

Case :- WRIT - C No. - 17547 of 2020

Petitioner :- Ata Nasiba And Another

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Gulrez Khan, Javed Husain Khan

Counsel for Respondent :- C.S.C., Sant Ram Sharma

Hon'ble Ashwani Kumar Mishra, J.

Heard W. H. Khan, learned Senior Counsel for the petitioner, learned Standing Counsel for the State Authorities and Sri H. N. Singh, learned Senior Counsel assisted by Sri Sant Ram Sharma, Advocate for respondent no.6.

This petition has been filed challenging an order passed by the District Magistrate, Hamirpur dated 24.7.2020, whereby the appeal preferred before the District Magistrate under Rule 3-AAA (2)(e) of the U.P. Panchayat Raj Rules, 1947 has been rejected. Challenge to this order is laid in the present writ petition filed by Smt. Ata Nasiba who is also the Pradhan of Gram Panchayat Fattepur, Tehsil Maudaha, District Hamirpur. The Gram Panchayat is also a party in the writ petition as petitioner no.2.

An objection is taken by Sri H. N. Singh, learned Senior Counsel for respondent no.6 to the maintainability of the writ petition on the ground that a writ petition by Gaon Sabha cannot be instituted through any private legal practitioner without obtaining prior permission of the Collector. Reliance is placed upon Section 72(4) of the U.P. Revenue Code, 2006.

Faced with the above objection Sri W.H. Khan, learned Senior Counsel for the petitioner submits that this petition is not pressed at the instance of petitioner no.2 and that it be entertained at the instance of petitioner no.1.

The locus of petitioner no.1 to maintain the writ petition in her individual capacity is also objected by the respondents on the ground that it is either the Pradhan or an objector who alone can institute an appeal in terms of Rule 3-AAA (2)(e) of the U.P. Panchayat Raj Rules, 1947.

Perusal of the record would go to show that an objection was raised to the notification extending the area of Nagar Palika Parishad, Maudaha on the ground that only part of the village Maudaha has been included in the notification and, therefore, the whole village cannot be ousted. It is also stated that the

entire funds of the village Panchayat have been stopped which is arbitrary.

An objection is shown to have been taken before the District Panchayat Raj Officer, Hamirpur, vide Annexure No.15 to the writ petition, which is signed by the Pradhan of Gram Panchayat, Fattepur. Petitioner no.1 though has filed the present writ petition in her personal capacity but it is undisputed that she is also the Pradhan and has been contesting before the District Panchayat Raj Officer and the District Magistrate in her capacity as Pradhan of village Panchayat, Fattepur. It appears to the Court that the filing of writ petition by petitioner no.1 is only with an intend to get over the difficulty created by the express provisions contained in Section 72 (4) of the U.P. Revenue Code, 2006 which reads as under:-

"No Gram Sabha, Gram Panchayat or Bhumi Prabandhak Samiti shall engage any legal practitioner other than one appointed under this section without prior permission of the Collector."

Once the law prohibits filing of any petition etc. by the Gaon Sabha except through the authorised counsel without permission from the Collector, it would be incumbent upon the Gaon Sabha to follow the procedure as is statutorily prescribed. The object and the provisions contained cannot be allowed to be bypassed in the manner as is sought to be attempted by the present petitioner. Section 73(1) (c) of the U.P. Revenue Code, 2006 is also relevant for the present purposes and is reproduced hereinafter:-

"Section 73 (1) In any suit or other proceedings under this Code, the Gram Panchayat shall be represented-

(c) in proceeding before the Board or the High Court by the separate Standing Counsel (Revenue) of Lucknow or Allahabad, as the case may be."

A combine reading of the above two statutory provisions makes it clear that proceedings before the High Court at the instance of Gaon Sabha can be instituted only through Standing Counsel appointed for such purposes and not otherwise. In the event this petition is entertained at the instance of petitioner no.1 then the provisions contained in the statute would clearly be bypassed. The attempt to circumvent the statutory provision by inventing a novel method is not required to be encouraged.

Learned Senior Counsel for the petitioner also places reliance upon a judgment of the Apex Court in Nandkishore Ganesh Joshi Vs. Commissioner, Municipal Corporation of Kalyan & Dombivali and others (2004) 11 SCC 417 to submit that the issue raised in the petition can otherwise be examined by the High Court treating the petition to be in public interest.

Emphasis is laid by learned Senior Counsel for the petitioner upon the following passage contained in paragraph 21 of the judgement:-

" Submission of Mr. Radhakrishnan that the Appellant has no locus standi to maintain the writ petition cannot be accepted keeping in view the fact that he was the Chairman of the Standing Committee and although the Standing Committee itself was not the writ petitioner. A question involving proper interpretation as regard the statutory provisions conferring a statutory right on a statutory authority vis-à-vis a statutory duty on the part of the Commissioner could be gone into by the High Court even in a public interest litigation."

It is otherwise on record that PIL No. 14443 of 2017 filed by certain other persons in public interest, arising out of notification extending the area of Nagar Palika Parishad, Maudaha has already been dismissed by the Division Bench of this Court on 26.3.2019. The submission advanced by Sri Khan, that the issue raised in this petition is distinct from the cause brought before the Division Bench in PIL matter need not be examined, at the instance of the present petitioner.

The jurisdiction of this Court to examine an issue in public interest, even *suo moto*, is well established. This Court, however, is of the opinion that such a course is not warranted in the facts of the present case particularly as the object is to circumvent the provisions contained in the statute itself. Even otherwise various parameters for entertaining a public interest litigation including the locus etc. has been examined by the Supreme Court in State of Uttarakhand Vs. Balwant Singh Chauhal and others (2010) 3 SCC 402 and in the event such a PIL is filed the Court will proceed to examine the locus etc. in light of the observations contained in the judgment of the Supreme Court on the basis of which the rules of the Court has already been amended. The petition otherwise has not been described as a public interest petition. It is otherwise reflected from the records that petitioner no.1 has only acted as Pradhan in raising the objection and thereafter pursuing the appeal. Her attempt to resile her status of Gram Pradhan and to institute the petition in her personal capacity, only to circumvent the provisions contained under Section 72 (4) of the U.P. Revenue Code, 2006, therefore, cannot be allowed to succeed.

Writ petition fails and is, accordingly, dismissed. Certified copy of the orders annexed with this petition shall be returned by the Registry after retaining its copy on record.

Order Date :- 2.11.2020

Abhishek Singh