

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

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Court : Allahabad

Decided On : May-27-2010

Judge : V.K. Shukla, J.

Appellant : Rakesh Kumar

Respondent : State of U.P. and ors.

Advocate for Def. : Sri. S.C. Pandey

Advocate for Pet/Ap. : Sri. B.N. Singh

Judgement :

V.K. Shukla, J.

1. In the present case, petitioner's contention is that elected Pradhan of village died on 26.3.2010. Petitioner submits that thereafter, interim arrangement has to be made in exercise of authority vested under Section 12- J (2) of U.P. Panchayat Raj Act, 1947. Petitioner is elected member of Gram Panchayat Barethar Khurd, Block Kjajuwa, Tehsil Bindki, District Fatehpur, has contended that at no point of time any meeting of member of Gram Panchayat had ever been convened to ascertain the wishes of the member of aforesaid Gram Panchayat. Contention of petitioner is that as officiating arrangement is to be made, then at this juncture District Magistrate was obliged to convene meeting in order to ascertain wishes of majority member of Gram Panchayat and then based on the same opinion ought

to have been made in this direction, but same has not been done. At this juncture present writ petition has been filed.

2. Sri. Vishal Khandelwal, Advocate, learned Counsel for the petitioner contended with vehemence that in the present case, District Magistrate has not at all called meeting of the elected member of Gram Panchayt, to ascertain as to who should function as Pradhan as per the majority wish expressed, as such action taken deserves to be set aside.

3. Countering the said submission, learned Standing Counsel as well as Sri R.B. Singh on the other hand contended that rightful action has been taken by the District Magistrate while making temporary arrangement, keeping in view the majority view.

4. After respective arguments have been advanced, undisputed factual position is that petitioner is member of Gram Panchayt Panchayat Barethar Khurd, Block Kajuwa, Tehsil Bindki, District Fatehpur. On account of death of Gram Pradhan on 26.3.2010, as an interim arrangement a member of the Gram Panchayt was to be nominated to function as officiating Pradhan of aforesaid Gram Panchayat. Petitioner submits that without verifying the majority view of member of Gram Panchayt in arbitrary exercise of discretion, the District Magistrate has nominated Smt. Rampati to function as Pradhan of the village. Once democratically elected office has fallen vacant, then interim arrangement also has to be made, qua the democratic process alone.

5. At this juncture Section 12-J of the Act, which deals with making of arrangement in temporary vacancy in the office of Pradhan is being extracted below:

12-J Arrangement in temporary vacancy in the office of Pradhan:(1) Where the office of Pradhan is vacant by reason of death, removal, resignation or otherwise, or where the Pradhan is incapable to act by reason of absence, illness or otherwise, the Up- Pradhan shall exercise all powers and discharge all duties of the Pradhan. (2) Where the offices of both, Pradhan and Up-Pradhan are vacant for any reason whatsoever, or when both Pradhan and Up-Pradhan are incapable to act for any reason whatsoever, the prescribed authority shall nominate a

member of the Gram Panchayat to discharge the duties and exercise the powers of the Pradhan until such vacancy in the office of either the Pradhan or the Up-Pradhan is filled in, or until such incapacity of either of the two is removed

6. Said provision in question has been subject matter of interpretation before this Court and this Court in the case of Usha Singh (Smt.) v. District Magistrate, Gorakhpur 1992 RD 337 has opined that nomination of a person as Gram Pradhan by the District Magistrate/Prescribed Authority is arbitrary if it is not made by the consent of the member of the Gram Panchayat. Paragraph 6 of the Judgment is as under:

A perusal of Section 12-J of U.P. Panchayat Raj Act shows that if the office of Pradhan becomes vacant then the Up-Pradhan would exercise the function of Pradhan. Sub-section (2) of Section 12-J of the Act states that if the office of both Pradhan and Up-Pradhan are vacant, or if for any reason both Pradhan and Up-Pradhan are incapable to act, the prescribed Authority shall nominate a member of the Gaon Panchayat to discharge the functions of the Pradhan until the office of Pradhan or Up- Pradhan is filled up. Sub-section (2) does not state which member of the Gaon Panchayat should be nominated by the Prescribed Authority to discharge the functions of the Pradhan. Literally construed the said provisions gives absolute discretion to the Prescribed Authority to nominate any member of the Gaon Panchayat for this purpose. Such an interpretation, however, would make the provision arbitrary and also unconstitutional since no guiding principles has been laid down as to how the discretion of the prescribed authority is to be exercised and in various of which members of the Gaon Panchayat. However, it is a settled principle of interpretation that the Courts should as far as possible try to avoid holding a statute to be unconstitutional, and if an interpretation can be found which makes the statute constitutional, such an interpretation should be accepted . In my opinion, since the Gaon Sabha and Gaon Panchayat are democratic bodies elected by the people, the proper interpretation of Sub-section (2) of Section 12-J would be that in case where the offices of both Pradhan and Up Pradhan are vacant, or when both Pradhan and Up-Pradhan are incapable to act, the Prescribed Authority should ask the members to act, the Prescribed Authority should ask the members of Gaon Panchayat to hold a meeting , and such

members should decide among themselves which member should be nominated as Pradhan for the interim period until regular election, and such member should be nominated as officiating Pradhan under Section 12(2). Such an interpretation would be inconsonance with the democratic principle underlying the U.P. Panchayat Raj Act, and would also make the statute.

7. Said view has again been reiterated by this Court in the case of Udaivir v. The State Election Commission of U.P. through its Chairman and Ors. decided on 11.4.2008 in Writ Petition No. 53468 of 2007. The judgment of learned single judge in the aforementioned case has been approved of by Division Bench of this Court in the case of Udaivir v. State Election Commission 2009 (106) RD 151. View has been taken as follows:

This Special Appeal has been preferred against the impugned judgment and order of the Hon'ble Single judge dated 11th April, 2008 passed in Civil Misc. Writ Petition No. 53468 of 2007; Udaivir v. The State Election Commission of U.P. through its Chairman and Ors. filed by the appellant against appointment of respondent No. 7 as officiating Pradhan has been dismissed.

The Hon'ble Single Judge after considering the facts and law applicable came to the conclusion that the wishes of the elected members of the Gram Panchayat could have been ascertained before nominating any member to officiate as Pradhan till the regular election qua the office is held, in exercise of powers under Section 12-J of the U.P. Panchayat Raj Act.

We have heard Sri B.N. Singh learned Counsel for the appellant -petitioner, Sri S.C. Pandey, learned Counsel for respondent No. 7, Sri K.P., Singh, learned Counsel for the respondent no1. and learned Standing Counsel for other respondents, and perused the records of the present special appeal. Considering the basic concept of the democracy set up for the Panchayat Raj under the provisions of Article 243 of the Constitution, we are of the opinion that respondent No,3, i.e. District Magistrate, Aligarh ought to have ascertained the wishes of the elected members of the Gram Panchayat, as to who should be the officiating Pradhan for the period till the regular election of the Gram Pradhan is held. Further every attempt should be made to elect the new Pradhan at the earliest possible In

view thereof, we dispose of this Special appeal with a request upon the District Magistrate i.e. respondent No. 3 to convene a meeting of the elected members of the Gram Panchayat within a period of two weeks from the date of certified copy of this order is filed before him, nominating some responsible officer not below the rank of Sub Divisional Magistrate, to chair the meeting of the elected members so as to ascertain the wishes qua nomination of officiating Pradhan. Person so nominated would be handed over the charge forthwith. We also request the District Magistrate to ensure that the election of the Gram Pradhan of the village concerned be held in accordance with law at the earliest possible.

8. In the case of Smt. Kusma Devi v. State of U.P. and Ors. 2009 (106) RD 5 and Jaglal v. State of U.P. and Ors. 2009 (106) RD 47 decided on 06.11.2008 and 10.11.2008, learned Single Judge has taken view that provision of Sub-section (2) of Section 12-J of the Act is clear that temporary Gram Pradhan is to be nominated by the Prescribed Authority. Nothing can be added by reading in between the lines or to give strength one's own opinion. The Prescribed Authority has power to nominate any person under the Act which cannot be said to be arbitrary and the Registrar has acted in its wisdom as conferred under the Act.

9. These two judgments of learned Single judge has been passed in ignorance of the judgment Division Bench judgment of this Court decided on 23.4.2008 reported in 2009 (106) RD 151 Udaivir v. State Election Commission of U.P. through its Chairman and Ors. It appears that Division Bench judgment has not been placed before the learned Single Judge. Once on the same subject matter, the view of Division Bench of this Court is there and view mentioned therein has been holding the field since more than 15 years, then in this background judicial discipline impells this Court to follow the view which has been laid down by the Division Bench of this Court in the case of 2009 (106) RD 151 Udaivir v. State Election Commission of U.P. through its Chairman which clearly provides that considering the basic concept of the democracy set up for the Panchayat Raj under the provisions of Article 243 of the Constitution, District Magistrate ought to have ascertained the wishes of elected member of the Gram Panchayat, as to who should be the officiating Pradhan for the period till the regular election of the Gram Pradhan is held. It is true that language of Section 12-J of U.P. Panchayat Raj Act,

1947 does not talk of convening any meeting but by judicial pronouncement, looking into the fact that, it is democratically elected office in view of Article 243, qua which interim arrangement is to be made, the lacuna has been sought to be filled up by directing that meeting shall be convened and then as per the majority wish interim arrangement should be made amongst elected Gram Panchayat members.

10. Consequently, in view of the fact and circumstances of the case, as order passed by the District Magistrate, Fatehpur does not reflect as to whether any meeting had been convened by the authority concerned or not, as it is being alleged by the petitioner that such meeting had never been convened and on the other hand majority is being claimed by respondent, in this background liberty is given to petitioner to make fresh representation alongwith certified copy of this order before the District Magistrate, Fatehpur within three weeks from today, who shall take appropriate decision in accordance with law after keeping in mind the Judgment quoted above, preferably within period of next six weeks thereafter from the date of production of certified copy of this order. Impugned order dated 11.5.2010 shall abide by final order to be passed by the District Magistrate, Fatehpur.

11. With these observations, writ petition is disposed of.