

Neutral Citation No. - 2024:AHC:158545-DB

Reserved on 26.09.2024

Delivered on 27.09.2024

Court No. - 3

Case :- WRIT - C No. - 31171 of 2024

Petitioner :- Smt Phulbasa

Respondent :- District Magistrate Collector And 5 Others

Counsel for Petitioner :- Archana Singh,Saurabh Pratap Singh

Counsel for Respondent :- C.S.C.,Sadhana Dubey,Shashi Kant Shukla

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Jayant Banerji,J.

1. Counter affidavit has been filed today on behalf of the District Magistrate, the sixth respondent, which is both in official capacity and personal capacity. Another counter affidavit has been filed on behalf of the fifth respondent. Both these affidavits are taken on record.

2. Counsel for the petitioner states that he does not propose to file any rejoinder affidavits as a pure question of law is involved in this petition and, therefore, we have proceeded to hear the matter on merit.

3. Heard learned counsel for the petitioner, Shri Shashi Kant Shukla, who represents the respondent no.5 and learned Standing Counsel, who represents the remaining respondents.

4. The writ petition seeks a writ of certiorari for quashing the order dated 01.08.2024 passed by the District Magistrate, Chandauli, whereby a notice of an intention to make a motion, expressing want of no confidence in the Pramukh of Block Chahaniya, District Chandauli, the fifth respondent, filed by the petitioner and 71 elected members of the Block Development Committee has been rejected.

5. The facts of the case relevant for the purposes of writ petition are that earlier in time, a notice expressing want of no confidence in the Pramukh was moved on 04.03.2024. This notice was rejected on 15.03.2024 by the District Magistrate.

6. Against the order of the District Magistrate, Writ Petition No.11485 of 2023 was filed before this Court, which was dismissed by the order dated 10.07.2024. A copy of this order is filed along with the counter affidavit.

7. Yet another notice of an intention to make a motion of no confidence was preferred by the petitioner and 71 other persons on 18.07.2024. This notice has been rejected by the impugned order dated 01.08.2024 relying upon Section 15(12) of the U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961.

8. The impugned order records that since the earlier notice expressing no confidence moved on 04.03.2024 had been rejected by the order dated 10.07.2024 in the absence of requisite member of signatories, thereto and the order had been affirmed by the High Court. Therefore, in view of Section 15(12), a fresh notice expressing no confidence can be entertained only after the lapse of one year.

9. The impugned order has been assailed by learned counsel for the petitioner on the ground that sub-section (12) of Section 15 is not attracted in the facts of the instant case. This provision merely bars a fresh notice in case in an earlier meeting convened, the motion of no confidence is not carried, either if the meeting could not be held for want of quorum or the no confidence motion did not pass muster in the meeting, a fresh no confidence motion or a notice therefor cannot be entertained until after expiry of one year from the date of such meeting.

10. He submits that the earlier notice itself was found to be bearing signature of less than half of the persons required to move such a motion and therefore, no meeting was convened. It is only if such a meeting had been convened, would the bar of sub-section (12) of Section 15 be applicable. In case, the notice itself was defective for any reason and the same was rejected on account of such defect, the same would not bar a fresh notice of an intention expressing want of no confidence in a Pramukh.

11. The relevant provision namely sub-section (12) of Section 15 of the U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 is extracted herein below:

“(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.”

12. Learned counsel for the petitioner in support of his contention has placed reliance upon the decision of the Apex Court in Kiran Pal Singh vs. State of U.P. and Others, AIR 2018 Supreme Court 3000, especially paragraph 20, thereof and Smt. Prema Devi vs. State of U.P. and Other, 2012 (7) ADJ 606, especially paragraph 8, thereof.

13. The relevant portion of the judgment of the Apex Court in Kiran Pal Singh (supra) is extracted below:

“20. In the case at hand, there is no allegation that the meeting was convened to consider the previous notice dated 9th October, 2017, as provided in Section 15 and the motion was not challenged on any other ground or the lack of quorum. What is singularly contended is that once a notice is given under Section 15(2), another notice of no confidence shall not be received until after expiration of one year. The said submission is without any substance inasmuch as the prohibition under Section 15(12) would only come into play when there is meeting and the motion is “not carried out” as per the provisions of Section 15 or meeting could not be held for want of quorum. As the facts of the instant case would reveal that no meeting was convened to consider the previous notice dated 9th October, 2017, as per the provisions of the Act. Mere receipt of a notice by the Collector will not allow the prohibition under Section 15(12) to come into play. That is not the purpose of the provision. That being the position, the ground urged by the learned counsel for the appellant that subsection 15(12) would come into play is sans substratum. Neither of the conditions precedent is satisfied to attract the prohibition engrafted under Section 15(12) of the Act. 21.”

14. The relevant portion of the judgment in Smt. Prema Devi (supra) is also extracted herein below:

“8. However, learned counsel appearing for respondents then submitted that the notice impugned in this writ petition if set aside, it would be against public interest inasmuch as the petitioner would then be contending that no fresh motion for no confidence can be initiated for a period of one year and that would cause serious prejudice to public at large. In our view this submission has no force. When a meeting itself has not been convened validly despite delivery of notice of no confidence under sub-section (2) of Section 15 by the Collector under Section 15(3), sub-section (12) of Section 15 would not be attracted in such a case. It would apply only when meeting actually is convened but the motion is

not carrying out or the meeting though convened but for want of quorum etc. the actual business in the meeting does not take place. A similar question came up for consideration before the Division Bench in Khursheed Hussain (supra) and while considering this very provision, the Court said, when no meeting is held on account of some fault on the part of Collector in convening a meeting, committing fault in observance of provisions of sub-section (3), it would not debar a fresh motion. This Court, therefore, has no hesitation in holding that setting aside notice impugned in this writ petition would not debar the Members of Kshetra Panchayat in bringing a fresh motion. In the present case, in the facts and circumstances, as discussed above, sub-section (12) of Section 15 shall not be attracted at all.”

15. The submission of Shri Shashi Kant Shukla, learned counsel for the respondent no.5 is that the writ petition is misconceived. The order impugned is in consonance with the mandate contained in sub-section (12) of Section 15 and, therefore, the same warrants no interference. He has also vehemently argued that the judgment cited by learned counsel for the petitioner has no application in the facts of the case. He has also submitted that the judgment in the case of Prema Devi (supra) is clearly distinguishable on facts because in that case a meeting to consider the motion of no confidence was not held on account of a fault on the part of the District Magistrate. In the case at hand there was no fault on the part of the District Magistrate because the earlier notice of intention to move a no confidence motion had been rejected by the District Magistrate, which order has been affirmed up to this Court.

16. Learned Standing Counsel has also supported and reinstated the submission of Shri Shashi Kant Shukla and has supported the impugned order. He has submitted that the impugned order is in consonance with the provision of law contained in sub-section (12) of Section 15 of the Act and, therefore, writ petition merits dismissal.

17. We have considered the submissions made by learned counsel for the parties and perused the record as also the judgment cited.

18. The Court is called upon to interpret sub-section (12) of Section 15 of the U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961, which has already been extracted herein above.

19. The bar under Section 15(12), upon a bare perusal of the provision, comes into play if a motion for no confidence is not carried in a meeting convened for the purpose or if the meeting is not held for want of quorum. The relevant provision therefore contemplates failure of a meeting to be convened to consider a motion of no confidence consequent to a valid notice signed by the at least one half of the total members of the elected members of the Kshetra Panchayat is delivered in person by one of the signatories to the Collector having jurisdiction over the Kshetra Panchayat. The provisions of a valid notice are to be found in sub-section (2) of section 15. Sub-section (3) onwards, lay down the procedure to be followed once a valid notice has been presented to the Collector.

20. In our considered opinion, the words used in sub-section (12) of Section 15 namely “carried as aforesaid” occurring after the opening words “if the motion is not”, clearly refers to the procedure and the requirements of the meeting as prescribed in sub-section (3) to sub-section (11) of Section 15.

21. The second condition provided under sub-section (12) contemplates a situation where a meeting is actually held as per the procedure prescribed but is not held on account of want of quorum. Thus, if a motion of no confidence upon consideration as provided under sub-section (3) to (11) is not passed in the meeting or the meeting fixed for consideration of a motion of confidence is not held due to lack of quorum, the bar contemplated under sub-section (12) would definitely be attracted, and not otherwise. Therefore, the submission of learned counsel for the petitioner has substance.

22. For the same reason, we are unable to accept the contention of learned Standing Counsel as also the counsel appearing for the respondent no.5, the Block Pramukh, that the bar contemplated by sub-section (12) of Section 15 would apply also where the notice of an intention to make the motion is

itself invalid. This is precisely what has been held also by the Apex Court in Kiran Pal Singh (supra) as also the decision of the Co-ordinate Bench in the judgment of Smt. Prema Devi (supra).

23. It would therefore be appropriate to clarify afresh that it is only after a valid notice of intention to make a motion of no confidence is preferred and thereupon a meeting is convened and the meeting fails either for want of quorum or where the motion of no confidence does not pass muster in the meeting convened, fresh notice of an intention to make a motion of no confidence cannot be entertained for a period of one year from the date of such meeting. This bar does not apply where the notice expressing intention to make a motion of no confidence is itself defective and as a consequence, no occasion arises for convening a meeting for consideration of a motion of no confidence.

24. In view of what has been stated above, the impugned order cannot be sustained.

25. We, accordingly, allow the writ petition and quash the impugned order dated 01.08.2024, directing the District Magistrate to examine the notice expressing the intention to make a no confidence motion afresh within a period of three days from today, and in case the same is found to be signed by the requisite number of elected members of the Kshetra Panchayat, and is otherwise in order, to proceed in accordance with the procedure prescribed in Section 15 of the Act for convening a meeting for considering the motion of no confidence.

Order Date :- 27.09.2024

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