reply to the writ petition there was no specific denial to the averment made in paragraphs 28 and 29 of the writ petition that videography was done at the behest of the district administration. He refers to paragraph 18 of the counter-affidavit of Ramphal in this regard. Sri Tripathi submits that it was for the first time that in para 4 (iv) of the counter-affidavit to the supplementary-affidavit dated 17.10.2008 that the respondents denied the videography. But the stand therein that no videography was done was false and when this was realized the respondents tried to improve their case and in the affidavit dated 1.12.2008 of the Chief Development Officer, Veereshwar Singh the stand was taken that no videography of the proceedings inside the hall was done but a videography was done by administration outside the hall.

17. The Upper Mukhya Adhikari in the counter-affidavit denied the averments made in paragraphs 27 to 30 of the petition regarding the videography of the proceedings of the meeting done by the district administration. However, in the affidavit of Veereshwar Singh the Chief Development Officer it is admitted that a C.D. of the videography done outside the hall was prepared. According to the petitioner the videography was also done by two T.V. Channels-India T.V. and Aina Vision. Counsel for the petitioner submitted that the CD. be displayed and seen by the Court, Sri W.H. Khan, learned Counsel for the respondent submitted that the CDs. are doctored and the case that any videography was done regarding the proceedings of the meeting is false and that the petitioner has been improving her case in this regard at different stages during the pendency of the writ petition. He pointed out that in the original writ petition filed on 7.6.2008 it was alleged in paragraphs 28 and 29 that videography was done by the district administration. Sri Mukesh Prasad, counsel for the petitioner pointed out that the stand of the petitioner is that the videography was done at the behest of the district administration and not that it was done by the District Administration. We however, find that in paragraph 29 of the writ petition it has been stated that the district administration has made videography and there is thus some contradiction in the stand taken in paras 28 and 29 in this regard. Even in the affidavit dated 26.11.2008 filed by the petitioner in support of the objections to the report of the Presiding Officer dated 7.11.2008 the petitioner had merely referred to the videography being done at the behest of or by the district administration. The same stand has been taken in the rejoinder-affidavit which was also filed on 26.11.2008. It was in paragraphs 17 and 18 of the supplementary-affidavit dated 4.12.2008, that the petitioner took the stand that the videography of part of the proceedings was done by the India T.V. After the affidavit dated 4.12.2008 the respondent filed a supplementary-affidavit dated 21.1.2009 enclosing separate affidavits of 31 members of the Zila Panchayat that they had voted in favour of the no-confidence and that no videography was done.

Thereafter a counter-affidavit dated 2.2.2009 was filed by the petitioner in paragraphs 8 and 9 of which it is stated that videography was also done by a local news channel known as Aina Vision which had also been telecast but there is no averment in these paragraphs disclosing the date on which the telecast was made. Thereafter, on 20.2.2009, a supplementary-affidavit was filed by the petitioner enclosing thereto certain photographs, which are extracted from the CD. made by the India T.V. and from the Alna Vision. The sequence of facts indicates that the petitioner has been improving her case regarding the videography. The stand of the respondents is that the CD., which are sought to be produced and displayed before the Court are doctored and that no evidentiary value can be attached to those CDs. According to the respondents the petitioner is trying to prolong the proceedings. From these facts it emerges that the petitioner has undoubtedly tried to improve her case regarding the videography.

18. In view of the conflicting versions given we find no reason to disbelieve the report of the Presiding Officer the Additional District Judge, Sri S.S. Mishra against whom no motive have been attributed. The fact stated in his report that neither the petitioner nor any other member raised any objection to any videography being done by any person and that no such fact that any videography was being done was brought to his notice indicates that the case about the videography is an afterthought. These facts in the report of the Presiding Officer have not been controverted. We are therefore inclined to accept the version given by the Presiding Officer who holds the rank of an Additional District Judge and to whom no motive for giving a false report has been imputed. Moreover, the petitioner has already filed the photographs of the India T.V. and of the Aina Vision and there is nothing in these photographs, which may demonstrate that the members were being influenced. In these facts and circumstances the video CD"s, cannot be regarded as reliable evidence.

19. The last contention advanced by Sri W.H. Khan may also be taken into account. He submitted that where the motion of no-confidence has been carried out by overwhelming majority the Court sitting under Article 226 would be loathe to interfere. In support of his contention Sri W.H. Khan relied upon two decisions in *Om Prakash Yadav v. Collector, Etah* and *Ors.* 1991 (1) UPLBEC 238 : 1991 (1) AWC 28 , and upon the order in the case of *Smt. Saroj Kumar Yadav v. State of U.P. and Ors.* passed in Review Application in Writ Petition No. 49529 of 2009, decided on 25.8.2008 and upon *Jai Charan Lal Vs. State of U.P. and Others*, These decisions support the contention.

20. In the result, we do not find any merit in the writ petition. The writ petition is dismissed.