

**Court No. - 8**

**Case :-** WRIT - C No. - 5883 of 2022

**Petitioner :-** Om Prakash

**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Panchayat Raj  
Lko. And 3 Others

**Counsel for Petitioner :-** Girish Chandra Sinha

**Counsel for Respondent :-** C.S.C.

**Hon'ble Pankaj Bhatia,J.**

1. Heard learned counsel for the petitioner, learned Standing Counsel and perused the amended writ petition as well as counter affidavit and rejoinder affidavit filed by the parties.

2. The facts, in brief, are that in the elections held in respect of Village Thauri, the petitioner was elected as Gram Pradhan and 11 other persons were elected as members of the Gram Panchayat. It is alleged that subsequently, the petitioner took oath as Gram Pradhan and out of 11 members so elected, only 4 person took oath on 25.05.2021 and other persons who were elected did not take oath. Subsequently, the seats on which the other 7 members did not take oath, were declared as vacant and therefore, elections were notified in respect of 7 such members vide Notification dated 31.05.2021. It is stated that in terms of the Notification dated 31.05.2021, fresh elections were held and 7 new members were elected, however, the said remaining 7 members who did not take oath approached this Court by filing Writ Petition No.11834 (MB) of 2021 challenging the subsequent election and raising grievance that they were not allowed to take oath. During the pendency of the said writ petition, an interim order came to be passed by a Division Bench on 23.06.2021 to the following effect:

*"Heard.*

*The District Magistrate, C.D.O., Raebareli and concerned V.D.O. are present. They have been heard.*

*Learned Additional Chief Standing Counsel prays for and is granted 10 day's time to file counter affidavit in the matter.*

*The Election Commission should also file its counter affidavit in the matter, inter alia, detailing the procedure for declaration of result, issuance of certificate of election and taking oath etc. so as to facilitate adjudication of this writ petition.*

*List/ put up on 07.07.2021 as fresh amongst first five cases.*

*Office is directed to trace out the application for impleadment said to have*

*been filed by the petitioners and place it on record before the next date. Objection, if any, to the said application can be filed by the State Authorities. The same shall be considered on the next date.*

*Interim order to continue till the next date of listing with the modification that appropriate interim arrangement can be made by the District Magistrate for managing affairs of the Gaon Sabha, but, such arrangement shall include the members who have been elected and taken oath regarding whom there is no dispute.*

*No adjournment shall be granted on the next date.*

*The Officers who are present today need not appear again unless called for."*

**3.** In terms of the liberty given by the Division Bench of this Court to make interim arrangements by the District Magistrate for managing the affairs of the Gaon Sabha from amongst the members who were elected and had taken oath and from amongst the members in regards to whom there was no dispute, an order came to be passed on 06.09.2022 by the District Magistrate invoking the powers under Section 12-J of the U.P. Panchayat Raj Act (hereinafter referred to as 'the Act') holding that as an interim measure, work of the Gaon Sabha shall be discharged by Smt. Rani who was a member elected.

**4.** Challenging the said order dated 06.09.2022, the present petition has been filed by the petitioner stating that in terms of the provisions of the Act, the petitioner was elected as Gram Pradhan and the recourse to Section 12-J of the Act was wholly unjustified as none of the conditions prescribed under Section 12-J of the Act are admittedly present permitting the respondents to invoke the powers which flow in favour of the District Magistrate by virtue of Section 12-J of the Act.

**5.** It is further argued that even in terms of the liberty granted by the Division Bench of this Court in terms of the order extracted hereinabove, only steps could be taken for effective running of the Gram Panchayat by nominating either individual members or by members subsequently elected and in any case, no steps could be taken for seizing the powers which vests in the petitioner by virtue of him being elected as a Gram Pradhan.

**6.** Learned Standing Counsel, on the other hand, supports the order by arguing that in terms of the liberty granted by this Court and there being inability of the Pradhan to act for any reason whatsoever as prescribed under Section 12-J of the Act, the order impugned was passed which was also in terms of the liberty granted by the High Court in its order extracted hereinabove.

**7.** In view of the rival contentions, it is essential to notice the scheme of the U.P. Panahcyat Raj Act. The said Act was enacted to establish and develop local self-government in the rural areas of Uttar Pradesh. Section 11-A of the Act which came into effect from 1994 on the foundation of the constitutional amendments by virtue of Article 243C of Constitution, provides for appointment of a Pradhan who is to be the Chairperson. The manner of election of Pradhan is specified under Section 11-B of the Act; Section 12 of the Act provides for composition of a Gram Panchayat which shall comprise of a Pradhan and number of members as specified under Section 12(1)(c) of the Act which in the present case was to comprise of 11 members. The manner of election is specified under Section 12A. Section 12-J of the Act provides for making of temporary arrangements, if any of the disability is suffered by the elected Gram Pradhan.

Section 12-J of the Act reads as under:

*"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 for any reason whatsoever, the prescribed authority shall nominate a member of the Gram Panchayat, to discharge the duties and exercise the powers of Pradhan until such vacancy in the office of the Pradhan is filled in, or until such incapacity of Pradhan is removed."*

**8.** Section 14 of the Act confers the powers of removal of Pradhan. Section 15 of the Act provides for functions to be performed by Gram Panchayat. In terms of the scheme of the Act, it is clear that the post of Gram Pradhan is a post which is directly elected and can be taken away only when the conditions specified under Section 12-J or Section 14 of the Act are present.

**9.** In the present case, we are only concerned with the mandate of Section 12-J of the Act. On a plain reading of the provisions of Section 12-J of the Act, extracted hereinabove, it is clear that the said provision confers the power to make temporary arrangements where the office of the Pradhan is rendered vacant by reason of death, removal, resignation or otherwise or where the Pradhan is incapable to act by reason of absence, illness or for any other reason whatsoever and further powers are conferred to nominate a member of the Gram Panchayat to discharge the duties and exercise the powers of Pradhan until such vacancy in the office of the Pradhan is filled in, or until such incapacity of Pradhan ceases to exist.

**10.** In the present case, the office of the Pradhan has not been rendered vacant on account of death, removal, resignation or

otherwise as the petitioner continues to be an elected Pradhan.

**11.** As regards the incapacity of the Pradhan to act, there is no material to indicate that the Pradhan was absent or ill or any other reason existed to form an opinion or view that the Pradhan is incapable to act. Thus, there is no material on record to demonstrate the existence of any of the contingencies which triggers the exercise of powers under Section 12-J of the Constitution.

**12.** As regards the liberty granted by this Court in its order dated 23.06.2021, the liberty so granted was nothing but an interim arrangement for managing the affairs of the Gaon Sabha from amongst the elected members. The said liberty cannot be interpreted to confer any additional power over and above Section 12-J of the Act to remove the elected Pradhan as has been done by means of the impugned order. The said liberty at best conferred the power on the District Magistrate to appoint person from amongst the elected members to discharge the day to day affairs of the Gram Panchayat, however, the said power/liberty could not be misused by the District Magistrate to denude the petitioner as a Gram Pradhan of his powers conferred by virtue of the Act and that too contrary to the mandate of the Act.

**13.** It is essential to notice that the powers under Section 12-J and Section 14 of the Act are to be interpreted strictly in view of the mandate of the Constitution as well as the Act which intends to promote the local self-government and removal of an elected Pradhan would militate against the constitutional spirit as well as the statutory spirit.

**14.** For all the reasons recorded above, the impugned order dated 06.09.2022 cannot be sustained and is quashed.

**15.** The District Magistrate would be well within his power in terms of the liberty given by the Division Bench in its order dated 23.06.2021 to nominate the members for smooth functioning of the Gram Panchayat, however, the petitioner cannot be denuded of his rights to act as a Gram Pradhan.

**16.** The District Magistrate shall now take steps in terms of the liberty granted by the Division Bench in its order dated 23.06.2021 by nominating the members, however, such members shall act alongwith the petitioner as Gram Pradhan.

**17.** The writ petition is ***disposed off*** in above terms.

**Order Date :-** 29.11.2023  
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