

Court No. - 8

Case :- WRIT - C No. - 10901 of 2023

Petitioner :- Shyam Rang And 6 Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Panchayet Raj, Govt. Civil Sectt. Lko. And 4 Others

Counsel for Petitioner :- Anand Kumar Srivastava, Ritu Shukla

Counsel for Respondent :- C.S.C., Dinesh Kumar Mishra, Pankaj Gupta

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the petitioners, learned Standing Counsel for the State; Shri Dinesh Kumar Mishra, learned counsel for respondent no.5.

2. Present petition has been filed by seven petitioners alleging that respondent no.5 has been appointed as Gram Pradhan in exercise of powers under Section 12J of the U.P. Panchayat Raj Act without even considering the views of the other elected panchayat members.

3. The facts, in brief, are that one Sunil Jaiswal was earlier elected as Pradhan, however, as he was detained in custody on 12.06.2022 and the post of Pradhan became temporarily vacant, respondent no.3 has nominated respondent no.5 as an In-charge Pradhan by exercising his power under Section 12J(2) of the U.P. Panchayat Raj Act (hereinafter referred to as 'the Act') without even ascertaining the views of the other elected members. It is further argued that respondent no.5 is the brother of the Pradhan who is in detention since 12.06.2022.

4. In short, the submission is that without even ascertaining the views of the other elected members, respondent no.5 has been appointed as Gram Pradhan, which is an improper exercise of powers under Section 12J(2) of the U.P. Panchayat Raj Act. He places reliance on the Division Bench Judgement of this Court in the case of ***Shyamu v. State of U.P. & Os.; (2010) 8 ADJ 459*** wherein this Court had the occasion to analyze the mandate of Section 12J of the Act which empowers the prescribed authority to nominate an interim gram pradhan on account of there being a vacancy in the office of Pradhan.

5. Section 12J(2) of the Act was interpreted by the High Court in the case of ***Shyamu (supra)*** and following was observed:

"16. The question is whether such opinion given by the elected members would be binding on the Prescribed Authority. If such an interpretation is given, then the power exercised by the Prescribed Authority under Section

12J of the Act will have to be read subject to the opinion of other members. This would not be a correct interpretation of the law. There could be a possibility of violation of reservation policy, and/or a person may pressurise other members to propose his name, and/or the like. Directing the Prescribed Authority to accept the view of the members after the process of consultation, as to who should be the Pradhan of the village, to an extent, will be against the language of the Section. To that extent, in our opinion, the observation in the latter part of the paragraph, which we have reproduced separately, which practically holds that the view given by the elected members would be binding on the District Magistrate, would not be a proper interpretation of Section 12J of the Act and to that extent may have to be further explained. Considering the Division Bench judgment in Udaivir (supra), the Prescribed Authority, at the highest, should note the opinion of the members and thereafter proceed to nominate the Pradhan. Such a step, to some extent, will help the Prescribed Authority to know who enjoys the confidence of the members, and this will help him to make an informal choice. If an overwhelming number of members prefer a candidate, the Prescribed Authority should ordinarily, in the exercise of his powers to nominate, take that opinion into consideration if otherwise the name proposed would not be against any policy. This, in our opinion, would be a proper interpretation of Section 12J, which would not denude the power of the Prescribed Authority under the Section. The observation in Smt. Usha Singh (supra) should be read in this context."

6. He, thus, argues that the mandate of Section 12J(2) of the Act has not been followed while appointing respondent no.5 as the interim gram pradhan, which is an improper exercise of powers.

7. Learned Standing Counsel has produced instructions wherein it is stated that the power of appointment of respondent no.5 flew from the mandate of Section 12J(2) of the Act. On the basis of instructions, it is further stated that a meeting was called, however, no consensus could be reached for appointment of respondent no.5 as Pradhan or in case of any other person, thus, the power under Section 12J was exercised by the prescribed authority.

8. Learned counsel for respondent no.5 has produced photocopies of the affidavits of other elected panchayat members to argue that they were happy with the working of respondent no.5. The said photocopies of the affidavits handed over across the Bar are taken on record.

9. In view of the pleadings recorded above, what emerges is that apart from a meeting which was called prior to appointment of an interim gram pradhan, there was no material to suggest that the views of elected members was taken. Merely because the consensus could not be reached, the prescribed authority will not have unguided powers to appoint any person as an interim gram pradhan; any such exercise of power would militate against the law as clarified by this Court in the case of **Shyamu**

(supra).

10. In the present case, the seven petitioners who are the elected members have approached this Court by arguing that they never gave their views in favour of respondent no.5. As the manner in which the appointment has to be made is explained by this Court in the case of ***Shyamu (supra)***, the order of appointment of respondent no.5 cannot be sustained. As such, the impugned order dated 26.04.2023 is quashed.

11. The prescribed authority is directed to pass a fresh order after taking the recorded view of the elected members, within a period of two weeks from today i.e. by 06.01.2024.

12. In the meanwhile, as an interim measure, the prescribed authority shall run the affairs till 06.01.2024.

Order Date :- 22.12.2023

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