
(2010) 12 UK CK 0053

In the Uttarakhand High Court

Case No : Writ Petition P.I.L. No. 312 of 2008

Uttarakhand Gram Pradhan Sangathan

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 20, 8
Uttar Pradesh Panchayat Raj Act, 1947 — Section 12

Citation : AIR 2011 Utt 56 : (2012) 115 RD 246 : (2011) 3 UC 2122 : (2011) 1 UD 35

Hon'ble Judges : Barin Ghosh, C.J.;V.K. Bist, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—In view of the provisions contained in Article 243E of the Constitution of India, there is no concept of Administrator of any Panchayat, but since the Government, by a notification, while postponing election of Panchayats, appointed Administrators, the present batch of writ petitions, in the form of Public Interest Litigations, were filed.

2. The Government having taken the stand that what it has done is permissible in terms of the law made to that effect, the question, which is to be decided, is whether Sub-section (3-A), inserted in Section 12 of the Uttar Pradesh Panchayat Raj Act, 1947 and in Sections 8 & 20 of the Uttar Pradesh Kshetra Panchayats and Zila Panchayats Act, 1961, by the Uttaranchal Panchayat (Amendment) Act, 2002, is valid or not. A look at Article 243E would make it abundantly clear that the term of every Panchayat is five years and no more. The said Article mandates that before expiry of the term of Panchayat, election of new Panchayat, who would succeed the existing Panchayat, should be completed. That being the situation, there is no scope of appointment of an Administrator, nor there is any scope of extension of an existing Panchayat. When the constitutional mandate is that an election to constitute a Panchayat shall be completed before expiry of the duration of the existing Panchayat, there is no question of providing in the Act, dealing with the subject made by the State Legislature, anything contrary to

completion of election of a Panchayat before the time specifically mentioned in the Constitution. There is, therefore, no premise to proceed on the basis that it is not practicable to hold election to constitute a Gram Panchayat or a Kshettra Panchayat or a Zila Panchayat within the time as specified in Article 243E of the Constitution of India and, accordingly, to do something, which has not been provided, either expressly or impliedly, in the said Article and expressly negated the same in so many words.

3. Looked at from that angle, the Notifications challenged in the writ petitions, being contrary to the power expressly granted to the State Legislature and the State Executive, the same are per se illegal. Those have been purported to be issued in exercise of power granted by the Amendment referred to above. The Amendment dealt with a Gram Panchayat or a Kshettra Panchayat or a Zila Panchayat. It did not authorise non-holding of election en masse, as was purported to be done in the instant case. We, accordingly, directed the Chief Secretary of the State to file an affidavit and such an affidavit has been filed. In that, it has been indicated in clearest of clear terms that, in future, the State will not take recourse to postponement of election of any Panchayat beyond the time mentioned in the Constitution and shall also not appoint Administrators en masse, except in exceptional circumstances and in public interest, but only in respect of a or a few of the Panchayats. We hope and expect that the State would remember what it represented to the Court through the Chief Secretary of the State in relation to future elections of Panchayats and discharge its obligations strictly in terms of the provisions of the Constitution of India.

4. We are not issuing any further direction in the matter, inasmuch as, on 2nd December, 2010, a Notification has been published giving schedule of elections in relation to Panchayats situated in the district of Haridwar, with which these writ petitions are concerned. We, however, make it clear that the Administrator, who has been appointed and who shall henceforth be appointed in the circumstances indicated above, shall only be entitled to discharge day-to-day functioning of the Panchayats and shall not be entitled, under any circumstances, to take any policy decision with regard to anything concerning the Panchayats in question. If any such policy decision has been taken by the Administrators, in respect of any of those Panchayats in which they have been appointed, those policy decisions shall be treated as null and void. We hope and expect that the State Government, in consultation with the State Election Commission, shall immediately take steps to complete the elections.

5. We, accordingly, dispose of these writ petitions.