
(2016) 09 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2622 of 2016

Smt. Rukhsana

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 27-09-2016

Acts Referred:

Uttarakhand Panchyati Raj Act, 2016 — Section 18(4)

Citation : (2017) AIR(Uttaranchal) 23

Hon'ble Judges : Sudhanshu Dhulia, J.

Bench : Single Bench

Advocate : Mr. Sharad Sharma, Senior Advocate assisted by Ms. Indu Sharma, Advocate, for the Petitioner; Mr. Syed Nadim, Standing Counsel, for the Respondent Nos. 1 to 3/State of Uttarakhand; Mr. Rajesh Joshi, Advocate, for the Interveners

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J. (Oral) - Counter affidavit filed on behalf of interveners in the Court today is taken on record.

2. The petitioner before this Court is a Gram Pradhan and elected way back in the year 2014. The petitioner has presently challenged the no confidence motion proceedings which have been initiated against her by the villagers of Gram Sabha in which the date fixed for considering the no confidence motion is 29.09.2016. Petitioner alleges violation of Uttarakhand Panchayati Raj Act, 2016 (from hereinafter referred to as "the Act"). The provision for initiating the no confidence motion against the Pradhan is given under Section 18 of the Act. There are two conditions in Section 18 of the Act, which the learned Senior Counsel for the petitioner would submit have been violated. The first contained in clause 1 of Section 18 of the Act, according to which, the requisition must bear the signature of at least 25th of the total members of the Gram Sabha to the Panchayat Raj Adhikari and the Panchayat Raj Adhikari after verification must thereafter call for no confidence meeting for which 15 days notice is required as

provided under Section 18(4) of the Act.

3. According to the petitioner, the signature which has been made in the requisition contain names of such persons as well who are dead, and therefore, first condition is not met. Learned Senior Counsel for the petitioner submits that the total members of the Gram Sabha are 2779 but according to the learned counsel for the interveners the total members are 2523. The requisition bears signature of 1157 persons. Even it is assumed for the sake of argument that the total strength of Gram Sabha is 2779, 1157 would be much more than the 1/3rd of the members. Moreover, how many are fake signatures, etc have already been seen by the concerned officer and at this stage this aspect cannot be looked into by this Court. The second objection of the petitioner is that 15 days clear notice is a mandatory requirement under Section 18(4) of the Act, which has not been followed inasmuch as the show cause notice was given to the petitioner on 14.09.2016 but it was served on the petitioner on 20.09.2016, and the date fixed for consideration of no confidence motion is 29.09.2016. Learned Senior Counsel for the petitioner would further argue that 15 days notice would mean 15 days clear notice or at least 15 days of clear notice which would necessary imply the two terminal dates i.e., 14.09.2016 and 29.09.2016 have to be excluded from this 15 days. If that is done, the notice would be of 14 days as between 14.09.2016 to 29.09.2016.

4. Learned counsel for the interveners Mr. Rajesh Joshi on the other hand would argue that Section 9 of the Uttar Pradesh General Clauses Act clearly stipulates that while calculating 15 days, the date on which a notice was sent has to be excluded. Section 9 of the Uttar Pradesh General Clauses Act reads as under:-

"Section 9. Commencement and termination of time.- In any Uttar Pradesh Act, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to"."

5. Learned Senior Counsel for the petitioner on the other hand has relied upon a decision of the Allahabad High Court in the case of Yadu Nath Pandey v. The District Panchayat Raj Officer, District Ballia, reported in A.W.C. Volume 12, 1986, page no. 1004, where a similar provision was contained for no confidence motion under Section 14(1) of the Uttar Pradesh Panchayat Raj Act. Section 14(1) of the Uttar Pradesh Panchayat Raj Act, reads as under:-

"14. Removal of Pradhan.- (1) The Gram Sabha 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 of the Gram Sabha present and voting."

6. The Division Bench of Allahabad High Court while interpreting clause 1 of Section 14 of the U.P. Panchayat Raj Act has held that where the word "at least" is given prior to the days of notice, it would mean that the first and the last date of the notice have to be excluded.

7. However, there is no such wording in the Uttarakhand Panchayati Raj Act where "at least" 15 days notice has been mentioned. In Section 18 (4) of the Uttarakhand Panchayati Raj Act only 15 days notice is to be provided, which would mean that the day the notice is given has to be excluded while counting 15 days.

8. In view thereof, there is no anomaly in the notice dated 14.09.2016 issued by respondent no. 3.

9. The writ petition has no merit and is hereby dismissed.