

Chhatrapal Singh Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Sep-19-2003

Reported in : (2003)3UPLBEC2634

Judge : B.S. Chauhan and ;D.P. Gupta, JJ.

Acts : Utter Pradesh Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961 - Sections 15(1), 15(2) and 15(3)

Appeal No. : Civil Misc. Writ Petition No. 41944 of 2003

Appellant : Chhatrapal Singh

Respondent : State of U.P. and ors.

Advocate for Def. : Vijendra Singh, Adv. and ;S.C.

Advocate for Pet/Ap. : Ravi Kant and ;Suvarna Singh, Adv.

Disposition : Petition allowed

Judgement :

B.S. Chauhan, J.

1. This writ petition has been filed for quashing the impugned notice dated 3.9.2003 (Annexure-4), issued by the respondent No. 2, to convene the meeting for considering no-confidence motion against the petitioner on 22.9.2003.

2. The facts and circumstances giving rise to this case are that petitioner was elected on 8.3.2001, as a Kshettra Pramukh of Block, Hasiyan, District Mahamaya Nagar. Members, more than required for the purpose of the said Kshetra Panchayat gave notice to the District Collector (Respondent No. 2) of no-confidence motion against the petitioner on 30.6.2003. The notice was issuing to all the members for holding the meeting on 21.7.2003. However, for some reason the meeting was not held and has been scheduled to be held on 22.9.2003, which is being challenged on the ground that it was mandatory for the Respondent No. 2 to hold the meeting within 30 days from the date of receipt of the notice, i.e., from 30.6.2003, and as the notice has lapsed, the meeting for no-confidence motion cannot be held under the provisions of U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 (hereinafter referred to as Adhiniyam, 1961).

3. Shri Ravi Kant, learned Senior Advocate appearing for the petitioner has submitted that under Section 15 of the Adhiniyam, 1961, a motion expressing no-confidence in the Pramukh or Up-Pramukh is to be considered in a meeting on the date appointed by the Collector, which shall not be later than 30 days from the day on which the notice under Sub-section (2) of Section 15 was delivered to him, and in the instant case, as the notice had been served upon him on 30.6.2003, he cannot be permitted to hold the meeting on 22nd September, 2003 and as the said notice stood lapsed, the impugned notice for holding the meeting on 22.6.2003 is liable to be quashed.

4. On the contrary, the learned standing Counsel appearing for the respondent Nos. 1 to 4 and Shri Vijendra Singh, learned Counsel appearing for the Respondent No. 5 have submitted that there has been delay in holding the meeting as petitioner himself, had asked the District Collector to have an investigation regarding the genuineness of the signatures on the notice served upon him, and if there is a lapse on the part of the statutory authorities, that cannot vitiate the proceedings. No prejudice can be shown by the petitioner to have been caused to him and thus, no interference is called for in the matter and petition 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. Relevant provisions of Section 15 of the Adhiniyam, 1961, read as under :

'(2) A written notice of intention to make the motion in the such form as may be prescribed, signed by at least half of the total number of (Elected members of Kshetra Panchayat) for the time being together with a copy of proposed motion, shall be delivered in person by any one of the member signing the notice to the Collector having jurisdiction over the (Kshetra Panchayat).

(3) The Collector shall thereupon-(i) Convene a meeting on (Kshetra Panchayat) for consideration of Motion at the office of the (Kshetra Panchayat) on a date appointed by him, which shall not be later than thirty days from the date on which the notice under Sub-section (2) was delivered to him. And (ii) Give to the (Elected Members of Kshetra Panchayat) notice of not less than fifteen days of such meeting in such manner as may be prescribed.'

7. A simple and plain reading of the provisions provides that meeting shall not be held later than 30 days from the date of delivery of the notice under Sub-section (2) and it appears that no interpretation is required as language therein is not ambiguous at all.

8. In *Dadi Jagannadham v. Jammulu Ramulu and Ors.* : AIR 2001 SC2699 , the Hon'ble Supreme Court observed as under :-

'The Court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly, if there is a defect or an omission in the words made by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court could not add words to a Statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The Court cannot aid the legislatures defeating phrasing of an Act or add or mend, and by construction, make up deficiencies which are there.'

9. Similarly, in *Siddappa Vasappa Kuri v. Special Land Acquisition* : AIR 2001 SC2951 , the Apex Court has reiterated the same principle observing that a

provision 'must receive the only construction it can bear'.

10. The issue involved herein is no more *res Integra* and has been decided by this Court time and again.

11. A Division Bench of this Court in *Khursheed Hussain v. District Magistrate and Collector, Bareilly*, 1992 AWC 208, considered the provisions of Section 15(3) of *Adhiniyam, 1961* and held that the provisions are mandatory and if the meeting is not held within the period of 30 days stipulated therein, the notice would lapse. However, it would not debar the members to bring another no-confidence motion. Interpreting the similar provisions of Section 87-A(3) of the U.P. Municipalities Act, 1916, (hereinafter called the Act, 1916), a Division Bench of this Court in *Mahendra Pal Singh v. State of U.P. and Ors.*, 1992 AWC 424, held that the provisions are mandatory and the meeting is to be held within a period not earlier than 30 days and not later than 35 days from the presentation of the notice to the District Magistrate.

12. While deciding the said case, reliance has been placed upon a 5-Judges Bench of this Court interpreting the provision of Section 87-A(3) of Act, 1916, in *Gyan Singh v. District Magistrate, Bijnor* : AIR1975 All315 , wherein the Court observed as under :-

'A careful analysis of Sub-section (3) would make it clear that the first part which requires the District Magistrate to convene meeting of the Board for considering the motion of no-confidence against the President is mandatory. The District Magistrate is required to perform a public duty in convening a meeting of the Board for consideration of the motion at the office of the Board on the date and time as fixed by him, he has no choice in the matter. He has to convene a meeting on a date within 30 and 35 days from the date of presentation of the motion to him. The District Magistrate is further enjoined to perform a public duty of sending notice of the meeting to the members; this again is a mandatory requirement of law which must be strictly complied with. The second part of the subsection lays down the manner required to be followed in sending notices to the members. It lays down that notice of the meeting shall be sent by registered post to every member of the Board at his place of residence. The essence of this provision is to

give information to the members to enable them to avail opportunity of participating in the meeting convened for the purpose of considering the no-confidence motion. The first part of the section requiring the District Magistrate to convene meeting and to send notices to the members is mandatory, any disregard of that provision would defeat the very purpose of the meeting, but the manner of service of notice and publication of the same is directory in nature, therefore, a substantial compliance of the same would meet the requirement of law.'

13. Thus, from the aforesaid judgments, it is clear that the provisions requiring holding the meeting within the stipulated period is mandatory.

14. On the contrary, in *Sharafatullah Khan v. State of U.P. and Ors.*, 1962 ALJ 930, the Division Bench of this Court while interpreting the provision of Section 46 of the Act, 1916, had taken a view that in a procedural matter unless it is shown that prejudice is caused to the party concerned, it should not be interfered by the Writ Court. While dealing with provisions of Section 87-A(3), the Division Bench held that the provisions were directory. The Court should not interfere merely because strict compliance had not been made in accordance with language of the statute.

15. In *Gopal Tiwari v. District Panchayat Raj Officer, Deoria*, 1990 RD 325, a 3-Judges Bench of this Court held that the provisions of Rule 33-B (2) of the U.P. Panchayat Raj Rules, were merely imperative and not mandatory. The motion of no-confidence against the Pradhan if not held within the period stipulated therein, the proceedings would not lapse, and it be held subsequent thereto.

16. The instant case, requires consideration in the light of the aforesaid judgments cited at the bar.

17. The judgment in *Gopal Tiwari* dealt with Rule 33-B (2) of the U.P. Panchayat Raj Rules and the reference was made to a Larger Bench for the reason that there has been conflict of views in the judgment of the two Division Benches dealing with the issue in *Bhola Ram Kushwaha v. Zila Panchayat Raj Adhikari*, 1987 UPLBEC 718 and *Debt Singh v. District Panchayat Raj Adhikari*, 1987 UPLBEC 745. Present case is quite distinguishable from the said case, The said case had

been in respect of the Panchayat Raj Rules which is subordinate legislation and cannot override the statutory provisions contained in the U.P. Panchayat Raj Act. The Court took note of this fact and examined the rules in the light of the provisions of Section 14(4) of the Panchayat Raj Act, observing that if the provisions of Rule 33-B(2) is held mandatory, it will run, counter to the provisions of Section 14 of the Panchayat Raj Act and thus, it was held to be imperative. The provisions of Section 14(4) of the Panchayat Raj Act authorise the Government for prescribing the procedure for the removal of Pradhan. Under the guise of prescribing the procedure, it was not open to the Government to lay down unalterable rule of limitation which could extinguish right conferred by the statute. Therefore, the judgment of this Court in Gopal Tiwari is quite distinguishable and has no application in the instant case. More so, the ratio of the judgment in Sharafatullah Khan docs not seem to be attractive at all for the reason the issue involved herein is different. The question raised therein had been as to whether presence of more than two members while delivering the notice to the District Collector would render the proceedings illegal. In the said case, the statute provided the Clause (2) of Section 87-A of the Act, required delivery of the notice by two of the signatories. In that case, it was held that as the notice had been served by more than two members it would not vitiate the proceedings and more so, no prejudice had been caused by delivery of the notice by more than two members.

18. The judgment in Sharafatullah Khan requires to be examined from another angle also. Undoubtedly, every action taken by the author is to be examined on the touch-stone of doctrine of prejudice and in a given case, it may be held that substantial compliance and not strict adherence to the statutory provisions has not caused any prejudice to the party concerned. Therefore, the other side would not have any right to raise that grievance. [Vide M/s G. S. Sodhi v. Union of India : 1991 CriLJ1947 ; Managing Director, ECU, Hyderabad Ors., v. B. Karunakar and Ors. : (1994) ILLJ162SC ; State Bank of Patiala and Ors. v. S.K. Sharma : (1996) IILLJ296SC ; S.K. Singh v. Central Bank of India and Ors. : (1997) ILLJ537SC ; State of U.P. v. Shatrughan Lal and Anr. : [1998] 3SCR939 and Debotosh Pal Choudhury v. Punjab National Bank of India and Ors. : (2002) IILLJ 1082 SC].

19. However, the question does arise as to whether the judgment in Sharafatullah Khan (supra), can be said to be of binding nature in this case, even 'when the issues referred to above, had not been raised/considered therein. It is settled proposition of law that an issue, which has not been considered by the Court while delivering a judgment, cannot be said to be binding as a 'decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision' of the Court. (Vide H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur and Ors., v. Union of India : [1971]3SCR9 ; M/s. Amar Nath Om Prakash and Ors., v. State of Punjab and Ors. : [1985]2SCR72 ; Rajpur Rude Meha v. State of Gujarat : 1980 CriLJ1246 ; C.I.T. v. Sun Engineering Works (P) Ltd. : [1992]198ITR297(SC) and Sarva Shramik Sangh, Bombay v. Indian Hume Pipe Co. Ltd. and Anr. : (1993)ILLJ965SC].

20. In Haryana Financial Corporation and Anr., v. M/s. Jagdamba Oil Mills and Anr. : [2002]1SCR621 , the Hon'ble Apex Court held that Courts should not place reliance on decisions without discussing as to how the factual situation fits-in with the fact situation of the decision relied upon.

21. In Jawahar Lal Sazawal and Ors., v. State of Jammu and Kashmir and Ors. : (2002)ILLJ836SC , the Hon'ble Supreme Court held that a judgment may not be followed in a given case if it has some distinguishing features.

22. In Bhavnagar University v. Palitana Sugar Mill (P) Ltd.. : AIR 2003 SC511 , the Hon'ble Supreme Court held that a decision is an authority for which it is decided and not what can logically be deduced therefrom. A little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. While deciding the said case, the Court placed reliance upon its earlier judgment in Delhi Administration v. ManoharLal : 2002 CriLJ4295 .

23. In Union of India v. Chajju Ram : [2003]3SCR647 , a Constitution Bench of the Hon'ble Supreme Court held as under :-

'It is now well settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is equally well settled that a little difference in facts may lead to a different conclusion.'

24. In *Ashwani Kumar Singh v. U.P. Public Service Commission and Ors.* : AIR 2003 SC2661 , the Apex Court held that a judgment of the Court is not to be read as a statute as it is to be remembered that judicial utterances have been made in setting of the facts of a particular case. Substantial flexibility; one additional or different fact may make a world of difference between the conclusions in two cases. Disposal of cases by blindly placing reliance upon a decision is not proper.

25. The ratio of the judgment in *Gopal Tiwari (supra)*, is not attracted for a case of subordinate legislation, wherein the provisions of the Rule were held to be imperative and had it been held to be mandatory, the provisions of the Rule became liable to be struck down being ultra vires of the statutory provisions of Sub-section (4) of Section 14 of the Panchayat Raj Act.

26. Similarly, as the issue as to whether not holding the meeting within stipulated period would vitiate the proceedings altogether had not been in issue in the case of *Sharafatullah Khan (supra)*, the same cannot be held to have any binding effect in the instant case.

27. There is another aspect of the matter. 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 modes 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. Govind Joti Chavare and Ors.* : [1975]3SCR839 ; *Chettiam Veetil Ammad v. Taluk Land Board and Ors.* : [1979]3SCR839 ; *State of Bihar v. J.A.C. Saldanna* AIR 1980 SC 327; *A.K, Roy and Am. v. State of Punjab*

and Ors. : 1986 CriLJ2037 ; State of Mizoram 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].

28. 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, 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 evidence 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 ; Dhanajaya Reddy v. State of Karnataka etc. etc., (2001) 4 SCC 9 and Commissioner of Income Tax, Mumbai v. Anjum M. H. Ghaswala and Ors. : [2001]252ITR1(SC) .

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

30. In sum and substance, we are of the considered opinion that the case is squarely covered by the five-Judges Bench judgment of this Court in Gyan Singh (supra), wherein it was held that the provision of Section 15(3) of the Adhiniyam, 1961 are mandatory and requires strict adherence thereto. In case, it is not followed, the proceedings would stand vitiated.

31. In view of the above, petition succeeds and is allowed. Impugned notice for holding the meeting for no-confidence motion on 22.9.2003, is hereby quashed. However, in the facts and circumstances of the case, it is held that there will be no bar for the members for giving a fresh notice for no-confidence motion, and if it is so given, needless to say, authorities shall proceed in accordance with law.

32. Needless to say that the statutory authority would not defeat the norms of the democratic set-up of this country and frustrate the purpose of bringing the no-confidence motion by their inaction, or delayed action or by dereliction of their

duty.

33. In the instant case, the learned District Collector has over-acted for holding the enquiry regarding the genuineness of signatures of the members on the notice and proposal for the no-confidence motion, which was not warranted at all as the statute does not envisage for such an enquiry. Thus, repetition of such overact should be avoided.

34. No costs.

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