

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2024:AHC-LKO:79283-DB

Court No. - 2

Case :- WRIT - C No. - 10142 of 2024

Petitioner :- Ashutosh Patel And 47 Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Panchayati Raj
Deptt. Lko. And 4 Others

Counsel for Petitioner :- Vijay Dixit, Devam Shukla, Mukul Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy, J.

Hon'ble Manish Kumar, J.

1. Shri Prabhat Kumar Mishra, Advocate has filed his vakalatnama on behalf of the petitioner no. 3. The same is taken on record.
2. Shri Manish Mishra, Advocate has filed his vakalatnama on behalf of the petitioner no. 6. The same is taken on record.
3. Shri Rahul Kumar Shukla, Advocate has filed his vakalatnama on behalf of the petitioner no. 47. The same is taken on record.
4. Shri Manoj Kumar Dwivedi, Advocate has filed his vakalatnama on behalf of the opposite party no. 5 who is the Block Pramukh. The same is also taken on record.
5. Heard Shri Vijay Dixit, learned counsel for the petitioners, Shri Prabhat Kumar Mishra, learned counsel for the petitioner no. 3, Shri Manish Mishra, learned counsel for the petitioner no. 6, Shri Rahul Kumar Shukla, learned counsel for the petitioner no. 47, Shri Manoj Kumar Dwivedi, learned counsel for the opposite party no. 5 and learned Additional Chief Standing Counsel for the State.

6. By means of this writ petition the following reliefs have been sought:-

"I. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 25.10.2024, passed by opposite party number 2, contained in Annexure No. I to the writ petition;

II. Issue a writ, order or direction in the nature of mandamus commanding the opposite party number 2 to convene a meeting of the Kshettra Panchayat, Shivgarh, Pratapgarh for consideration of No Confidence Motion against opposite party number 5 in pursuance of written notice of intention strictly as per provisions of Section 15(3) of the Act of 1961;

III. Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to make suitable arrangement for video recording as well as CCTV surveillance of the meeting to ensure free and fair participation of the members in the proposed meeting of No Confidence Motion;

IV. Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to authorize some senior officer to supervise the proposed meeting of No Confidence Motion and in the alternate this Hon'ble Court may be pleased to direct any learned judicial officer of the Pratapgarh Judgeship under whose supervision the proposed meeting of No Confidence Motion may be held;"

7. On 27.11.2024 we had passed the following order:-

"1. Heard learned counsel for the petitioners and Sri Rajesh Tewari, learned Additional Chief Standing Counsel appearing for State-opposite parties no.1 to 4.

2. The contention of the petitioners' counsel is that notice under Section 15(2) of the Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 (for short 'Act, 1961') which is a notice of 'No Confidence' in the Pramukh of Kshetra Panchayat, Shivgarh has been rejected by adjudicating the validity of the notice by taking evidence as to whether the signatories to the notice are actually in favour of the motion or not, a task beyond the jurisdiction of the Collector as held by the Full Bench of this Court in the case of Sheela Devi and others Vs. State of U.P. and others, reported in 2015 (2) ADJ 325 which has been followed by a Division Bench of this Court in Writ-C No.38441 of 2019, Ram Jit Yadav and 04 others Vs. State of U.P and 02 others, wherein the judgement was delivered on 26.11.2029, against which Special Leave Petition (Civil) No.44000 of 2019, Pramukh Kshettra Panchayat Dudhahi and others Vs. State of U.P. and others, filed, as informed, has been dismissed by the Hon'ble Supreme Court on 11.12.2019

3. Let the Collector, Pratapgarh join the proceedings through Video Conferencing on 29.11.2024 and explain as to how he has exercised the jurisdiction under Section 15(2) of the Act, 1961 as the case of the petitioners is that it is in contempt of the law laid down by a Full bench of this Court in the aforesaid case as also other Division Benches of this Court.

4. Put up on 29.11.2024, as fresh.

5. Sri Rajesh Tewari, learned Additional Chief Standing Counsel shall communicate our order to the Collector, Pratapgarh for compliance."

8. Today, the District Magistrate, Pratapgarh has joined the proceedings through video conferencing which has been facilitated by Shri Rajesh Tiwari, learned Additional Chief Standing Counsel. He has

informed us that he was not aware of the Full Bench decision rendered in the case of *Sheela Devi and Ors. Vs. State of U.P. and Ors. and connected matters* reported in *AIR 2015 All 65* at the time of passing of the order and therefore, he had conducted aforesaid inquiry, however, on being aware of this, he opined that the application would have to be sent to the house for consideration as per law and he accepted that the fact that he does not have any adjudicatory power.

9. Shri Manoj Kumar Dwivedi, learned counsel for the opposite party no. 5 submitted that the Motion is fabricated one in the sense that several persons, who are said to have signed the same, have actually not signed it. He says that 39 persons have given affidavit in favour of his client.

10. Shri Prabaht Kumar Mishra, learned counsel for the petitioner no. 3 says that petitioner no. 3 has not filed this writ petition nor authorized it to be filed.

11. Learned counsel for the petitioners Shri Vijay Dixit submitted that he was anticipating such a situation considering the nature of the dispute, therefore, he had cautioned his clients in this regard whereupon he says that his client has photographs of the petitioners signing the vakalatnama. We do not wish to enter into this dispute, as, there are about 48 petitioners and only petitioners no. 3, 6 and 47 are trying to raise an alleged dispute.

12. The Dispute Magistrate after receiving the Motion expressing want of confidence in the Pramukh signed by 50 members along with their affidavit directed District Development Officer to conduct an inquiry as to the veracity of such signatures and by the impugned order he has recorded a finding that during inquiry 39 members out of total of members 70 had expressed confidence in the Pramukh.

13. Considering the facts of the case, the law is as settled by the Full Bench in the case of *Sheela Devi and Ors. Vs. State of U.P. and Ors. and*

connected matters reported in *AIR 2015 All 65* noticed hereinabove which was not taking into consideration by the District Magistrate.

14. Section 15 of the U.P. Kshettra Panchayat and Zila Panchayat Act, 1961 (hereinafter referred to as 'the Act, 1961') reads as under:-

"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.

(4) The sub-divisional officer of the sub-division in which the Kshettra Panchayat exercises jurisdiction shall preside at such meeting :

Provided that if the Kshettra Panchayat exercises jurisdiction in more than one sub-division of the sub-divisional officer cannot for any reason preside, any stipendiary additional or assistant Collector named by the Collector shall preside at the meeting.

[(4A) If within an hour from the time appointed for the meeting such officer is not present to preside at the meeting, the meeting shall stand adjourned to the date and time to be appointed by him under sub-section (4B).

(4-B) If the Officer mentioned in sub-section (4) is unable to preside at the meeting, he may, after recording his reasons, adjourn the meeting to such other date and time as he may appoint, but not later than 25 days from the date appointed for the meeting under sub-section (3). He shall without delay inform the Collector in writing of the adjournment of the meeting. The Collector shall give to the members at least ten days' notice of the next meeting in the manner prescribed under sub-section 3.]

(5) [Save as provided in sub-sections (4-A) and (4-B), a meeting] convened for the purpose of considering a motion under this section, shall not be adjourned.

(6) As soon as the meeting convened under this section commences, the Presiding Officer shall read to the Kshettra Panchayat the motion for the consideration of which the meeting has been convened and declare it to be open for debate.

(7) No debate on the motion under this section shall be adjourned.

(8) Such debate shall automatically terminate on the expiration of two hours from the time appointed for the commencement of the meeting, if it is not concluded earlier. On the conclusion of the debate or on the expiration of the said period of two hours; whichever is earlier, the motion shall be put to vote [which shall be held in the prescribed manner by secret ballot].

(9) The Presiding Officer shall not speak on the merits of the motion and he shall not be entitled to vote thereon.

(10) A copy of the minutes of the meeting, together with a copy of the motion and the result of the voting thereon, shall be forwarded forthwith on the termination of the meeting by the Presiding Officer to the State Government and to the Zila Panchayat having jurisdiction.

(11) If the motion is carried with the support of [not less than two thirds] 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 the Kshettra Panchayat.

(12) If the motion is not carried as aforesaid or if the meeting could not be held for want of quorum, no notice of any subsequent motion expressing want of confidence in the same Pramukh or Up-pramukh shall be received until after the expiration of [one year] from the date of such meeting.

(13) No notice of a motion under this section shall be received within [two years] of the assumption of office by a Pramukh or Up-pramukh, as the case may be."

15. On a bare reading of the provision the role of the Collector therein is well defined. It is a restricted role. This issue came up for consideration before the Full Bench of this Court in the case of ***Sheela Devi and Ors. Vs. State of U.P. and Ors. and connected matters*** reported in ***AIR 2015 All 65*** which was decided on 02.02.2015. The question before the Full Bench was - whether the District Magistrate or the competent authority under the U.P. Kshetra Panchayat and Zila Panchayat Act, 1961 while proceeding to entertain a notice for tabling a no confidence motion under Section 15 thereof against the Block Pramukh, can exercise his discretion for examining the genuineness or veracity of the signatures endorsed by the members, and as to whether there is a direct conflict on principles in the judgments of this Court on the issue. The said question was answered in Para 23 as under:-

"23. For these reasons, we have come to the conclusion that where a notice is delivered to the Collector under sub-section (2) of Section 15, the Collector has the discretion to determine whether the notice fulfills the essential requirements of a valid notice under sub-section (2). However, consistent with the stipulation of time enunciated in sub-section (3) of Section 15 of convening a meeting no later than thirty days from the date of delivery of the notice and of issuing at least a fifteen days' notice to all the elected members of the Kshettra Panchayat, it is not open to the Collector to launch a detailed evidentiary enquiry into the validity of the signatures which are appended to the notice. Where a finding in regard to the validity of the signatures can only be arrived at in an enquiry on the basis of evidence adduced in the course of an evidentiary hearing at a full-fledged trial, such an enquiry would be outside the purview of Section 15. The Collector does not exercise the powers of a court upon receipt of a notice and when

he transmits the notice for consideration at a meeting of the elected members of the Kshettra Panchayat. Hence, it would not be open to the Collector to resolve or enter findings of fact on seriously disputed questions such as forgery, fraud and coercion. However, consistent with the law which has been laid down by the Full Bench in Mathura Prasad Tewari's case, it is open to the Collector, having due regard to the nature and ambit of his jurisdiction under sub-section (3) to determine as to whether the requirements of a valid notice under sub-section (2) of Section 15 have been fulfilled. The proceeding before the Collector under sub-section (2) of Section 15 of the Act of 1961 is more in the nature of a summary proceeding. The Collector for the purpose of Section 15, does not have the trappings of a Court exercising jurisdiction on the basis of evidence adduced at a trial of a judicial proceeding. Whether in a given case, the Collector has transgressed the limits of his own jurisdiction is a matter which can be addressed in a challenge under Article 226 of the Constitution. We clarify that we have not provided an exhaustive enumeration or list of circumstances in which the Collector can determine the validity of the notice furnished under sub-section (2) in each case and it is for the Collector in the first instance and for the Court in the exercise of its power of judicial review, if it is moved, to determine as to whether the limits on the power of the Collector have been duly observed. The reference to the Full Bench is answered in the aforesaid terms. All the writ petitions shall now be placed before the regular Bench according to the roster of work for disposal in the light of this judgment."

16. In view of the above, as the Collector does not have the jurisdiction or power to launch a detailed evidentiary inquiry to the validity of signatures which are appended to the notice. Where a finding in regard to the validity of the signatures can only be arrived at in an enquiry on the basis of evidence adduced in the course of an evidentiary hearing at a full-fledged trial, such an enquiry would be outside the purview of Section 15.

The Collector does not exercise the powers of a court upon receipt of a notice and when he transmits the notice for consideration at a meeting of the elected members of the Kshettra Panchayat. Hence, it would not be open to the Collector to resolve or enter findings of fact on seriously disputed questions such as forgery, fraud and coercion. However, consistent with the law which has been laid down by the Full Bench in ***Mathura Prasad Tewari's case***, it is open to the Collector, having due regard to the nature and ambit of his jurisdiction under sub-section (3) to determine as to whether the requirements of a valid notice under sub-section (2) of Section 15 have been fulfilled. The proceeding before the Collector under sub-section (2) of Section 15 of the Act of 1961 is more in the nature of a summary proceeding. The Collector for the purpose of Section 15, does not have the trappings of a court exercising jurisdiction on the basis of evidence adduced at a trial of a judicial proceeding. Whether in a given case, the Collector has transgressed the limits of his own jurisdiction is a matter which can be addressed in a challenge under Article 226 of the Constitution of India.

17. The Collector has appeared before us as already noticed hereinabove and has accepted the fact that he does not have the jurisdiction to pass an order such as the one passed by him and will have to refer the matter to the House in terms of Section 15 of the Act, 1961. We have also perused the Full Bench decision of this Court rendered in the case of ***Mathura Prasad Tewari Vs. Assistant District Panchayat Officer, Faizabad and anr.*** reported in ***1966 All LJ612 (FB)***.

18. Considering the scope of proceedings under Section 15 of the Act, 1961 and the only issue involved before us as to the very jurisdiction and power of the Collector to take such a decision as is impugned herein, wherein, he has veritably decided the issue as to whether the persons who had moved the application/ Motion under Section 15 of the Act, 1961 had actually moved/signed it or not, which, he could not have done in view of

the Full Bench decision and as there is nothing in the order to show that notice is otherwise bad in law i.e. it is not in terms of Section 15(2) of the Act, 1961 and also taking into consideration the decision of the Supreme Court rendered in the case of ***Kavita Vs. State of Uttar Pradesh through Secretary and Ors.*** reported in ***(2018) 10 SCC 569*** wherein both the Full Bench decisions of this Court referred hereinabove were considered and in Para 9 thereof after taking into consideration the said Full Bench decisions it has been observed - ***In view of the above, the ground urged by the appellant that the Collector ought to have enquired into the validity of the signatures of 10 members, who subsequently filed affidavits stating that their signatures were obtained by fraud, had been justly negatived by the High Court. Hence, the impugned judgment does not warrant any interference,*** we quash the impugned order and **allow** the writ petition.

19. We further direct the Collector to act strictly in accordance with the judgment of the Full Bench referred hereinabove and the decision of the Supreme Court in the case of ***Kavita*** (supra) and do the needful positively within a period of one week from receipt of a certified copy of this judgment.

20. We must make it clear that if the Motion is sent to the house, then, any observation made herein will not come in the way in consideration of the same before the floor of the House itself, as, we have not at all recorded any opinion whatsoever as regards the signatures existing on the Motion or otherwise nor have we considered the rival contentions, as, these are issues to be decided on the floor of the House and not by the Collector nor by this Court at this stage.

(Manish Kumar,J.) (Rajan Roy,J.)

Order Date :- 29.11.2024
R.K.P.