

Court No. - 21

Case :- WRIT - C No. - 41655 of 2023

Petitioner :- Durvijay Singh

Respondent :- Collector District Magistrate And 3 Others

Counsel for Petitioner :- Indra Raj Singh, Adarsh Singh

Counsel for Respondent :- C.S.C., Vijai Shanker Tripathi, Vinod Shankar Tripathi

Hon'ble Manoj Kumar Gupta, Acting Chief Justice

Hon'ble Donadi Ramesh, J.

1. Heard Sri Indra Raj Singh, learned counsel for the petitioner, Sri Rajiv Gupta, learned Additional Chief Standing Counsel for respondents nos. 1 to 3 and Sri Vinod Shankar Tripathi, learned counsel for respondent no. 4.
2. Since, purely legal question is involved, therefore, parties have agreed for disposal of the instant petition at this stage itself.
3. The petitioner is member of Kshetra Panchayat Bhithari Chainpur, District Bareilly. Respondent no.4 was elected as Block Pramukh of the aforesaid kshetra panchayat in the year 2021. As per Section 8 of the Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 (hereinafter referred to as the Adhiniyam), the term of kshetra panchayat is five years from the date appointed for its first meeting. The term of the president and members is co-terminus with the term of the kshetra panchayat. Under Section 15 of the Adhiniyam, a detailed procedure is prescribed for bringing a motion of no-confidence against the pramukh of a kshetra panchaya. The said section was amended by the Uttar Pradesh Kshetra Panchayat and Zila Panchayat Sanshodhan Adhiniyam, 2022. The amendment became effective from 4th October, 2022. The amendment, which is material and has bearing on the dispute involved in the present writ petition, is the one carried out in sub-section (11) of the Section 15 of the Adhiniyam, whereby no-confidence motion is now required to be carried out with the support of not less than two-third of the total number of elected members of the kshetra panchayat

instead of more than half in the past. The other amendments are not very relevant and are therefore, not being noticed. Relevant part of the unamended provision of Section 15, is as follows:

"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 8 [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.

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(11) If the motion is carried with the support of [more than half] of the total number of [elected members of the Kshettra Panchayat] for the time being –

(a) the Presiding Officer shall cause the fact to be published by affixing a notice thereof on the notice board of the office of the Kshettra Panchayat and also by notifying the same in the Gazette; and

(b) the Pramukh or [Up-Pramukh], as the case may be, shall cease to hold office as such and vacate the same on and from the date next following that on which the said notice is fixed on the notice board of the office of Kshettra Panchayat. "

4. The amending Act did not make any amendment in sub-section (2) of Section 15. However, as noted above, the result of amendment in sub-section (11) of Section 15 is that motion is now required to be carried out with a majority of not less than 2/3rd members.

5. In the instant case, a notice of intention to bring no-confidence motion dated 25.10.2023 signed by 82 elected members of the kshetra panchayat was submitted before the Collector. It appears that nine person out of those, who had signed the notice for bringing no-confidence motion, filed application dated 7.11.2023 stating that they were made to sign the notice by not disclosing correct and complete facts. By order dated 8.11.2023 impugned herein, the Collector taking notice of the affidavits filed by nine persons held that after excluding them the notice of intention to bring no-confidence motion would not have the support of two-third members as the house comprises of 112 elected members. Therefore, no further action is required to be taken on basis of such a notice.

6. Sri Indra Raj Singh, learned counsel for the petitioner submitted that as per Gazette notification dated 13th December, 2022, by which amendment has been made in Section 15 of the Adhiniyam, no change has been made in sub-section (2) of Section 15. The notice of intention to make the motion is still required to be signed atleast by half of the total number of elected members only and not by 2/3rd members as observed in the impugned order. Thus even after excluding nine persons, the notice would be valid.

7. It is not disputed before us that even if the notice to bring the motion is treated to be signed by 73 members, it would be by more than half of total number of elected members of the kshetra panchayat. Learned counsel appearing on behalf of respondent no.4 as well as Sri Rajiv Gupta, learned Additional Chief Standing Counsel appearing for the State-respondents admit that no amendment has been carried out in Section 15 (2) of the Adhiniyam and therefore, written notice of intention to make the motion is still required to be signed only by atleast half of the total number of elected members and not by 2/3rd members as observed in the

impugned order.

8. In view of the above admitted factual position, we are of considered opinion that the impugned order is manifestly illegal and is, accordingly, quashed. The first respondent is directed to proceed in the matter in accordance with law.

9. The petition stands disposed of accordingly.

(Donadi Ramesh, J.)

(Manoj Kumar Gupta, ACJ.)

Order Date :- 7.12.2023

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