

Court No. - 21

Case :- WRIT - C No. - 35445 of 2023

Petitioner :- Smt Munni Devi

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Sabhajeet, Nishad Ramjanki

Counsel for Respondent :- C.S.C., Gaurav Gautam, Sameer Kumar Rai

Hon'ble Manoj Kumar Gupta, ACJ.

Hon'ble Donadi Ramesh, J.

1. Personal affidavit filed by respondent no.2 in compliance of our order is taken on record.
2. Heard Shri Shailesh Kumar Pathak, Sri Sabhajeet Nishad, learned counsel for the petitioner, Sri Abhishek Srivastava, learned Chief Standing Counsel-VII for respondent nos.1 and 2, Sri Rakesh Pande, learned Senior Counsel assisted by Sri Gaurav Gautam, learned counsel for respondent no.3.
3. With their consent, the instant petition is being disposed of finally at this stage as they waive right to file further affidavits.
4. The petitioner is an elected ward member of Kshettra Panchayat, Block Karma, Tehsil Ghorawal, District Sonbhadra. She along with 57 other members served a written notice of intention dated 01.09.2023 to bring motion of no-confidence against the Pramukh (respondent no.3). The petitioner is aggrieved by the order dated 22.09.2023 passed by respondent no.2 (Collector) holding that the written notice of intention to bring the motion of no-confidence against Pramukh is not in accordance with Section 15 (2) of the Uttar Pradesh Kshettra Panchayat and Zila Panchayat, Adhiniyam, 1961 (hereinafter referred to as 'the Adhiniyam') and was consequently rejected. The notice of intention was not found to be in consonance with Section 15 (2) of the Adhiniyam on the ground that notice was not personally delivered to the Collector but to the Chief Development Officer.

5. Before passing of the impugned order, respondent no.2 on 17/18.09.2023 himself passed an order convening meeting for consideration of motion of no-confidence on 06.10.2023 at 11:00 a.m. in the office of the Kshetray Panchayat. However, it seems that certain representation was filed by respondent no.3 before the Collector on 22.09.2023 disputing the validity of the notice on the ground that it was not personally delivered to the District Magistrate but to the Chief Development Officer and, therefore, there was violation of mandatory provisions of Section 15(2) of the Adhiniyam. Taking notice of the said representation, the impugned order was passed by respondent no.2.

6. Learned counsel for the petitioner submitted that in the order dated 18.09.2023 by which the Collector initially convened meeting of the Kshetra Panchayat on 6.10.2023, it is recorded that the notice of intention to bring no-confidence motion was delivered to him on 8.09.2023 and after examining the same, he fixed the meeting. The stand now taken in the impugned order is in variance with the stand taken in his own order dated 18.09.2023. It is further submitted that even assuming that notice was delivered to the Chief Development Officer as the Collector was not present in his office at the relevant time, it would not invalidate the notice.

7. In support of the said contention, learned counsel for the petitioner placed reliance on a Division Bench of this Court dated 02.02.2018 in **(Misc. Bench No.3098 of 2018 Rama Devi Vs. State of U.P. and others)**. It is urged that although delivery of the proposed motion is mandatory but its handing over to the Collector is only directory and where ultimately the motion reaches the Collector, there would be no infraction of any mandatory provision of law. He further submits that the motion in the instant case was admittedly delivered in person by the signatories thereto. The Collector in his affidavit has accepted that he was not in office on 08.09.2023 and was out for field work. It is in such circumstance that the motion was delivered by the signatories of the motion to the Chief Development Officer, Sonbhadra. He has also

certified in his recent communication to respondent no.2 that the motion was personally delivered to him by members of Kshettra Panchayat and he accepted the notice in good faith.

8. Respondent no.2 in his affidavit has admitted that in his order dated 18.09.2023 he had mentioned that the notice was placed before him on 08.09.2023. However, it is stated that the same is wrongly recorded and the correct fact is that on that day, the notice was delivered to the Chief Development Officer. He has tendered unqualified apology for the aforesaid mistake and has also mentioned that there was no oblique intention on his part in taking a different stand subsequently.

9. The averments made in the counter affidavit filed by respondent no.2 further reveals that after receipt of notice of intention, the Chief Development Officer marked it to the District Panchayat Raj Adhikari, Sonbhadra and District Panchayat Raj Adhikari, Sonbhadra transmitted the record to the office of respondent no.2 on 17.09.2023 and on the same day, it was put up before him. Immediately, he issued notice convening meeting of Kshettra Panchayat for consideration of the motion fixing 06.10.2023. He has, however, taken the stand that since notice of intention was not delivered to him personally, therefore, he on basis of representation made to him by respondent no.3 cancelled his earlier order and dropped the proceedings.

10. Sri Rakesh Pande, learned Senior Counsel appearing for respondent no.3 submits that since notice was not delivered to the District Magistrate and, therefore, there would be violation of Section 15(2) of the Adhiniyam. He submits that in case the proposition of law canvassed by learned counsel for the petitioner is accepted there would be considerable delay in transmission of the motion from person accepting it on behalf of the Collector till it reaches the Collector and this would defeat the provisions of law.

11. We have considered the rival submissions and perused the record.

12. Section 15 of the Adhiniyam which is relevant for our purpose, is extracted below:-

*"15. Motion of non-confidence in Pramukh or [Up-Pramukh] (1)
A motion expressing want of confidence in the Pramukh [or any Up-Pramukh] of a Kshettra Panchayat may be made and proceeded with in accordance with the procedure laid down in the following sub-sections.*

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

(3) The collector shall thereupon-

(i) convene a meeting of the [Kshettra Panchayat] for the consideration of the motion at the office of the [Kshettra 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 member of the Kshettra Panchayat] notice of not less than fifteen days of such meeting in such manner as may be prescribed.

Explanation:- In computing the period of thirty days specified in this sub-section, the period during which a stay order, if any, issued by a Competent Court on a petition filed against the motion made under this section is in force plus such further time as may be required in the issue of fresh notices of the meeting to the members shall be excluded.

.....”

13. Under sub-section (2) of the Adhiniyam, (a) written notice of intention to make motion has to be in prescribed format signed by at least half of the total number of elected members of Kshettra Panchayat for the time being together with a copy of the proposed motion, (b) it should be delivered in person by any one of the members signing the notice and, (c) it would be handed over to the Collector having jurisdiction of Kshettra Panchayat. It is not case of the respondents that the written notice of intention was not in prescribed format although we find from the record

that there is draft order dated 12.09.2023 seeking to reject motion on the ground that notice of intention was not in prescribed format. The District Magistrate in his affidavit has taken the stand that said order was prepared by one Dhananjay Yadav, Senior Assistant in the office of D.P.R.O. without any instruction from him. It also does not bear his signature. The Collector is said to have initiated proceeding against Dhananjay Singh who acted on his own in preparing the said order. We thus proceed to accept the stand taken in the affidavit of the Collector that the notice was on prescribed format.

14. There is also no dispute that notice of intention was duly signed by at least half of the total number of elected members of Kshettra Panchayat for the time being and was accompanied with a copy of the proposed motion. The motion, as admitted by the Collector in his affidavit, was personally delivered by persons signing the motion to the Chief Development Officer as the Collector was not present in his office. Indisputably, it was put up before the District Magistrate on 17.09.2023 and on the same day, he issued an order for convening meeting of Kshettra Panchayat for consideration of no-confidence motion on 06.10.2023.

15. In **Rama Devi (supra)**, a Co-ordinate Bench answered exactly the issue which arises for consideration in the instant case. It has been held that delivery of motion to the Collector personally is only directory in nature. It would suffice if the same is delivered personally by signatory of the motion in his office and it ultimately reaches the Collector as object of the provisions is that notice should reach the Collector without delay. Relevant observations made in this regard are extracted herein under:-

*“23. Though in the case of **Vikas Trivedi (supra)** the Full Bench was considering the provisions of Section 15(3)(ii) of the 1961 Act yet the principles of law laid down in the said judgment would be relevant as regards the question which has arisen in the instant petition. What can be culled out from the judgments in the case of **Vikas Trivedi, Babu Ram Upadhyaya, Raja Buland Sugar Company Ltd. Rampur, Sharif-ud-Din, Lakshmanasami Gounder and Pt.***

Rajan (supra) is that merely because the statute uses the word "shall", it is not conclusive on the question whether it is a mandatory or a directory provision. In order to find out true character of the legislation, the Court has to ascertain the object which the provision of law in question is to subserve and the real intention of the legislature by carefully seeing the whole scope of the legislative intent. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory, but when a provision of law which relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one.

24. Armed with the said conclusions as have been culled out from the aforesaid judgments, what we find is that the intention of the legislature by incorporating the word "shall" in sub-section (2) of Section 15 of the 1961 Act is to ensure that the copy of the proposed motion reaches the Collector and it is the Collector alone who is to convene the meeting of the Kshetra Panchayat for the consideration of the motion after giving to the elected members of the Kshetra Panchayat notice of such meeting as specified in Section 15(3) of the 1961 Act. Thus the purpose of Section 15(2) of the 1961 Act is to ensure that the Collector gets a copy of the proposed motion which is to be delivered in person by any one of the members signing the notice. The said delivery of notice is thus mandatory but the contention on the part of the petitioner that it is the Collector alone who can receive the said notice would only be a procedural requirement and will fall within the realm of being a directory provision and merely because the notice has not been handed in the hands of the Collector would not vitiate the notice as is sought to be made out by the petitioner. Moreover, no prejudice is caused to the Pramukh in case the notice is not handed over in the hands of the Collector, as sought to be set out by the petitioner inasmuch as the intention of the no confidence motion and a meeting convened in pursuance thereof would be to test the confidence of the Pramukh amongst the elected members of the Kshetra Panchayat who initially elected the Pramukh from amongst themselves in terms of Section 7 of the 1961 Act and the said Pramukh would only continue till such time the elected members continue to express their confidence upon him. Thus, in our considered opinion, delivery of the proposed motion in the hands of the Collector is only a directory provision and not mandatory and the notice of no confidence would not be vitiated merely because the notice was not given to/received personally by the Collector."

16. We are in full agreement with the view taken in the case of **Rama Devi (supra)**. Since in the instant case, admittedly the Collector was not present in his office when the motion was sought to be delivered to him, therefore, we find no illegality in the same being handed over to the Chief Development Officer who admittedly had transmitted the same to the Collector.

17. Resultantly, we find that the order impugned is wholly illegal insofar as it holds that the notice of intention of no-confidence motion was bad in law. The impugned order dated 22.09.2023 passed by the Collector - respondent no.2 is quashed.

18. Before parting, we would like to note that upon receipt of notice, the meeting to be convened by the Collector, should be on a date which is not later than thirty days on which the notice under sub-section (2) of the Adhiniyam was delivered to him. The Collector in his affidavit has stated that in the impugned order, by inadvertence and oversight, it was mentioned that notice was placed before him on 08.09.2023 while correct fact is that on the said date it was delivered to the Chief Development Officer as he was absent from his office. It came to be placed before him for the first time on 17.09.2023 and on the same day, he issued notice to convene meeting fixing 06.10.2023. However, on 22.09.2023 i.e. after five days, he cancelled the previous order convening the meeting. Thus, five days elapsed between 17.09.2023 to 22.09.2023 still leaving twenty five days to complete the formalities in relation to holding of meeting. Since the Collector himself had cancelled his previous order and had declined to proceed further on basis of notice, therefore, in our opinion, the situation was akin to a stay of the proceedings.

19. The *explanation* to sub-section (3) of the Adhiniyam stipulates that while computing the period of thirty days specified in this sub-section, the period during which a stay order, if any, issued by a Competent Court on a petition filed against the motion made under this section is in force with such further time as may be required in the issue of fresh notice of the

meeting of the members would be excluded. Although strictly under the *explanation*, the period would be excluded if there is stay issued by Competent Court but the object of explanation is to ensure that by virtue of stay order granted by the Court, the period provided under the Statute does not lapse and the motion is not defeated on the said ground.

20. We are of the opinion that same analogy would apply to the facts of the present case where the proceeding got stalled as a result of passing of the impugned order by the Collector, which we have declared to be illegal. Therefore, we hold that the period from 22.09.2023 till today would stand excluded while computing time frame specified under sub-section (3) of Section 15 of the Adhiniyam.

21. Learned counsel for the parties admit that if the aforesaid time period is excluded sufficient time is still left to convene the meeting. Accordingly, we direct the Collector to proceed further in the matter as per observations and directions given above.

22. In the result, the instant petition succeeds and is allowed.

23. The Collector has tendered his unconditional apology, which having regard to the facts of the case, is accepted.

24. The original record placed before this Court is returned to Sri Abhishek Srivastava, learned Chief Standing Counsel-VII.

Order Date :- 11.12.2023

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(Donadi Ramesh,J.) (Manoj Kumar Gupta, A.C.J.)