

Babu Ram Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jan-08-1998

Reported in : 1998(1)AWC753; (1998)2UPLBEC951

Judge : S.R. Singh, J.

Acts : Uttar Pradesh Panchayat Raj Act, 1947 - Sections 6, 11C, 12, 12(1) and (6) and 14; Uttar Pradesh Panchayat Raj Rules, 1947 - Rules 33B(5) and 35; Uttar Pradesh Panchayat Raj (Fourteenth Amendment) Rules, 1996; [Constitution of India](#) - Articles 226 and 227

Appeal No. : C.M.W.P. No. 34907 of 1997

Appellant : Babu Ram

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Vijay Prakash, Adv.

Judgement :

S.R. Singh, J.

1. This petition under Article 226/227 of the Constitution has been filed for issuance of a writ of ccrftorori quashing the proceedings dated 20.3.1997 in which

the petitioner was removed by vote of no-confidence at a meeting of the Gram Panchayat, GovIndpur convened and held under Section 14 of the U. P. Panchayat Raj Act, 1947. The minutes of the meeting held on 20.3.1997 (Annexure-2 to the writ petition) show that 12 out of 13 members of the GramPanchayat were present at the meeting and all of them exercised their franchise. Eight votes were polled in favour and four against the motion of no-confidence. The motion was declared to have been passed and the petitioner removed from the office of the Pradhan. It appears that charge could not be handed over due to certain order of stay passed by this Court in Civil Misc. Writ Petition No. 8811 of 1997. Subsequently the said petition came to be dismissed and interim order vacated vide order dated 22.8.1997. Consequently, the District Panchayat Raj Officer, Meerut by his order dated 9.9.1997 directed that charge of the office of Pradhan be handed over to the Up-Pradhan. The said order dated 9.9.1997 has also been impugned in the instant writ petition.

2. I have heard Sri Vijay Prakash, learned counsel for the petitioner and Sri Kripa Shanker Singh for the State Authorities.

3. Although several grounds have been taken in the writ petition to assail the Impugned orders, but the learned counsel for the petitioner circumscribed his submission to the only point that the proceedings at the meeting of no-confidence were vitiated because of reasons that the petitioner, who also happened to be the member of the Gram Panchayat by virtue of Section 12 (6) of the Act, was not allowed to cast his vote. Learned counsel urged that if the vote of the petitioner was also taken into account then in that event, the motion would have fallen to the ground for want of requisite majority of two-thirds of the members present and voting at the meeting. Sri Kripa Shankar Singh, learned standing counsel refuted the submission made by the learned counsel for the petitioner and tried to urge that only elected members of the Gram Panchayat were entitled to cast their votes and the Pradhan had no right to vote at a meeting convened for discussion on the motion of no-confidence brought against him. Learned standing counsel also urged that from the proceedings dated 20.3.1997, it would be evident that the petitioner participated in the deliberation of the meeting and exercised his franchise on the motion of no-confidence brought against him and. therefore,

urged the learned standing counsel, the motion was rightly declared to have been passed.

4. So far as the question as to whether the Pradhan is entitled to cast his/her vote at the meeting of no-confidence brought against him/her is concerned, this Court has already taken the view, in *Raj Singh and others v. District Panchayat Raj Adhikari, Muzaffarnagar and others*, 1997 RD 429. that by virtue of Section 12 (6) of the U. P. Panchayat Raj Act. 1947 as it stands substituted by U. P. Act No. 9 of 1994, a Pradhan shall be deemed to be a member of the Gram Panchayat and as such he/she is entitled to participate in the deliberations of the meeting convened for the purpose of discussion and voting on the motion of no-confidence brought against him/her under Section 14 of the Act read with Rule 33B of the Rules made thereunder. The same view has been taken by this Court in Civil Misc. Writ Petition No. 40873 of 1997, *Smt. Meera Devi v. State of U. P. and others*, decided on 7.1.1998.

5. Apart from the reasons given by this Court in the above-mentioned cases, it may be pertinently observed that a Gram Panchayat. according to Section 12 (1) (c) of the Act, consists of a Pradhan and elected members whose numbers may vary from 9 to 15 depending upon population of the Panchayat area. A conjoint reading of clause (c) of sub-section (1) of Section 12 and subsection (6) thereof leaves no manner of doubt that a Pradhan is not only a member of the Gram Panchayat but he/she is an integral constituent thereof. It is true that sub-clause (H) of clause (a) of sub-rule (5) of Rule 33B of the U. P. Panchayat Raj Rules as amended by U. P. Panchayat Raj (Fourteenth Amendment) Rules. 1996 provides that the Presiding Officer shall be supplied a list of elected members of the Gram Panchayat concerned but that by itself would not affect the logical consequence flowing from Section 12 of the Act according to which a Pradhan is an integral constituent of the concerned Gram Panchayat and is deemed to be its member. It is noteworthy that Rule 35 of the U. P. Panchayat Raj Rules, 1947 clearly provides that one-third of the total number of the members of Gram Panchayat including Pradhan and Up-Pradhan, shall form quorum for a meeting of the Gram Panchayat. This provision indicates that not only the Pradhan but Up-Pradhan as well has a voting right at any meeting of Gram Panchayat. It may be pointed out

that Up-Pradhan is elected from amongst the members of the Gram Panchayat as provided in Section 11C and he/she does not cease his/her membership after being elected Up-Pradhan as would be evident from Section 6 of the Act which provides for the circumstances in which a member of a Gram Panchayat shall cease to be such member. Therefore, a Pradhan or Up-Pradhan cannot be kept at bay from exercising his/her right to speak at a no-confidence meeting and to vote thereat.

6. It has been clearly ruled in the case of Smt. Meera Devi (supra), that where two-thirds majority of the members present and voting falls short by a fraction, in that eventuality the motion would be deemed to have fallen to the ground. In the case of Smt. Meera Devi (supra), it has been held as under :

'It cannot be gainsaid that Section 14 of the Act and Rule 33B (iii) of the Rules do require at least two-thirds of the total number of members present and voting to be arrived at if the motion is to be deemed to have been passed. The expression 'majority of two-thirds' has the same purport and import as the expression 'at least two-thirds'. It means that at least two-thirds of the members present and voting at a no-confidence meeting validly convened must vote in favour of motion if it has to be carried. In case it falls short by a fraction, the fraction would be rounded off for the purpose of computing two-thirds majority.'

7. In the present case, however, it is not quite clear as to whether the petitioner was permitted to cast his vote at the no-confidence meeting. In the minutes of the meeting dated 20.3.1997 (Annexure-2 to the writ petition), it is no doubt mentioned that the petitioner was present at meeting and participated in the deliberation, but the allegations made in the writ petition to the effect that the petitioner was not allowed to cast his vote, has not been controverted by means of a counter-affidavit despite specific order passed by the Court on 26.11.1997 giving opportunity to the Assistant Development Officer who presided over the meeting to file counter-affidavit dwelling upon the point whether the petitioner was allowed to cast his vote at the meeting of no-confidence brought against him. In the facts and circumstances of the case, therefore, I am inclined to dispose of the writ petition with the direction that in case the petitioner prefers a representation before the

District Panchayat Raj Officer, Meerut the latter shall look into the matter and dispose of the representation keeping in view the legal position stated in this judgment. Decision in this regard shall be taken within a period of one month from the date of receipt of a certified copy of this order.

8. The writ petition is disposed of in terms of the above direction and observations.

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