

Ram Das Vs. Badan Singh and Others

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Court : Allahabad

Decided On : Apr-07-1994

Reported in : AIR1994All328

Judge : V.K. Khanna, A.C.J. and ;G.P. Mathur, J.

Acts : Uttar Pradesh Panchayat Raj Act, 1947 - Sections 2, 11-A, 11-B, 11C, 11-C(3), 12, 14(4), 14 and 42; Uttar Pradesh Panchayat Raj Rules, 1947 - Rules 13B, 13B(1), 33B and 33B(1); [Constitution of India](#) - Article 226

Appeal No. : Special Appeal No. 963 of 1993

Appellant : Ram Das

Respondent : Badan Singh and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Ashok Khare, Adv.

Judgement :

ORDER

V.K. Khanna A.C.J.

1. Petitioner-respondent was elected as Up Pradhan of Gaon Sabha Fatehullapur, Block Sahpau, district Mathura in the year 1988. Proceedings were initiated for carrying out the motion of no-confidence against the petitioner-

respondent and notice was issued on 6th April, 1993 fixing the meeting on 16-4-1993 for considering the motion of no-confidence. A writ petition was filed by the respondent in this Court challenging the notice on the ground that 15 days notice had not been given and thus the holding of the meeting was in clear violation of the mandatory provisions contained in Section 14 of the U.P. Panchayat Raj Act (hereinafter referred to as the 'Act'). The aforesaid writ petition was allowed on 13-4-1993. However, it was held that it will be open to the respondents to fix another date and issue another notice under Section 14 of the Act in accordance with law. In view of the judgment of the High Court in the aforesaid writ petition the notice dated 6-4-1993 was cancelled. However, on 16-4-1993 the District Panchayat Raj Officer fixed the meeting for considering the motion of no-confidence on 3-5-1993. The aforesaid notice was challenged by filing second writ petition out of which the present special appeal arises on the ground that instead of 15 days clear notice only 10 days notice had been given to the petitioner-respondent which was contrary to the provisions of the Act, Rules and the judicial pronouncement besides other grounds.

2. Before the learned single Judge, at the time of hearing, notice of motion of no confidence was challenged solely on a fresh ground not raised in the writ petition -- the ground being that the motion of no confidence was signed by the members of the Gaon Sabha and it was presented by 5 members of the Gaon Sabha; whereas petitioner-respondent is Up-Pradhan and the motion of no confidence should have been signed by not less than one half of the total members of Gaon Panchayat and should have been presented by at least five members signing the notice to the Prescribed Authority. The learned single Judge held that the notice and the motion of no-confidence was signed by the members of the Gaon Sabha and it was also presented by the members of the Gaon Sabha was borne out from the impugned notice itself. The learned single Judge was of the view that since the question raised was purely legal and went to the root of the matter, it would be in the interest of justice to consider and examine it. Learned single Judge held that after reading the relevant provisions of Section 11C of the Act and Rule 33B there cannot be any other conclusion except that Rule 13B while being applied in cases of removal of Up-Pradhan at every place word 'Gaon Sabha' should be read as 'Gaon Panchayat'. The learned single Judge took the view that the notice and the

motion for removal of the Up-Pradhan was not signed by one half of the total members of the Gaon Panchayat nor the same was delivered by members of Gaon Panchayat before the Prescribed Authority. On the aforesaid findings it was held that there was no valid and legal motion for consideration and the entire proceedings subsequent thereto were illegal and could not be sustained. The writ petition was accordingly allowed and the motion of no-confidence was quashed.

3. In the present special appeal the learned counsel for the appellant has urged the following points:

(i) It has been urged that the intention to move no-confidence motion was given in writing and signed by half of the members of the Gaon Sabha. Rule 33B(1) provides the procedure both for Pradhan and Up-Pradhan and on its plain meaning the notice had to be sent by half members of the Gaon Sabha and Rule 33B (1) requires no substitution of the word 'Gaon Sabha' by 'Gaon Panchayat'.

(ii) Alternatively it was argued that even if it was taken that Rule 13B(1) requires signing of the motion by half of the members of the Gaon Panchayat, no factual foundation had been laid in the writ petition by making an averment to that effect. It was urged that more than half of the members of the Gaon Panchayat had signed the notice of motion of no-confidence and the affidavit would clearly show that the five members of the Gaon Sabha had also presented the same before the Competent Authority. Documentary evidence has been filed along with the affidavit and the rejoinder affidavit showing that even if it is assumed that Section 33B(1) requires signing of motion by half of the members of the Gaon Panchayat the same has been done. It has been argued that even if a larger body would have signed the motion besides the persons who were in law required to sign the motion, the motion would not be held to be invalid specially in view of the fact that the same had been carried out by all the members of the Gaon Panchayat present in the meeting except the petitioner-respondent. Reliance has been placed on a decision of this Court reported in 'Sharafatullah Khan v. State of U.P., 1962 All LJ 930.

(iii) It has been urged that the earlier notice of no-confidence was challenged by filing a writ petition by the petitioner and in the said writ petition the only ground

urged was that 15 days clear notice as contemplated by Section 14 of the Act was not given. No other point was urged before this Court. The writ petition was allowed on 13-4-1993 only on the aforesaid ground of not giving clear 15 days notice, the petitioner-respondent having not raised the points which have been urged in the present writ petition, the principles of constructive res judicata will apply and the petitioner could not be allowed to urge fresh grounds in respect of the notice of no-confidence in this writ petition.

(iv) In view of the fact that motion of no-confidence was in fact carried, this Court should not have interfered in exercise of its extraordinary jurisdiction under Art. 226 of the Constitution. Reliance has been placed on a decision of this Court reported in *Om Prakash Yadav v. Collector, Etah*, 1991 (1) UPLBEC 238.

4. Sri R. C. Srivastava, learned counsel appearing for the respondent firstly referred to Annexure IA which shows that it refers to the signatures of Panches which would be attributable to the members of the Nyaya Panchayat who, in law, are called Panches. It has been urged that as soon as a person becomes a Panch of the Nyaya Panchayat he ceases to be a member of the Gaon Panchayat. On that basis it has been urged that the appellant has not been able to show that the motion of no-confidence had been signed by requisite number of members of the Gaon Panchayat. In the alternative it has been urged that even if it is taken that requisite members of the Gaon Panchayat had signed the motion, the motion will not be treated to be a valid motion in law since they have signed in the capacity of the members of the Gaon Sabha and it cannot be said to be taken on behalf of the members of the Gaon Panchayat as they had no intention to sign it in that capacity. It has been urged that as there was no valid notice, no motion of no-confidence could be carried and the Court has rightly exercised its jurisdiction under Art. 226 of the Constitution by quashing the motion of no confidence.

5. The first question which we have to consider in the present special appeal is as to whether under the provisions of Rule 33B the notice had to be signed by the members of the Gaon Sabha or the members of the Gaon Panchayat. For the purposes of deciding this question it will be useful to reproduce the relevant provisions of the U.P. Panchayat Raj Act, 1947 (hereinafter referred to as the 'Act').

Section 2(g) of the Act defines 'Gaon Sabha' as a body established under Section 3. Section 2(h) defines 'Gaon Panchayat' as the Executive Committee of the Gaon Sabha constituted under Section 12 of the Act. Section 2(a) defines 'Nyaya Panchayat' as a Nyaya Panchayat established under Section 42 and includes a bench thereof. Section 11-A provides that there shall be Pradhan and Up-Pradhan of Gaon Sabha. Section 11-B provides that the Pradhan shall be elected by the members of the Gaon Sabha from amongst themselves in such manner as may be prescribed. Section 11 -C of the Act provides that the Up-Pradhan shall be elected by the members of the Gaon Panchayat from amongst themselves in such manner as may be prescribed. Section 11-C(3) provides as follows: --

'11. C: ELECTION OF UP-PRADHAN AND HIS TERM:

(1) to (2).....

(3) The provisions of Section 14 shall apply to the removal of Up-Pradhan as they apply to the removal of Pradhan with the substitution of references to Gaon Sabha and Pradhan by references to Gaon Panchayat and Up-Pradhan respectively.'

Section 12 of the Act provides for constitution of Gaon Panchayat which provides that after, the establishment of the Gaon Sabha there shall be constituted an Executive Committee thereof called the Gaon Panchayat. The members of the Gaon Panchayat shall be elected by the members of the Gaon Sabha from amongst themselves (their number shall be such as may be prescribed). The Pradhan and Up-Pradhan of the Gaon Sabha shall respectively be, ex officio, Pradhan and Up-Pradhan of the Gaon Panchayat. Section 14 provides for removal of Pradhan and Up-Pradhan which runs as follows:

'14. REMOVAL OF PRADHAN AND UP-PRADHAN:

(1) The Gaon Sabha may at a meeting specially convened for the purpose and of which at least 15 days previous notice shall be given, remove the Pradhan by a majority of 2-3rds of the members present and voting.

(2) A meeting for the removal of a Pradhan shall not be convened within one year of his election.

(3) If the motion is not taken up for want of quorum or fails for lack of requisite majority at the meeting, no subsequent meeting for the removal of the same Pradhan shall be convened within a year of the date of the previous meeting.

(4) Subject to the provisions of this Section, the procedure for the removal of the Pradhan including that to be followed at such meeting shall be such as may be prescribed.'

6. As the matter before us is regarding passing of motion of no confidence in respect of Up-Pradhan, in view of the provisions of Sections 14 and 11-C(3) of the Act it is clear that the removal of Up-Pradhan can be done by the Gaon Panchayat at a meeting specially convened for the purpose and of which at least 15 days previous notice shall be given by a majority of 2-3rds members 'present and voting Sub-section (4) of Section 14 provides' that subject to the provisions of this section, the procedure for the removal of a Up-Pradhan, including that to be followed at such meeting, shall be such as may be prescribed.

7. We have now to see as to what is the procedure which has been prescribed by the Rules. The relevant Rule in this connection is Rule 33-B, which runs as follows:

'33.B: PROCEDURE FOR REMOVAL OF PRADHAN OR UP-PRADHAN:

(1) A written notice of the intention to move a motion for removal of the Pradhan or Up-Pradhan under Section 14 of the Act shall, be necessary. It shall be signed by not less than one half of the total number of members of the Gaon Sabha and shall state the reasons for moving the motion and it shall be delivered in person by at least five members signing the notice to the prescribed authority.

(2) The prescribed authority shall convert a meeting of the Gaon Sabha, under Section 14 of the Act, on a date to be fixed by him which shall not be later than thirty days from the date of the receipt of the notice. The meeting so convened shall be presided over by the prescribed authority or the person authorised by him in writing in this behalf. The Presiding Officer may take such clerical assistance for conducting the proceedings of the meeting for the consideration of the motion as he deems necessary.

(3) The Presiding Officer shall read to Gaon Sabha the notice received by him. He shall then allow the motion to be moved and discussed. Such discussion shall terminate on the expiry of two hours appointed for the commencement of the meeting unless it is concluded earlier. Upon the conclusion of the debate or upon the expiry of the said period of two hours as the case may be the motion shall be put to vote. Voting shall be by secret ballot.' xxx xx

8. The law is well settled that the rules cannot undo the provisions of the Act under which they are framed. As has been stated above, the provisions of Section 14, in view of the provisions of Section 11-C(3) specifically provides that motion of no confidence will be passed in the meeting of the Gaon Panchayat specially convened for the purpose and of which at least 15 days previous notice shall be given and that Up-Pradhan can be removed by majority of the 2-3rds members present and voting. The law is also well settled that a harmonious construction has to be given to the provisions of the Act and the Rules so that the intention of the Legislature is carried out. It is, therefore, clear that in Rule 33-B wherever the word 'Pradhan' is occurring it will be read as 'Up-Pradhan' and wherever the word 'Gaon Sabha' is occurring it shall be read to be 'Gaon Panchayat' as has been prescribed by the Act itself in Section 11-C(3). The argument raised by the learned counsel for the appellant that as there is no ambiguity the substitution will not be made in Rule 33-B as prescribed by Sec. 11-C(3) of the Act; in our opinion, has no substance. If the argument of the (sic) provisions of Sec. 11-C(3) the provisions of Section 14 provides for convening of a meeting of the Gaon Panchayat for considering the motion of no confidence while Rule 33B prescribes convening a meeting of the Gaon Sabha. Even otherwise, if we see the Scheme of the Act the Up-Pradhan is elected by members of the Gaon Panchayat and logically the removal should be by that body itself and that is what the Act provides in view of the provisions of Sec. 11-C(3) read with Section 14 of the Act. If the motion of non-confidence has to be considered by the member of the Gaon Panchayat one can see no reason as to why the notice of motion of no confidence will have to be signed by the members of the Gaon Sabha and should be delivered in person by at least five members of the Gaon Sabha. Gaon Sabha is a distinct body which is in the nature of a general body constituted under the Act. On the other hand, Gaon Panchayat is the Executive Committee of the Gaon Sabha, the members of which

are elected by the Gaon Sabha. It is thus an elected body of the Gaon Sabha entrusted with the functions assigned to it under the Act. We are thus in complete agreement with the view taken by the learned single Judge, that in Rule 33-B while considering the procedure for removal of Up-Pradhan wherever the word 'Gaon Sabha' has occurred the same will be read as 'Gaon Panchayat'. We are thus of the opinion that the argument raised by the learned counsel for the appellant has no force.

9. The next question which arises for consideration is that even if it is taken that Rule 33-B(1) requires signing of the motion by half of the members of the Gaon Sabha, no factual foundation had been laid in the writ petition by making an averment to that effect. In fact, more than half the members of the Gaon Panchayat had signed the notice of motion of no confidence which is evident from the affidavits which have been filed along with the special appeal and that they had presented the same before the competent authority and that would be deemed to be sufficient compliance of the provisions of Rule 33-B of the Rules.

As we have stated above, in both the writ petitions the petitioner has challenged the notice and motion of no confidence on the ground that requisite notice had not been given. In the writ petition out of which the present special appeal arises, admittedly the ground which has been entertained by the learned single Judge had not been taken and no facts had been mentioned in the writ petition. The appellant thus cannot be blamed for not pleading in the writ petition that requisite number of members of the Gaon Panchayat had signed the notice of motion of no confidence and that the requisite members had also presented in person before the prescribed authority. Evidence has been filed along with the special appeal by the appellant to prove that even though the notice contained the signatures of 410 members of the Gaon Sabha it included the signature of 10 members of the Gaon Panchayat, namely Chiranjilal, Ram Bahadur, Dori Lal, Phool Singh, Kanchan Lal, Lal Singh, Ram Das, Saroj Devi, Net Ram and Vimla Devi, and that the notice of intention to move the motion of no confidence was submitted in person by Ram Bahadur, Ram Das, Netram, Lal Singh and Phool Singh, all members of the Gaon Panchayat. It has also been said that this notice was accompanied by the affidavit of the said members of the Gaon Panchayat submitted on 4-4-1993 before the

Prescribed Authority. True copies of these affidavits have been annexed collectively as Annexure I-A to the affidavit accompanying the stay application to the special appeal.

10. A counter-affidavit has been filed to the stay application by respondent Badan Singh in which it has been admitted that the notice contained the signatures of 410 members of the Gaon Sabha. It has been denied that 11 members of Gaon Panchayat named in the paragraph under reply ever signed the motion of no confidence and presented the same as alleged in the paragraph under reply. In reply to the aforesaid averments a rejoinder affidavit has been filed in which a copy of the notice dated 16-4-1993 issued by the Gram Panchayat Adhikari intimating all the 12 persons specified therein with regard to the scheduled meeting of the Gaon Panchayat has been filed as Annexure R.A.I. A copy of the proceedings of the meeting dated 2-5-1993 has also been filed which shows the signatures of these persons. A copy of the written notice has also been filed as Annexure R.A, '3' to the affidavit. In these signatures some of the signatures which can be clearly identified are the signatures at serial No. 40 of Shrimati Vimla Devi, Sl. No. 67 of Sri Nek Ram, Sl.No. 2101 Ram Das, Sl. No. 212 Dorilal, Sl.No. 272 of Ram Bahadur and Sl. No. 233 of Phool Singh.

11. From the documentary evidence which has been filed in this special appeal we are of the opinion that five affidavits which have been filed as consolidated document as Annexure I-A clearly show that 5 members of Gaon Panchayat presented the notice of motion of non-confidence in person to the prescribed authority. Para 2 of the aforesaid affidavit clearly states that on the notice of motion of no confidence 410 members of the Gaon Sabha have signed out of 564 total members of the Gaon Sabha. It also contains signatures of 10 members out of 11 members of the Gram Panchayat, These affidavits have been filed before the Prescribed Authority. It has not been stated in the counter-affidavit that these affidavits are false. It is thus established from the documentary evidence filed on the record that 5 members of the Gaon Panchayat presented the notice of motion of no confidence before the prescribed authority, and 10 members had signed the notice of motion of no confidence.

12. The only question which has to be examined is that if the requisite number of members of the Gaon Panchayat have signed the motion of no confidence whether the appending of signatures by members of the Gaon Sabha would invalidate the aforesaid notice. We are of the opinion that the signing of the motion of no confidence by members of the Gaon Sabha would not invalidate the notice so long as the statutory requirement of signing the notice by the requisite number of members of the Gaon Panchayat is fulfilled. Notice of motion of no confidence has, in fact, been presented by 5 members of the Gaon Panchayat and thus the legal requirement of proper presentation of the notice is also fulfilled. In Our opinion, therefore, notice of motion of no-confidence suffers from no invalidity as there is sufficient compliance of the provisions of Rule 33B of the Rules.

13. It has not been disputed that including the petitioner there are 12 members of the Gaon Panchayat. In the meeting in which the motion of no-confidence was considered, except Badan Singh Up-Pradhan all the 11 members voted in favour of the motion of no 'confidence. This Court in exercise of, its extraordinary jurisdiction under Art. 226 of the Constitution will not interfere when the motion of no confidence has been carried out by overwhelming majority. This Court in the case of Om Prakash Yadav (supra) has held:

'....., Even if orders are not in accordance with law and suffers from infirmity this Court can decline to exercise its discretionary power under Art. 226 of the [Constitution of India](#) if it considers that in view of the facts and circumstances of the case no interference is called for. As mentioned above, the motion of no confidence has been passed against the petitioner by overwhelming majority and interference by this court against such a resolution will amount to restoring office to a person against the will of the majority of the people. In a domestic set up where right to an office depends on the will of the people a person who has lost majority cannot be permitted to hold the office, we are accordingly of the opinion that it is not a fit case to interfere under Art. 226 of the [Constitution of India](#).'

14. On the facts and circumstances of the present case we are also of the opinion that even otherwise on merits it is not a fit case for interference under Art. 226 of the [Constitution of India](#).

15. We have not gone into other questions raised by the learned counsel for the appellant as, in our opinion, the special appeal is liable to be allowed on the view which we have taken above.

16. For the reasons stated above, the present special appeal succeeds and is allowed. The judgment and order of the learned single Judge dated 15th July, 1993 is set aside. The motion of no confidence passed against the respondent Badan Singh, in our opinion, is valid and suffers from no voice. Looking to the facts and circumstances of the case the parties shall bear their own costs.

17. Appeal allowed.

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