

(2017) 04 AHC CK 0211
In the Allahabad High Court
Case No : 8288 of 2017

Surendra Kumar Yadav

APPELLANT

Vs

State Of U.P. Thru. Secy. Co-Operative Deptt. & Ors

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

Uttar Pradesh Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961, Section 15 -
Uttar Pradesh Co-operative Societies Rules, 1968, Rule 458, Rule 458(1)

Citation : (2017) 04 AHC CK 0211

Hon'ble Judges : Amreshwar Pratap Sahi, Sanjay Harkauli

Bench : Division Bench

Advocate : Shishir Chandra, Awaneesh Yadav, Prashant Singh Atal

Judgement

1. This petition has been filed by the Chairman of Sahkari Ganna Samiti Limited, Faizabad. He is facing a No-Confidence-Motion the proposal whereof, is stated to have been signed by the requisite number of members. This proposal was forwarded to the District Magistrate, Faizabad who issued notice on 7th of April, 2017 fixing 28.04.2017 as the date of holding of the meeting for consideration of the aforesaid proposal of No-Confidence-Motion.

2. Apart from the other issues raised, the main ground of challenge is that the notice is in violation of the mandatory provisions of Rule 458 (1) of the Uttar Pradesh Cooperative Societies Rules, 1968. The same is reproduced below:-
"458. (1) On receipt of the notice of no confidence as provided in Rules 456 and 457, the specified authority shall fix such time, date and place as, he may consider suitable for holding a meeting for the purpose of consideration of the proposed no confidence motion:

Provided that such meeting shall be held within thirty-five days of the receipt of the notice of no confidence:

Provided further that at least twenty-one day"s notice shall be given for holding

such meeting."

We had heard the matter on an earlier occasion and also passed an order yesterday extracted hereinunder:-

"Heard the learned counsel for the petitioner and the learned standing counsel for the State and Shri Prasant Singh Atal for respondent no.10.

The issue raised in this petition is about absence of an interval of 21 days from the date of issuance of notice to the members for holding the alleged "No Confidence Motion" meeting against the petitioner.

Prima facie, we find that only 20 days have expired and therefore, the proposed "No Confidence Motion" meeting cannot be held on 28.4.2017. We therefore, restrain the District Magistrate from proceeding to hold the meeting.

The learned counsel for the respondent no. 10 prays that the matter may be taken up tomorrow i.e on 25th of April, 2017 for further advancing the arguments.

Put up tomorrow, i.e., 25.4.2017. Let a copy of this order be supplied to the learned counsel for the parties today itself. "

3. Today, Sri Prashant Singh Atal has put in appearance on behalf of the other respondents including the respondent No.10 who are said to have signed the No-Confidence-Motion.

4. The main argument of the learned counsel for the petitioner is that in the absence of clear 21 days of notice the meeting scheduled to be held on 28th April, 2017 is clearly vitiated as it is not within the mandate of the second provision to Rule 458 (1) of the 1968 Rules. He submits that since there are no 21 clear days of notice, the same would be hit by a mandatory provision and for this the learned counsel for the petitioner has relied on a number of decisions relating to such provisions in other enactments as well. He has invited the attention of the Court to the Full Bench (5 Judges) decision in the case of Gyan Singh. Vs. District Magistrate, Bijnore: AIR 1975 All. 315, to urge that this part of the Rule being mandatory and having not been observed in accordance with the said Rules, the notice dated 7th April, 2017 is vitiated as there are only 20 days in between the date of issuance of the notice and the date of the proposed meeting to be held on 28th April, 2017.

5. The aforesaid factual position could not be disputed either by the learned standing counsel appearing on behalf of the respondent No.1, 2 and 3 nor the same could be disputed by the learned counsel for the private respondents.

6. However, learned standing counsel has taken a stand to the effect that this provision being directory in nature, the members having knowledge of holding of the meeting, then any such deficiency as is being pointed out cannot invalidate the holding of the meeting of 28th April, 2017 as scheduled. He has invited the attention of the Court to the judgment in the case of Jivendra Nath Kaul Vs.

State of U.P. and others:1991(9)L.C. D. 186; paragraph-31.

7. We have considered the aforesaid submissions raised that the issuance of notice is mandatory. The provisions of Rule 458 (1) and the provisos therein are akin to the provisions of Section 15 of the Section U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 where also in respect of a No-confidence-Motion against the Chairman requires the undertaking of a process of holding a meeting not later than 30 days from the date on which the notice was delivered by the members, and further the Collector is enjoined with the responsibility of issuing a notice to the members of not less than 15 days for holding the meeting of a No-Confidence Motion.

8. In the instant case, Rule 458 (1) second proviso requires at least 21 days of notice to the members. The learned standing counsel tried to draw a distinction between the words used in the two statutes namely, the 1961 Act and the 1968 Rules to contend that they being different in context, the exclusion of the two dates namely, that of dispatch and the date of meeting, in the present case may not be attracted. We are unable to accept this argument inasmuch as, the words, "not less than" and "at least" as used in the two statutes referred to above, do not convey a different meaning and the lowest common denominator that can be construed from a reading of both the phrases is that they mean, one and the same, that is the minimum period as described in the statute. Thus, the period of 21 days is the minimum period required for a gap between the date of the notice and the holding of the meeting. This period cannot be shrunk by any mathematical operation or legal interpretation as it would negate the very purpose of the Rules which give a breathing time between the issuance of the notice and the holding of the meeting for the members to get informed and prepare themselves for the said meeting. It is in effect a brooding period for the members to deliberate and make up their minds for taking a stand in the meeting. This should not necessarily mean to be a period for indulging in horse trading. The purpose of a minimum period is therefore clearly reflected in the statute and the same cannot be further reduced by the very use of the words therein. The Legislative intent is clear not to reduce the said gap below than what is prescribed. We cannot subtract something from the law under the cover of interpretation that allows us only "to iron out the creases and not weave a new texture"

9. The Office of the Chairman is that of a democratically elected leader. The Electorate that has elected the Chairman is different whereas those who are bringing about No-Confidence-Motion, are especially privileged to do so under the statutory provisions. The question of impeaching such an elected Chairperson therefore mandates that the procedure prescribed should be scrupulously followed in order to protect the nature of the Office, the occupant whereof should not be allowed to be dislodged on the asking of a few persons. This is also one of the reasons for making the provisions of holding the meeting of a Noconfidence-Motion to be stringent and compulsive.

10. For this we are fortified in our view by a long line of decision that have been holding the field till now. Similar arguments in relation to parimateria provisions of the 1961 Act were considered in depth by a Division Bench of the High Court in the case of Kamla Devi. Vs. State of U.P. and others (Civil Misc. Writ Petition No.41077/2012) reported in [2014 (2) ADJ 327 (DB)] [Allahabad High Court]=2014 (3) AWC 3099 Alld.= 2014 (2) ESC 801 (Alld)=2014 (122) RD 701. The said Division Bench has noticed the Full Bench decision referred to hereinabove in the case of Gyan Singh (supra) and the other decisions as indicated in paragraphs 2, 20, 21, 27 to 29 that are extracted hereinunder:- "2. The next step to be undertaken by the Collector is to give notice of not less than 15 days of such meeting in such manner as may be prescribed, to the elected members of the Kshettra Panchayat. The meeting has to be presided over by the Sub-Divisional Officer of the division concerned.

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20. Sri Shashi Nandan has relied on the following decisions to contend that 15 days clear notice is a mandatory provision and any meeting transacted without there being such notice is a void meeting and any resolution passed thereunder is also invalid. The decisions are:-

1. Yadu Nath Pandey Vs. The District Panchayat Raj Officer, District Ballia, 1986 AWC Pg. 1004.

2. Smt. Krishna Jaiswal Vs. State of U.P. & others, 2005 (2) AWC Pg. 1732.

3. Satya Prakash Mani and others Vs. State of U.P. & others, 2005 (2) U.P. L.B.E.C. 1883.

4. Phula Devi Vs. State of U.P. & others, 2004 (4) ESC 2385.

5. Gyan Singh Vs. The District Magistrate, Bijnor and others, AIR 1975 Allahabad 315.

21. He has further drawn support from the full bench decision in the case of Vikas Trivedi Vs. State of U.P. & Ors., Writ Petition No. 29907 of 2012 decided on 23.04.2013 and reported in 2013 (2) U.P. L.B.E.C. Pg. 1193.

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27. Coming to the issues relating to the compliance of the provisions of Section 15(3) (ii), the string of authorities as relied upon by the learned counsel for the petitioner and referred to hereinabove leave no room for doubt that a meeting held or proposed to be held in violation of a mandatory provision which requires 15 days clear notice would be invalid.

28. We have considered the ratio of the decisions that have been cited at the bar and we do not find any good reason to defer from the view already taken by several division benches as referred to hereinabove. One of the decisions, namely, Satya Prakash Mani (supra), has also taken into consideration the full

bench decision of 1975 in the case of Gyan Singh (supra) as relied upon by Sri Tripathi counsel for the respondent. The decision in the case of Phula Devi (supra) has already held that the provisions are mandatory except for the manner in which the notice has to be sent. Thereafter in Paragraph 30 of the aforesaid judgment in the case of Satya Prakash Mani (supra) also holds that the requirement of 15 days notice is mandatory.

29. In the instant case, the dispute is not with regard to the proforma of the notice but the period of 15 days clear notice. The respondents have not been able to establish the dispatch of notice prior to 13.8.2012. The pasting of the notice has been clearly denied by the petitioner. In the circumstances, the contention raised that the requirement of 15 days clear notice had not been complied with deserves to be accepted on the facts of the present case."

11. The aforesaid decision of the Division Bench has again been followed by a Division Bench of this court in the case of Awadhesh Singh. Vs. State of U.P. through Principal Secretary Panchayat Raj and others (Writ Petition No.7171 (M/B) of 2017), decided on 12.04.2017 which in turn has relied on a recent Full Bench decision of this Court in the case of Smt. Sheela Devi. Vs. State of U.P. and others [2015 (2) UPLBEC 1176].

12. The provisions therefore of at least 21 days notice in the second proviso to Rule 458 (1) of the 1968 Rules being parimateria is therefore mandatory for all the reasons aforesaid as the ratio and logic of the above mentioned decisions are clearly attracted and applicable in the present case.

13. The calculation of the period intervening in between is after excluding the date of issuance as well as the date of holding of the meeting. Learned counsel has invited the attention of the Court to the judgment of the Apex Court in the case of Jai Charan Lal. Vs. State of U.P. and others; AIR 1968 SC page 5. The gap of minimum number of days between the date of issuance of notice and the date of holding of the meeting has been held to be a necessary ingredient for being complied with by the authority, and consequently, we are of the opinion that the notice is short by one day.

14. Apart from this we also find that the first proviso to Rule 458 (1) also requires that the meeting shall be held within 35 days of the receipt of such notice.

15. Once we come to the conclusion that the period of 21 days has not intervened, then the meeting can be held only if a fresh proposal is made in this regard as any corrigendum now issued would not validate the notice that was initially bad.

16. Consequently, we allow this writ petition and quash the notice dated 07.04.2017. It shall be open to the members in case they still intend to move the No- Confidence-Motion to move a fresh proposal in accordance with law and in compliance of the Rule 458 of the 1968 Rules.

17. The writ petition is accordingly allowed.