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Court : Allahabad

Decided On : Sep-18-2012

Judge : Amitava Lala & Ashok Srivastava

Appeal No. : Civil Misc. Writ Petition No. 35942 of 2012

Appellant : Rajeev Kiran

Respondent : State of U P

Judgement :

Amitava Lala, J.

1. THE brief facts giving rise to the present writ petition are to the effect that on 20th December, 2010 the petitioner was duly elected as Pramukh of Kshettra Panchayat Devkali, District Ghazipur. Oath of the office was administered to the petitioner on 18th March, 2011 and since then the petitioner has been regularly discharging duties of the office of Pramukh and has never been found guilty of any dereliction of duty and functions of the office as contemplated under the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 (hereinafter in short called as the "Act"). However, on account of political rivalry, notice/proposal for bringing no confidence motion against the petitioner, which was allegedly signed by 61 members out of 96 members of the Kshettra Panchayat Devkali, has been served upon the respondent no. 2 i.e. the District Magistrate, Ghazipur. THE District Magistrate, Ghazipur, on the basis of aforesaid proposal,

issued the notice/order dated 13th July, 2012, whereby meeting has been fixed for 04th August, 2012 for considering the proposal of no confidence motion against the petitioner. According to the petitioner, such notice/order has been issued by the District Magistrate without following the prescription of Section 15 of the Act. Moreover, 59 members, out of total 96 members of concerned Kshettra Panchayat, swore affidavits on 03rd July, 2012 stating that they are fully satisfied with the functioning of the petitioner as Pramukh and further the person, who had lost the election, namely, Moti Chand Pasi, has tried to bring a fabricated and false proposal of no-confidence motion and there is every likelihood that names of the members have been forged in order to make out a proposal enabling him to bring a motion of no-confidence. THE petitioner further contended that the order impugned dated 13th July, 2012 has been passed in a mechanical fashion without application of mind and, as such, the same cannot be sustained. Against this background, the petitioner has filed the present writ petition for the following reliefs:

"i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order/notice dated 13.7.2012 issued by the District Magistrate, Ghazipur (Annexure No. 2 to the writ petition).

ii) Issue a writ, order or direction of suitable nature restraining the respondents from interfering in the peaceful functioning of the petitioner as Pramukh, Kshettra Panchayat, Devkali, District Ghazipur.

iii) Issue any other writ, order or direction in favour of the petitioner, as this Hon'ble Court may deem fit and proper in the present facts and circumstances of the case, so as to secure the ends of justice.

iv) Award cost of the Writ Petition to the petitioner."

2. THE writ petition was filed on 23rd July, 2012 and a Division Bench of this Court by order dated 25th July, 2012 directed the petitioner to implead the concerned Kshettra Panchayat as well as Moti Chand as respondent nos.3 and 4. In further, since the resolution was passed against the petitioner on 04th August, 2012, the petitioner was allowed to bring such fact to the notice of the Court, therefore, an

amendment application was allowed to file, which is in the record. Though formalities for incorporation of impleadment and amendment are not complete by amending the relevant portions of the writ petition by red ink, yet since we have heard Mr. Somesh Khare, learned Counsel appearing for the petitioner, Mr. Ramanand Pandey, learned Standing Counsel for the State-respondents, and Mr. C.K. Parekh and Mr. S.K.Dubey, learned Counsel appearing for newly impleaded respondent no. 4- Sri Moti Chand, who is alleged to be member of the Kshettra Panchayat and has brought the no confidence motion, on all the points including holding of meeting on 04th August, 2012, we are of the view that the procedural formalities can be ignored and the present writ petition can be decided and the judgement can be delivered on all the issues including the issue as taken by the petitioner by way of amendment application.

The question relevant herein is with regard to issuance of notice regarding motion of no-confidence against the Pramukh as under Section 15 of the Act. Mr. Somesh Khare, learned Counsel appearing for the petitioner, has given emphasis on Section 15(3) (ii) of the Act and said that written notice is required to be given of not less than fifteen days of such meeting in such manner as may be prescribed. In the instant case, there is a clear violation of such provision of notice, which is required to be served in accordance with law, therefore, no confidence motion ignoring such period of notice is fatal and the meeting, which has been held without completing the period, is bad in law.

We have gone through the impugned notice and found that the notice was issued on 13th July, 2012 to hold the meeting on 04th August, 2012. According to the petitioner, the notice was actually dispatched on 19th July, 2012 but it was received by the petitioner on 27th July, 2012 from one Sri Yadav, A.D.O., Panchayat at Allahabad, as is apparent from Paragraph-3 of the amendment application. It is further contended by the petitioner that such notice as received by the petitioner by hand is in contravention of Section 15 of the Act, as aforesaid.

3. ON the other hand, Mr. Ramanand Pandey, learned Standing Counsel appearing for the State, and Mr. C.K. Parekh, learned Counsel appearing on behalf of the contesting party i.e. respondent no. 4, have jointly contended before

us that the notice was dispatched by post on 19th July, 2012 and the date of dispatch is the relevant date for the purpose of completing part performance of formalities of notice by the authority. Since the notice had been issued on 19th July, 2012 and the date of the meeting was fixed for 04th August, 2012, there was clear 15 days' time in between the date of dispatch of notice and the date of meeting. Therefore, there is no fault on the part of the respondent authorities in respect of issuance of such notice. Mr. Pandey further stated that the writ petition is infructuous in view of the fact that now no confidence motion has been passed against the petitioner but such no confidence motion has not been challenged by the petitioner. When such fact was brought to the notice of the Court, Mr. Khare has contended that he wants to further amend the writ petition to bring such fact in the notice of the Court. According to us, the writ Court is not inclined to interfere with the decision but the decision making process. Therefore, decision making process is correct or not, that is the cause of action before us which cannot be extended upto the extent of the decision as on 04th August, 2012. Moreover, we are in doubt whether the writ jurisdiction has been invoked by the petitioner with clean hands or not. The petitioner's contention is that though the notice was dispatched on 19th July, 2012 and the same was received on 27th July, 2012 but we are surprised to note that the writ petition itself was filed on 23rd July, 2012. This action on the part of the petitioner creates cloud in the mind of the Court in connection with genuinity of the petition on behalf of the writ petitioner.

In any event, Mr. Khare has relied upon a Division Bench judgement of this Court reported in 1992 (2) UPLBEC 1181 (Ram Nath Tripathi Vs. Commissioner Lucknow Division, Lucknow and other) to establish that compliance of provisions of Section 15(3) of the Act is mandatory in nature. On the other hand, the respondents have relied upon an unreported judgement of another Division Bench of this Court dated 11th June, 2012, rendered in Writ- C No. 29907 of 2012 (Vikas Trivedi Vs. State of U.P. and others), whereunder the Division Bench referred the matter to the larger Bench to decide the following questions framed by it:

"(i) Whether notice required to be given under Section 15(2) and (3) of Act, 1961 as also under Section 28(2) and (3) of the Act, 1961 read with Rules prescribing the format and procedure is mandatory?

(ii) Whether the observations made in Ram Nath Tripathi (supra) that requirement of notice in prescribed form alongwith its enclosures in complete format is mandatory, or directory as observed in Smt. Krishna Jaiswal (supra). Which of these judgement lays down correct law?"

4. AT the time of framing the questions, the Division Bench in Vikas Trivedi (supra) has observed that another Division Bench of this Court in Smt. Krishna Jaiswal Vs. State of U.P. and others, reported in 2005 (2) AWC 1732, has held that the observations made in Ram Nath Tripathi (supra) are obiter and if notice of no confidence motion has not been given in the prescribed form, that will not vitiate the proceedings as it is only directory.

In addition to the earlier point in Smt. Krishna Jaiswal (supra) it was held by the Division Bench of this Court that relevant date is the date of giving notice and not the date of receipt by the members. Though the issue between these two judgments i.e. Ram Nath Tripathi (supra) and Smt. Krishna Jaiswal (supra) has been referred to the larger Bench by the third Division Bench on 11th June, 2012 in Vikas Trivedi (supra) and the matter has not been finalised, yet we have to go by the principle laid down by the later judgment till the issue is not ultimately decided by the larger Bench. That apart, the decision with regard to relevant date of notice being the date of issuance and not the date of receipt by the members is independent of the reference of Smt. Krishna Jaiswal (supra), which has a binding effect upon this Court apart from the judgments of the Division Bench of this Court, presided over by one of us (Amitava Lala, J.), in 2006 (1) UPLBEC 152 (Pramod Kumar Singh Vs. State of U.P. and another) and 2011 (5) AWC 4719 (Gunjan Bharadwaj Vs. Indian Oil Corporation Ltd. and another).

Furthermore, under Section 27 of the General Clauses Act, 1897 the meaning of service by post is given, which is as follows:

"27. Meaning of service by post.--Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and

posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

5. SINCE Section 27 of the General Clauses Act specifically incorporated the expression "give", which is equivalent to the word "give" used under Section 15 (3)(ii) of the Act, therefore, service shall be deemed to be effected by properly posting, to which there is no such dispute. The dispute, which has been tried to be raised by the petitioner herein, is with regard to delivery by hand on 27th July, 2012 which is, according to us, extraneous in nature. Thus, in totality, we do not find any departure on the part of the authority in "giving" notice to the member/s. Therefore, neither of the arguments as advanced on behalf of the petitioner can be acceptable by the Court. Hence, the writ petition is dismissed, however, without imposing any cost. Interim order, if any, stands vacated.

6. IN any event, we have not discussed anything whether the petitioner still can avail the opportunity under Section 16 of the Act or not, therefore, it is open to the petitioner to take steps in accordance with law, if so advised.

Under the authority of the Hon'ble Acting Chief Justice additional cause list has been printed for the purpose of delivery of judgment and the same has been delivered at 2.00 P.M. in the Court upon notice to the parties.

The writ petition is dismissed, however, without imposing any cost.

7. FOR order, see order of the date passed on the separate sheets (seven pages).

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