

Court No. - 2

Case :- WRIT - C No. - 5365 of 2022

Petitioner :- Bitendra Pratap Singh Yadav

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Panchayati Raj Deptt. Lko. And 5 Others

Counsel for Petitioner :- Anand Mani Tripathi

Counsel for Respondent :- C.S.C.,Arvind Kumar Singh
along with

Case :- WRIT - C No. - 8088 of 2022

Petitioner :- Anand Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Panchayat Raj Govt. Of U.P. Civil Secrt. Unnao And Others

Counsel for Petitioner :- Lalita Prasad Misra,Annapurna Agnihotri

Counsel for Respondent :- C.S.C.,Anand Mani Tripathi,Anurag Kumar Singh

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Manish Kumar,J.

1. Heard Sri Anand Mani Tripathi, learned counsel for the petitioners, Sri Akhilesh Kumar Srivastava, learned Standing Counsel for the State-respondents and Ms. Annapurna Agnihotri, Advocate, holding brief of Sri L.P. Mishra, learned counsel for respondent no. 6.

2. The petitioner in Writ C No. 5365 of 2022, an elected Pramukh of Kshettra Panchayat, Asoha, District Unnao has assailed the notice dated 28.07.2022 issued by the District Magistrate, Unnao respondent no. 2 herein, convening meeting of the Kshettra Panchayat on 18.08.2022 at 11.00 A.M. for consideration of motion of no-confidence against the petitioner. By amendment, the petitioner has also challenged the motion of no-confidence passed against him in meeting of Kshettra Panchayat held on 18.08.2022.

3. The sole contention is that under clause (i) of sub-section (3) of Section 15 of U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 (hereinafter referred to as 'the Adhiniyam, 1961), the Collector is required to convene meeting for consideration of motion of no-confidence on a date appointed by him which could not be later than thirty days from the date on which notice under sub-section (2)

was delivered to him. It is contended that since the notice of intention does not mention any date and therefore, it was not possible to count the period stipulated under clause (i) of sub section (3) of Section 15 of the Adhiniyam, 1961 and therefore, all proceedings consequent thereto have been rendered illegal.

4. Respondent no. 6, who is a member of Kshettra Panchayat and was instrumental in bringing motion of no-confidence against the petitioner has filed connected Writ C No. 8088 of 2022 for a direction to the State Election Commission, U.P. to hold election to fill up the casual vacancy caused as a result of passing of no-confidence motion against the petitioner. In the said petition, an order was passed by a co-ordinate Bench on 25.08.2023 requiring learned Standing Counsel to produce the original records before the Court. In compliance of the said order, the original record is available.

5. Learned Standing Counsel submitted that the notice of intention to bring no-confidence motion was received in the Office of Collector, Unnao on 25.07.2022, as is evident from the endorsement made by him on the said application. The notice convening the meeting was issued by him on 28.07.2022 fixing 18.08.2022 and thus, it was fifteen days' clear notice, as is the requirement under clause (ii) of sub-section (3) of Section 15 of the Adhiniyam, 1961. It is urged that the date on which meeting has been convened is also not later than thirty days from the date on which the notice under sub-section (2) was delivered in the Office of the Collector, therefore, there is no illegality in the notice convening the meeting.

6. The same submission has been made by counsel for respondent no. 6.

7. Relevant part of Section 15 of the Adhiniyam, 1961 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 [Khettra 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."

8. The notice of the Collector convening the meeting is dated 28.07.2022. The meeting was convened on 18.08.2022 at 11.00 A.M. in the Office of Kshettra Panchayat. The notice thus gave clear fifteen days' time to the members.

9. The law does not require that the written notice of intention should mention date on which it was delivered. The statutory time limits prescribed under clause (i) of sub-section (3) of Section 15 is to be counted from the date on which notice under sub-section (2) was **delivered to the Collector** and not the date mentioned on the notice. The date of delivery of notice is ascertainable from the original record and which reveals that notice was received by the District Magistrate on 25.07.2022 and on the same date, he made an endorsement on the notice requiring the District Panchayat Raj Officer to submit his report. Period of thirty days for holding of meeting of no-confidence when counted from the said date was not beyond the period prescribed. Thus, we find no illegality in the written notice of intention, nor the notice given by the Collector convening meeting of no-confidence.

10. Admittedly, in pursuance of order of this Court dated 18.07.2022, the meeting was held on 18.8.2022 in which the petitioner also participated. The motion was carried with a majority of more than two-third members i.e. it was passed by 59 members from total strength of 77 members, out of which 75 members were present.

11. We are informed that although there was no restraint put by this Court to give effect to the no-confidence motion but election for the vacancy caused as a result of passing of no-confidence motion has not been held by the State Election Commission, U.P. so far and an Administrator is working.

12. Having regard to the above undisputed factual position, while dismissing the petition, we direct the State Election Commission to notify the vacancy and hold elections, without any delay.

13. Accordingly, WRIT - C No. - 5365 of 2022 stands dismissed, whereas WRIT - C No. - 8088 of 2022 stands allowed.

(Manish Kumar, J.) (Manoj Kumar Gupta, J.)

Order Date :- 26.10.2023

Nitesh