

(1994) 04 AHC CK 0023

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12263 of 1992

Vinod Raj Saran Dubey alias Seth

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 23-04-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Kshetra Samiti and Zilla Parishad Adhiniyam, 1961 — Section 17,
17(1), 18, 18(1), 20(4)

Citation : (1994) 3 AWC 1261

Hon'ble Judges : R.R.K. Trivedi, J;B.L. Yadav, J

Bench : Division Bench

Advocate : A.K. Srivastava and P.K. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—In this writ petition, counter and rejoinder affidavits have been exchanged and the learned Counsel are agreed that the writ petition may be disposed of finally at this stage.

2. By means of this writ petition, Petitioner has questioned the validity of the notice of no confidence motion and also the result of the proceedings of no confidence motion held on 7th April, 1992. The facts giving rise to this writ petition are that on 9/10th March, 1992 a notice of no confidence motion against Petitioner was given to Respondent No. 3 as contemplated u/s 28 of Uttar Pradesh Kshetra Samities and Zila Parishads Adhiniyam, 1961 (U.P. Act No. 3 of 1961), hereinafter referred to as "Act of 1961". On the basis of the aforesaid notice the Respondent No. 3 fixed 7th April, 1992 as the date of meeting of the members of Zila Parishad for consideration of no confidence motion. The notices were issued to the members of the Zila Parishad as required u/s 28 of the Act of 12th March, 1992. However, controversy arose with regard to five those members who were chosen and nominated by the State Government u/s 18 of the Act. Such nominated members have been arrayed as Respondents No. 10 to

24 in three different sets according to the period they continued as nominated members of the Zila Parishad. It appears that Initially Respondents No. 10 to 14 were nominated as members. However by the Government Order dated 16th January, 1990 they were removed and in their place Respondents No. 15 to 19 were nominated as members. The State Government by order dated 25th January, 1992 nominated Respondents No. 20 to 24 as members replacing Respondent No. 15 to 19. However the Government Order dated 25th January, 1992 appointing Respondents No. 20 to 24 as members could be communicated to Respondent No. 3 on 25th March, 1992 and the oath was administered to them on 28th March, 1992. The effect of this delay in communication was that Respondent II set continued to be members of the Zila Parishad upto 27th March, 1992 as provided in Clause (c) of Section 20 Sub-section (4) of the Act as inserted by U.P. Act No. 20 of 1990. It shall be appropriate at this stage to reproduce Clause (c) to Section 20 of Sub-section (4) of the Act which runs as under:

Section 20(4)

(a)

(b)

(c) Subject to the other provisions of this Act, the term of office of a person chosen to be a member under Clause (v) of Sub-section (1) of Section 18, whether before or after January 20, 1990, shall be one year, but he shall continue to hold office till another person is chosen to be a member in his place.

Explanation--For removal of doubts it is hereby declared that the choice of a person to be a member under Clause (v) of Sub-section (1) of Section 18 may be cancelled by the State Government at any time before the constitution or reconstitution of the Zila Parishad u/s 17.

The effect of the aforesaid change was that on the date the notice of intention to move motion of no confidence was moved and on the date when the notices were issued by Respondent No. 3 fixing 7th April, 1992 as date for consideration of no confidence motion, the members shown as Respondents second set were continuing the members, as the Government Order dated 25th January, 1992 nominating Respondents III set was not communicated. However, on 28th March, 1992, when Respondents mentioned as III set were administered oath of office, they replaced Respondents II set and became members eligible to participate in the meeting of the members of the Zila Parishad Scheduled for 7th April, 1992 for consideration of no confidence motion. Consequently, Respondent No. 3 issued notices for members known as Respondents No. 20 to 24 after 28th March, 1992 Section 28(3)(ii) of the Act says that the notice to the members for attending the meeting of the Zila Parishad for consideration of the no confidence motion should not be less than 15 days notice, in the facts of the case as disclosed above, as members of Respondents III set were administered oath on 28th March, 1992 they could not be given 15 days notice as required u/s 28(3)

(ii) of the Act.

3. On 7th April, 1992 the meeting of the members of the Zila Parishad took place as scheduled which was attended by 26 members. The meeting was presided over by Sri S.K. Ratauri, Special Judge, Rampur and after considering the motion of no confidence the same was put to vote. Out of 26, 24 votes were cast in favour of the motion and two against it. The Presiding Officer thus declared the motion as carried out.

4. This writ petition was filed in this Court on 5th April, 1992 on which date a Division Bench of this Court granted time to parties to exchange affidavits and also required Petitioner to serve unserved Respondents. However as no interim order was granted, the motion of no confidence was carried against Petitioner. He filed an application on 25th May, 1992 for necessary amendments in the writ petition and for incorporating the subsequent events and also claiming relief for quashing the result of motion of no confidence dated 7th April, 1992 and for further relief not to interfere in his functioning as Zila Parishad Adhyaksh. This application was allowed on 27th November, 1992. An impleadment application was also moved by Petitioner for impleading Respondents No. 10 to 24 as parties in the writ petition which was also allowed by this Court by order dated 29th October, 1993 and the notices were required to be served on the newly impleaded Respondents. It appears that notices were sent through office and Petitioner was also required to serve Respondents personally. An affidavit of service dated 21st January, 1994 was filed by Petitioner. Registered notices were also sent to the Respondents returnable on 8th November, 1993. However, as per office report dated 19th January, 1994 neither the acknowledgement nor undelivered covers have been received back after service. In the aforesaid circumstances, the service of Respondents No. 10 to 24 is deemed sufficient. None of them has put in appearance in response to the notices issued to them.

5. The learned Counsel for Petitioner has challenged the legality of the notice and result of no confidence motion on various grounds which are mentioned below:

(i) The provisions of Section 28(3)(ii) of the Act requires that the members of the Zila Parishad should be given not less than 15 days notice of the meeting. However in the present case as Respondents No. 20 to 24 members of the Zila Parishad were given notices on 31st March, 1994, the mandatory provisions relating to notices have been violated and it has vitiated the entire proceedings. For this reliance has been placed by the learned Counsel in a case of Division Bench of this Court *Amir Khalid v. State of U.P.* 1994 (1) UP LB EC 45 and *Khurshid Hussain v. District Magistrate and Collector Barielly* 1992 (1) AWC 208.

(ii) The notice of vote of no confidence served by Respondent No. 3 was not in prescribed form as provided in Rules relating to the form for no confidence in *Adyaksh* 1962 and it vitiated the entire proceedings. Reliance has been placed in case of *Ram Nath Tripathi v. Commissioner Lucknow division Lucknow* 1992 (2) UP LB EC 1181.

(iii) The notice served on the Petitioner did not bear any date or signature of the authority issuing the same nor any date was mentioned in the copy of the motion annexed thereto. The notice did not accompany the motion of no confidence. Under Law, it is notice which is required to be signed by the members and not the motion. The signatures on the motion are wholly illegible. Thus there was no compliance of the provisions of the rules mentioned above.

(iv) Respondents No. 15 to 19 (II set) were legally members of the Zila Parishad and were duly served with the notice to participate in the meeting scheduled for 7th April, 1994. But they were not allowed to participate in spite of the interim order dated 2nd April, 1992 passed by this Court. Thus the proceedings were held in violation of the order of this Court and are liable to be quashed. The notice issued to such members to participate in the meeting was neither withdrawn nor cancelled.

(v) Respondents 20 to 24 (III set) though were nominated on 25th November, 1992 but their nominations have not been published in the official gazette and in absence of such publication they could not be legally treated as members of the Zila Parishad and Respondents committed a serious illegality in serving a notice on them to participate and at the same time not permitting Respondents (II set) to participate in the meeting. The proceedings are liable to be quashed on this ground alone.

(vi) On the objections being raised by Respondents (II set) and on production of the interim order of this Court dated 2nd April, 1992 the Presiding Officer adjourned the meeting and asked them to obtain necessary orders from Collector. The meeting was adjourned to allow Respondents No. 15 to 19 to obtain permission. It is claimed that as the meeting was adjourned, fresh notices or ten days ought to have been given by Respondent No. 3 u/s 28(4-B) of the Act and the result of the proceedings announced by the Presiding Officer is illegal and liable to be quashed.

(vii) Lastly, it has also been submitted that religious and communal feelings were incited and exploited to get the motion of no confidence carried against Petitioner and for this reason also the entire proceedings stood vitiated and are liable to be quashed.

6. Learned Counsel for the Respondents, on the other hand resisting the claim of Petitioner, has made the following submissions:

(i) The motion of no confidence moved against Petitioner was signed only by Sri Trilochan Singh, Respondent No. 16 from II set. On 7th April, 1992 at the time of consideration of no confidence motion only Lagan Singh, Respondent No. 24 put in appearance and participated. Hence the question raised on behalf of Petitioner about participation and non-participation of the Respondents shown in II and III set is of no consequence and did not effect the result of the proceedings of no confidence motion.

(ii) The Respondents III set took oath on 528th March, 1992 and it was not possible to serve 15 days clear notice on them as required u/s 28(3)(ii). However a clear 15 days notice was already given to the Respondents II set well within time and no fresh notice was required and so far as the Respondents III set is concerned it was an act of courtesy or caution that they were also given a fresh notice on 31st March, 1992.

(iii) As Respondents 15 to 19 (II set) were already given notice and the Respondents 20 to 24 (III set) stepped in their shoes as successors, no fresh notice was required and the notice already issued on 2nd March, 1992 was sufficient and legal and the proceedings and the result does not suffer from any legal infirmity.

(v) Interim order passed by the Lucknow Bench of this Court dated 2nd April, 1992 was to the effect that the order dated 27th March, 1992 by which Respondents (III set) were required to take oath on 28th March, 1992 was stayed. However as the oath was already administered on 28th March, 1992 i.e. much before the interim order dated 2nd April 1992 was passed by this Court, the Respondents (III set) were rightly served the notices and were legally eligible to participate. The Interim order dated 2nd April, 1992 could not have any adverse effect on the proceedings held on 7th April or the result thereof.

(vi) The notification nominating Respondents (III set) was issued on 25th January, 1992 which is on record. However the second notification was issued on 6th April, 1992 on account of the delayed communication. However, it has no effect on the proceedings.

(vii) There are total 40 members of the Zila Parishad including members nominated by the State Government. Out of 40, 24 members cast vote in support of no confidence motion and only two votes were cast against. Out of Respondents (III set) only Jagan Singh, Respondent No. 24 participated in the meeting and voted against the motion of no confidence. No other members attended the meeting. In view of this fact the result of the proceedings is not affected in any manner and it is not a fit case for interference under Article 226 of the Constitution.

7. We have considered the submissions made by the learned Counsel for the Petitioner and learned Counsel for the Respondents. It was stated before us that the original record of the case has been summoned and the same is lying in the safe custody of learned Chief Standing Counsel. Sri S.G. Hussnain, learned Standing Counsel has given a statement that no such record is available with the office of the Chief Standing Counsel. We do not feel that perusal of the original record of the proceedings is necessary as the questions argued may be decided effectively on basis of the material on record.

8. In our considered opinion, out of the several points pressed by the learned Counsel for the Petitioner as mentioned above, only two questions require serious consideration. Hence we propose to consider these questions first.

9. The first submission is with regard to absence of a clear 15 days notice given to Respondents 20 to 24. There is no doubt that as Respondents 20 to 24 were administered oath on 28th March, 1992, it was not possible to give them 15 days notice as required under the Act. There is also no dispute with regard to the legal position that the provisions with regard to the notice u/s 28(3)(ii) are mandatory as held by this Court in several cases where identical notices are required before consideration of the no confidence motion under the different Acts of this State. However, the question is as to what view should be taken by this Court in the special facts and circumstances of the present case. The possibilities cannot be ruled out about the change in number of the members of the Zila Parishad on account of various factors, for example the result of the election of the Parliament and Legislative Assembly in which fresh members may be elected as members of the House of People and the State Legislative Assembly who on being elected became ex-officio members of Zila Paribhad u/s 18(1)(vi), so also under Clause (vii) and other clauses. In the present case new members of Zila Parishad came in existence on account of the nomination by the State Government u/s 18 of the Act and such members were administered oath of office after the date, for consideration of no confidence motion, was already fixed. From perusal of the provisions contained in Section 28 of the Act it is clear that once the Collector fixes a date for convening the meeting of the Zila Parishad for consideration of the motion, he cannot adjourn it. Sub-section (5) of Section 28 of the Act contains a mandatory provision that the save as provided in Sub-section (4-A) and (4-B) a meeting convened for the purpose of consideration of motion under this section shall not be adjourned. Sub-section (4-A) and (4-B) of Section 28 of the Act provide for the grounds to adjourn the meeting on account of inability of the Presiding Officer to attend the meeting. In this legal position, what action could reasonably be expected from Respondent No. 3. In our opinion, though provisions with regard to the notice required u/s 28(3)(ii) are mandatory but, in the situation like in the present case and in view of the provisions of Sub-section (5) of Section 28 of the Act only substantial compliance could be legitimately expected from Respondent No. 3. In such circumstances a right balance may be struck to avoid inconvenience of vitiating the entire proceedings by rigidly adhering to the provision and convenience may be opted by departing from its tenor. In other words, the provisions of law have to be interpreted in a manner to bring a workable harmony. Law never contemplates or expects, to do something impossible. In the present case as the new members were given oath after fixing of the date of meeting, naturally they could not be given 15 days notice and only a substantial compliance may be reasonably held sufficient. The question may be considered from a different angle too. What was the object of the notice and whether it has been achieved or not. In our opinion, it intimates the date fixed to the members of Zila Parishad to participate in meeting and as this notice is accompanied by copy of the motion, members become aware of the allegations made therein and get themselves equipped to participate in the debate. In our opinion, the notice served on Respondents 20 to 24 achieved all the aforesaid purposes and even the substantial compliance was

sufficient and this view may be taken in the special facts and circumstances of the present case, without reducing the mandatory requirement of notice u/s 28 (3)(ii) of the Act. The result of proceeding of no confidence motion should not be allowed to vitiate merely on technical formality which may not have even a trivial impact on the merits of the result. Thus the submission of the learned Counsel for the Petitioner that the proceedings vitiated for want of clear 15 days notice, cannot be accepted.

10. The second serious challenge on behalf of the Petitioner with regard to Respondents No. 20 to 24. is that the notification nominating them as members of Zila Parishad was not published in the official gazette. Learned Counsel has placed reliance for this submission on the explanation appended to Section 18 which provides that in this section the term "specified" shall mean specified by the State Government by notification in the gazette before constitution or reconstitute job of the Zila Parishad. Learned Counsel has submitted that as the notification nominating Respondents 20 to 24 was not published in official gazette they could not be legally treated as members of the Zila Parishad and the exclusion of Respondents 20 to 24 from participating as members of the Zila Parishad, in the meeting held for consideration of the motion, has vitiated the result. However, this submission too has no force as the Act contains a "GANGA CLAUSE" in Section 98 of the Act Sub-section (2) whereof provides that no disqualification or defect in the election, co-option or appointment of a person acting as a member of Zila Parishad or of a committee or sub-committee appointed under this Act or as a Presiding Officer of meeting of the Zila Parishad or of such committee or sub-committee shall be deemed to vitiate any act or proceedings of the Zila Parishad, the committee or sub-committee if the majority of the persons present at the time of the act being done or proceedings being taken were," members of the Zila Parishad or committee or sub-committee without any such disqualification or defect. Thus the alleged defect of non-publication of the notification in the gazette, in our opinion, stands cured in view of the provisions contained u/s 98(2) of the Act. There is no allegation that the majority of the members who voted in favour of the motion, suffered from the like disqualification or defect as alleged against Respondents 20 to 24, and thus the result of the meeting held on 7th April, 1992 could not legally vitiate. In our opinion, the aforesaid Section 98(2) of the Act contains the complete answer to the question raised for Petitioner. Further if the provisions contained in Section 17(1) Section 22(2) and the Explanation to Section 18 of the Act are read together there remains no doubt that the provisions with regard to the publication of the notification in gazette are only directory and it could be done at any time, even subsequent to administration of oath to the nominated members. Thus the submission raised has no substance.

11. It was also submitted on behalf of the Petitioner that there was an interim order passed by the Lucknow Bench of this Court on 2nd April, 1992 and in violation of this order Respondents 15 to 19 (II set) were not allowed to participate in the meeting. We have considered this aspect also. However, there

appears no substance. By interim order dated 2nd April, 1992 only the operation of the order dated 27th March 1992 was stayed, which contained Intimation to Respondents 20 to 24 for taking oath on 28th March, 1992. It is not disputed that the Respondents 20 or 24 were already administered oath before the interim order was passed by this Court. In view of this the interim order could not help Respondents 15 to 19 (II set) who had already ceased to be the members of the Zila Parishad, and were rightly not allowed to participate in the meeting. It is also relevant to mention that in identical situation Hon'ble Supreme Court has upheld the power of the State Government to remove and nominate fresh members in case of Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others, . The view expressed by the Hon'ble Supreme Court may be applied to the power exercised by State Government u/s 18 of the Act also. The submission made on the basis of the interim order dated 2nd April, 1992 cannot be accepted.

12. It was next contended by the learned Counsel 1 or the Petitioner that the notice of No. confidence motion was not served on the Petitioner told other members in the prescribed form and it vitiated the entire proceedings. We have perused the notice and the copy of the motion annexed thereto and we do not agree with the submission made by the learned Counsel for the Petitioner. The notice contained all those facts which could be necessary to be conveyed and the copy of the motion annexed thereto was a complete copy. The case of Ram Nath Tripathi v. Commissioner Lucknow Division Lucknow 1992 (2) UP LB EC 1181, is clearly distinguishable on facts and cannot be applied in the present case.

13. It was also submitted by the learned Counsel for the Petitioner that the meeting was adjourned to allow Respondents 15 to 19 to obtain permission of the Collector to participate in the meeting and as the meeting was adjourned, a fresh notice was required u/s 28(4-B) of the Act. We have considered the relevant averments made by the parties in lib writ petition and the counter affidavit and in our opinion, the submission has no substance. The Respondents 15 to 19 ceased to be members of the Zila Parishad w.e.f. 28th March, 1992 and they were not entitled to participate. The interim order dated 2nd April, 1992 did not contain any permission or command on basis of which they could claim participation. In these circumstances there was no occasion to adjourn the meeting and the proceedings were rightly concluded by the Presiding Officer.

14. Learned Counsel for the Petitioner also challenged the proceedings on the basis of the religious and communal feelings which are alleged to have been incited and exploited to get the motion carried out against Petitioner. For this submission suffice it to say that such an issue requiring termination of complicated questions of facts cannot be gone into in the present proceedings under Article 226. The submission deserves outright rejection.

15. The motion of no confidence against Petitioner has, admittedly, been carried out by a majority of 24 members who voted against Petitioner and only two members stood on his side. Thus the Petitioner lost battle by an overwhelming

majority. Even if the contentions raised on this behalf with regard to Respondents II set or III set are accepted and it is assumed that these members could have voted in his favour, the result of the proceedings not affected. The total number of the members was 40 and majority of which has gone against Petitioner. For this reason also, we do not consider it a fit case for interference under Article 226 of the Constitution.

16. For the reasons recorded above, we do not find any merit in this writ petition and the writ petition is accordingly rejected. There will be no order as to costs.