

Sunil Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Oct-31-2003

Reported in : 2004(1)AWC664; (2004)1UPLBEC258

Judge : B.S. Chauhan and ;R.C. Pandey, JJ.

Acts : Uttar Pradesh Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 - Sections 13; [Constitution of India](#) - Article 243K

Appeal No. : C.M.W.P. No. 47069 of 2003

Appellant : Sunil Kumar

Respondent : State of U.P. and ors.

Advocate for Def. : P.N. Rai, Adv. and ;S.C.

Advocate for Pet/Ap. : A.P. Sahi and ;Ashok Singh, Advs.

Disposition : Petition dismissed

Judgement :

B.S. Chauhan, J.

1. This writ petition has been filed for quashing the impugned orders dated 28.8.2003 and 30.9.2003 (Annexures-6 and 8) passed by respondent No. 2, Deputy Secretary, Government of Uttar Pradesh, Lucknow, by which the decision

has been taken to have a fresh election for Block Pramukh of blocks Vikram Jot and Dubaulia.

2. Facts and circumstances giving rise to this case are that the petitioner had been elected as a Block Pramukh, Kshettra Panchayat Vikram Jot, District Basti under the provisions of the U. P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 (hereinafter called the 'Adhiniyam, 1961'), on 8.3.2001, as he had earlier been elected as a member of Kshettra Panchayat on 26.6.2000 and a member of the Block Development Committee from Gram Panchayat, Dubaulia of the said block. Subsequently, the State Government, in exercise of its power under the Adhiniyam, 1961 carved out new block in the name of Dubaulia having certain villages from block Vikram Jot, block Kaptanganj and block Harraiya and Vikram Jot remained a different block. As per the said notification, the newly created block Dubaulia includes Nyay Panchayat circles of Dubaulia as well and its other villages namely ; Khushalganj, Joghata, Chakohi, Bajariya Subi and Simra. The District Magistrate, respondent No. 4 vide letter dated 17th May, 2003 sought clarification from the Principal Secretary, Panchayatraj that how should he proceed after carving out the new blocks which has excluded several villages of block Vikram Jot and even in the new block Dubaulia, several villages from other neighbouring blocks have been included. Vide letter dated 28th August, 2003, he was informed that new election is to be held for both the blocks. In pursuance thereof, the impugned order dated 30th September, 2003 (Annexure-8) has also been passed by respondent No. 2, placing reliance upon the judgment of this Court in Madan Singh v. Madhwanand Joshi : 2000(2)AWC1639 , indicating that the petitioner ceased to be the Pramukh of block Vikram Jot, as his election as member from a constituency now falls within the territorial limit of the new created block of Dubaulia. Hence the present petition.

3. Shri R. N. Singh, learned senior counsel appearing for the petitioner submitted that once the petitioner stood elected as a Block Pramukh of block Vikram Jot, a right has accrued in his favour and mere division of the electoral college would not disqualify him to continue as a Block Pramukh of block Vikram Jot for the reason that the electoral college namely the elected members who had voted in election of the petitioner as a Pramukh will continue to be the members of block Vikram Jot

and, therefore, the carving out the new block would not automatically annul his election as it was a case of bifurcation and not of change of electoral college. The election of the Block Pramukh cannot be set aside by an administrative order of the State Government. More so, it has been submitted that the Judgment in Madan Singh (supra), which had so heavily been relied upon by the State Government while passing the impugned order, has not attained the finality as the same has been challenged before the Hon'ble Apex Court by filing Special Leave to Appeal (Civil) No. 8312 of 2000, Madhvanand Joshi v. Madan Singh and Anr., and the Hon'ble Apex Court granted leave vide order dated 1.12.2000 and is pending consideration before the Supreme Court. In view of the provisions of Section 13 of the Adhiniyam, 1961, which provides provisions for incurring disqualification either for contesting or continuing as such. The petitioner did not incur disqualification by mere declaration of new block, for which he had been elected as a Block Pramukh. More so, in view of the proviso of Section 4 and provisions of Section 6B of the Adhiniyam, 1961, the change of electoral roll would not disentitle the petitioner to hold the post till his tenure comes to an end. More so, if there is any dispute as to whether a sitting member or office bearer has incurred disqualification, the matter requires to be referred to the Civil Judge for decision but the State is incompetent to take a decision and as contesting the election or holding the post is not a constitutional right but a statutory right, the authorities are bound to have strict adherence to the procedure prescribed by the Adhiniyam, 1961 and they are not permitted to take a decision in violation thereof. Thus, the orders impugned are liable to be set aside and petition deserves to be allowed.

4. On the contrary, Shri Sudhir Agarwal, learned Additional Advocate General and Shri C. K. Rat, learned' standing counsel, appearing for the respondents, have submitted that on bifurcation, as the petitioner's village Dubaulia from which he had been elected for Gaon Sabha, is no more a part of the constituency of block Vikram Jot, in view of the provisions of Section 13 (o) of the Adhiniyam, 1961, petitioner cannot be permitted to held the post any more. The provisions of Section 6B of Adhiniyam, 1961 only gives the right to vote and, therefore, provides to use his franchise to the members/voters at the time of election and once the election is over, the provisions are not attracted to the case like instant. As there is no factual

dispute that the petitioner had been elected from a village, which is no more part of block Vikram Jot, the question of referring the matter to the civil court does not arise and fresh election is required to be held for both the blocks for the reason that the post of Block Pramukh in Vikram Jot became vacant by application of law, particularly the provisions of Section 13 (o) of the Adhiniyam, 1961 and petitioner cannot be made to be the Block Pramukh of Dubaulia because several villages of other blocks, referred to above, have been included therein and the elected members thereof had not been the voters when the petitioner stood elected as a Block Pramukh for Vikram Jot block. The language provided under Sections 8, 9 and 10 of the Adhiniyam, 1961 are different and deals differently for different office bearers. The law applicable in the instant case has to be given effect by giving literal meaning and as there is no ambiguity in it, it does not require any interpretation, whatsoever. The judgment of this Court in Madan Singh (supra), has not yet been reversed by the Hon'ble Apex Court and pending consideration, therefore, it cannot be held at this stage that the law laid down therein is not a good law. Petition has no force and is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. There can be no dispute to the settled legal propositions that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. It has been hitherto uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods or mode of performance are impliedly and necessarily forbidden. (Vide Taylor v. Taylor, 1876 (1) Ch D 426 ; Nazir Ahmed v. King Emperor ; Deep Chand v. State of Rajasthan. : [1962]1SCR662 ; Patna Improvement Trust v. Smt. Lakshmi Devi : AIR 1963 SC1077 ; State of Uttar Pradesh v. Singhara Singh and Ors. : [1964]4SCR485 ; Nika Ram v. State of Himachal Pradesh : 1972 CriLJ1317 ; Ramchandra Keshav Adke v. Covind Joti Chavare and Ors. : [1975]3SCR839 ; Chettiam Veetil Ammad v. Taluk Land Board and others : [1979]3SCR839 ; State of Bihar v. J.A.C. Saldanna, AIR 1980 SC 327 ; A. K. Roy and Anr. v. State of Punjab and Ors. : 1986 CriLJ2037 ; State of Mzoram v. Biakchhawna :

(1995)1SCC156 ; J. N. Ganatra v. Morvi Municipality, Morvi : AIR 1996 SC2520 ; Babu Verghese and Ors. v. Bar Council of Kerala and Ors. : [1999]1SCR1121 ; and Chandra Kishore Jha v. Mahavir Prasad : AIR 1999 SC3558].

7. The aforesaid settled legal proposition is based on a legal maxim '*Expressio unius est exclusio alterius*', meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible. This maxim has consistently been followed, as is evident from the cases referred to above. A similar view has been reiterated in Chandra Kishore Jha v. Mahavir Prasad and Ors. : AIR 1999 SC3558 ; Haresh Dayaram Thakur v. State of Maharashtra and Ors. : AIR 2000 SC2281 ; Delhi Administration v. Gurdip Singh and Ors. : (2000)7SCC296 ; Dhananjaya Reddy v. State of Karnataka etc., (2001) 4 SCC 9 ; Commissioner of Income Tax, Mumbai v. Anjum M. H. Ghaswala and Ors. : [2001]252ITR1(SC) ; and Bhaunagar University v. Palitana Sugar Mill (P.) Ltd. and Ors. : AIR 2003 SC511 .

8. Thus, in view of the above, it is not permissible for the authority concerned not to enure the compliance of the statutory provision.

9. It is also settled proposition of law that what cannot be done '*per directum*' is not permissible to be done '*per obliquum*', meaning thereby, whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of '*quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud*.'

10. In Jagir Singh v. Ranbir Singh : 1979 CriLJ318 , the Apex Court has observed that an authority cannot be permitted to evade a law by '*shift or contrivance*'. While deciding the said case, the Hon'ble Supreme Court placed reliance on the judgment in Fox v. Bishop of Chester. (1824) 2 B 7C 635, wherein it has been observed as under :

'To carry out effectually the object of a statute, it must be considered as to defeat all attempts to do, or avoid doing in an indirect or circuitous manner that which it has prohibited or enjoined.'

1. Law prohibits to do something indirectly which is prohibited to be done directly. Similar view has been reiterated by the Apex Court in *M.C. Mehta v. Kamal Nath and Ors.*, AIR 2000 SC 1997, wherein it has been held that even the Supreme Court cannot achieve something indirectly which cannot be achieved directly by resorting to the provisions of Article 142 of the Constitution, which empowers the Court to pass any order in a case in order to do 'complete justice'. The Hon'ble Supreme Court in *Bajaj Shiksha Parishad and Ors. v. Deputy Director of Education and Ors.*, 1988 UPLBEC 267, has categorically held that the State Government by issuing executive instructions/order cannot curtail the tenure of a duly elected member.

12. This case has arisen because of the change and reorganisation of several districts and the blocks, contained therein, and the new district Sant Kabir Nagar has been carved out from district Basti and a new block Dubaulia came into existence on 22.3.2002. It has been separated from the block Vikram Jot and several villages of other blocks namely. Khushalganj, Joghata, Chakohi, Bajariya Subi and Simra. Admittedly, the village Dubaulia is no more part of the constituency of block Vikram Jot and Dubaulia block has not been formed merely by bifurcating the block Vikram Jot but several other villages, as explained above, from various other blocks have been included and the elected members of those villages from different blocks had not been the voters at the time of election of the petitioner as a Block Pramukh of block Vikram Jot. Section 4 of the Adhinlyam, 1961 provides for the consequences, if there is a change in Khands, as it provides that if any area is excluded from one Khand and included in another, such area shall cease to be subject to the jurisdiction of the Khand from which it has been excluded and it shall be governed by the Khand in which it had been included. However, the proviso thereto provides that until the election is held for the newly created Khand, it shall be governed by Kshettra Panchayat of the Khand from which that area has been excluded. This provision is not of any help to the petitioner for the reason that it provides only for a transitory remedy and not for a permanent solution. It is only an interim arrangement till the new election is held. In the instant case, as several villages of other different blocks have also been included in the newly created block Dubaulia, it would be difficult to imagine as by which Vikas Khand it would be governed. Section 6B of the Adhiniyam, 1961

speaks of the electoral roll of the Kshettra Panchayat and its proviso lays down that any correction, deletion or addition made in the electoral roll after the last date for making nominations for any election to the Kshettra Panchayat and before the completion of that election, shall not be taken into consideration for the purposes of that election. This proviso also does not render any assistance whatsoever to the petitioner for the reason that it is applicable only in a case where the electoral roll after filing the nomination has been subjected to certain change/variation. So it applies only in a case where the election is being held and in the case at hand, its provisions are not attracted at all. Section 8 lays down the term of Kshettra Panchayat and its members as five years in ordinary circumstances unless dissolved sooner. The tenure of its members is co-terminus with the term of the Panchayat. The term of Pramukh and Up-Pramukh is provided under Section 9 of the Adhiniyam, 1961, separately and it extends upto the term of the Kshettra Panchayat. Section 10 deals with the constitution and re-constitution of the Kshettra Panchayat enabling the State Government to arrange for the reconstitution of the Kshettra Panchayat. Section 13 deals with disqualification for membership of Kshettra Panchayat, which reads as under :

'13. Disqualifications for membership of Kshettra Panchayat.--A person shall be disqualified for being chosen as and for being a member of a Kshettra Panchayat, if he-

..... (o) is not registered in the electoral rolls for any territorial constituency of the Kshettra Panchayat.....'

13. Provisions of the aforesaid section are applicable not only for the members contesting the election but also continuing as a member of Kshettra Panchayat and admittedly the petitioner is not registered in the electoral rolls for any territorial constituency of the Kshettra Panchayat Vikram Jot, so he cannot claim to continue on the said post.

14. The question does arise as to whether the petitioner being registered in the electoral roll in a territorial constituency of a Kshettra Panchayat, can be permitted to be the Block Pramukh of that block.

15. In the instant case, the villages from the different blocks have been included while forming the new block Dubaulia. The elected members thereof had not been the voters in his election. In a democratic set up, like ours, and particularly after amendment in the Constitution, inserting the provisions of Article 243K, petitioner cannot be forced upon the elected members of newly created block who had not chosen him, therefore, in the changed circumstances and to give the purposive interpretation to this provision, it is difficult to hold that the petitioner can become a Block Pramukh of said block Dubaulia without contesting the election afresh.

16. In Madan Singh (supra), the learned single Judge of this Court, while dealing with the similar situation, has held as under :

'.....since he is ceased to be a member elected from an electoral constituency of Z. P. Pithoragarh. Thus, the fact of creation of a new district and on the establishment of Z. P., the members elected from the electoral constituency fully included in the new district, shall cease to be members of the erstwhile district from which a new district is created. By reason of Section 18, there is no scope for Jeevan Lal to be included in the composition of Z. P. Pithoragarh as soon the electoral constituency from which he was elected was preceded from Z. P. Pithoragarh and included in Z. P. Champawat on the establishment of the new Z. P. Champawat.'

17. Therefore, the learned single Judge while relying upon the provisions of Section 18 of the Adhiniyam, 1961, has taken the view that in a case like instant, the elected person loses the right to hold the post. We also find no force in the submission made by Shri R. N. Singh, learned Senior Counsel appearing for the petitioner that the order has not attained the finality, as the matter is to be considered by the Hon'ble Apex Court and appeal has been admitted, thus, it may not be treated as binding precedent for the reason that even otherwise, it is a judgment of a learned single Judge and not of the Co-ordinate Bench, therefore, we can examine the correctness of the said judgment but we see no ground on the basis of which it can be held to be laying down a bad law.

18. Other judgment in Writ Petition No. 1304 of 1996, Heera Lal Yadau v. State of U. P., decided on 5.7.1996, is distinguishable for the reason the controversy in this

case had been entirely different. The issue involved therein had been as to whether after creation of a new district of Ambedkar Nagar, a new Zila Panchayat would be deemed to have been established, though the State Government had not taken steps for notifying the establishment of the said Zila Panchayat and the condition there was that without notifying the creation of new district, fresh election cannot be held, The controversy involved therein was entirely different altogether as the arguments had been advanced on the mandate of Article 243C of the Constitution creating a new district and one of the condition precedent for that was issuing a notification for that purpose. In the instant case, it is not the case of the petitioner that some statutory requirements have not been complied with while carving out the new Kshettra Panchayat, thus, we have no hesitation to hold that the said judgment in Heera Lal's case has no bearing in this case.

19. More so, no doubt, State Government cannot curtail the tenure of any elected member by passing an executive order, but in the instant case, the executive order has been passed to give effect to the legal provisions in the changed circumstances after carving out new district and new blocks. Therefore, the orders passed by the respondent-authorities are to ensure the compliance of statutory provisions and not in violation thereof.

20. In view of the above, as the petitioner ceased to be registered in the electoral rolls in any territorial constituency of the Kshettra Panchayat of Vikram Jot, he incurred disqualification under Section 13 (o) of the Adhiniyam, 1961 and cannot claim that fresh election for the Block Pramukh of that block cannot be held and he can be permitted to complete his tenure.

21. Thus, in view of the above, petition is devoid of any merit and is accordingly dismissed.