

(1973) 07 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3721 of 1973

Virendra Kumar Agarwal

APPELLANT

Vs

M.L. Kulshreshtha and others

RESPONDENT

Date of Decision : 19-07-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 10
Uttar Pradesh Land Revenue Act, 1901 — Section 18(6)
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 24

Citation : (1973) 07 AHC CK 0001

Hon'ble Judges : N.D. Ojha, J;K.N. Singh, J

Bench : Division Bench

Judgement

1. The Petitioner challenges an order of the SDO, Sadar, distt. Shahjahanpur, dt. 15-6-1973, holding that he had jurisdiction to hear and decide the election petition filed against the Petitioner u/s 12-C of the U.P. Panchayat Raj Act.

2. The Petitioner was elected Pradhan of the Gaon Sabha. His election was challenged by means of a petition u/s 12-C of the Act. The election petition was presented to Mr. M.L. Kulshreshtha who was at the relevant time functioning as SDO, Tilhar. One of the points raised by the Petitioner was that Sri Kulshreshtha was not appointed SDO, Tilhar, by the Collector and as such he was not entitled to function as SDO. It was further urged that the DM Sri Bhagwan Din had gone on leave for a month and one Sri Bankey Lal Jatav, ADM, Shahjahanpur, officiated as DM and Collector in the leave vacancy and it was he who had appointed Sri Kulshreshtha as SDO, Tilhar, although he had no power to appoint a SDO. Hence Sri Kulshreshtha had no jurisdiction to entertain, hear or decide the election petition against the Petitioner. The SDO repelled the Petitioner's contention and held that the election petition was properly presented to Sri Kulshreshtha who had been legally appointed SDO, Tilhar. Aggrieved the Petitioner has filed the present petition Under Article 226 of the Constitution.

3. Learned Counsel for the Petitioner, Sri S.N. Misra, has urged that an ADM

officiating as DM and Collector was not invested with the powers of Collector to appoint a SDO u/s 18 of the Land Revenue Act. According to the learned Counsel, an officiating DM cannot exercise the powers conferred on the DM under a statute. In support of his contention he has placed reliance on the cases of Ajaib Singh v. Gurbaohan Singh AIR 1965 SC 1819 and Union of India (UOI) Vs. Salween Timber Construction (India) and Others, . We have considered the contention and the aforesaid cases cited before us but we do not find any good reason to accept the Petitioner's contention.

4. Under the U.P. Panchayat Raj Act an election petition can be presented before the SDO of the area concerned u/s 12-C read with Rule 24 framed under the Act. Any person appointed as Collector under the U.P. Land Revenue Act can be empowered by the State Govt. to appoint an Asstt. Collector of the first Class as a SDO Under Sub-section (6) of Section 18 of the said Act. Sri Bhagwan Din who was the Collector of Shahjahanpur, had proceeded on one month's leave from 6th June to 6th July, 1972. The State Govt. issued a notification appointing Sri Ban-key Lal Jatav, the ADM, Shahjahanpur, to officiate as DM and Collector of Shahjahanpur. On 13-6-1972, Bankey Lal Jatav, the officiating Collector appointed M. L. Kulshreshtha as SDO of Tilhar in the leave vacancy of I.B. Khanduri, SDO, Tilhar, who had proceeded on leave. During the period when Khanduri was on leave the election petition in question was presented before Sri Kulshreshtha who was at that time acting as SDO, Tilhar. The question which falls for j determination is as to whether the appointment of Bankey Lal Jatav as officiating Collector and DM was valid. It is not disputed that the State Govt. is invested with powers to appoint DM u/s 10 of the Code of criminal Procedure. Similarly, the Staff Govt. is fully empowered to appoint Col lector u/s 14 of the Land Revenue Act. u/s 18(1) of the Land Revenue Act toe State Govt. is empowered to appoint any Asstt. Collector first class in charge of one or more Sub-Divisions of a District. That power can further be delegated to the Collector Under Sub-section (6) of Section 18 of the Act. It is not disputed in the present case that the State Govt. has delegated to the Collectors of all the districts of U.P. the power to appoint an Asstt. Collector as SDO. In these circumstances a Collector duly appointed by the State Govt. was full; competent to appoint any Asstt. Collector First Class as SDO of a sub-division., In the present case the notification issued by the State Govt. dt. 7-6-1972, in dicates that Sri Baukey Lal Jatav was appointed as Officiating Collector and as such he was competent to appoint Sri M.L. Kulshreshtha as SDO, Tilhar.

5. We have carefully considered the case of Ajaib Singh v. Gurbachan Singh but we find that the facts and the questions of law which were considered in that case were quite different than those involved in the present case. In the case of Ajaib Singh to notification had been issued by the State Govt. appointing Lal Singh as Officiating DM of Amritsar and since Lal Singh had passed the order of, detention in exercise of the powers of the DM, the detention order was held invalid. It was in those circumstances that certain observations were made in the judgment. Moreover, Section (2)(xv) of the Defence of India Act itself curtails the

powers of the State Govt. to delegate the powers of DM to any officer lower in rank than the DM. The law laid down in Ajaib Singh's case is not applicable to this case. Similarly, in the case of Hari Chand Agarwala v. Batata Engineering Co. there was no notification issued by the State Govt. u/s 10 Code of Criminal procedure appointing the ADM as the DM. Hence the power exercised by the ADM for requisitioning property was struck down. There is no provision in the U.P. Panchayat Raj Act or in the U.P. Land Revenue Act curtailing the power of an Officiating DM and Collector. An officiating DM and Collector is competent to appoint any Asstt. Collector first class as SDO of a sub-division u/s 18(6) of the U.P. Land Revenue Act.

6. In our opinion the statutory powers conferred on the DM can be exercised by the Officiating DM and Collector provided there is a notification issued by the State Govt. appointing an ADM as DM and Collector. In the case of Shiv Dayal v. State of U.P. AIR 953 All 664 an Officiating DM convened a meeting in exercise of the powers of the DM u/s 87-A(2) of the U.P. Municipalities Act for considering a motion of no-confidence against the President of the Municipal Board. A Division Bench of this Court held that an Officiating DM had full powers to convene a meeting of the Board in exercise of the statutory powers u/s 87-A(2) of the U.P. Municipalities Act. We are in respectful agreement with the law laid down in the Divisional Bench case of Shiv Dayal. Therefore we find no merit in the Petitioner's contention.

7. Learned Counsel for the Petitioner further urged that the notification dated 7-6-1972, was not expressed in the name of the Governor nor it was signed by the Governor, as such the appointment of Bankey Lal Jatav was illegal and invalid. No such plea was raised before the Election Tribunal. If this contention had been raised, evidence aliened could have been placed before the SDO that the notification had been issued in accordance with Article 166 of the Constitution. Since the point was not raised before the Election Tribunal, the Petitioner is not entitled to raise this question, for the first time before us in this petition.

8. In the circumstances we find no merit in the present case. We accordingly dismiss the petition. The interim order dated 27-6-1973, is vacated.