

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of case

WP. No. 633 (M/B) of 2002, decided on 31.3.2003

Smt. Brij Rani Vs. State of Uttaranchal & others

A.F.R. (Approved for reporting)

Not approved for reporting

Date 31.3.2003

Initials of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

RESERVED

Writ Petition No. 633 (M/B) of 2002

Smt. Brij Rani.....

Petitioner

V/s

State of Uttaranchal
and others

Respondents

.....

Hon. A.A.Desai, C.J.

Hon. M.M. Ghildiyal, J.

(Delivered by Hon'ble M.M. Ghildiyal, J.)

The petitioner has prayed for quashing the proceedings of the meeting dated 21.09.2002 for considering motion of no- confidence as also order dated 21.09.2002 passed by the Additional District Judge, Haridwar acting as Presiding Officer of the meeting dated 21.09.2002 convened for consideration of no- confidence motion.

The facts of the case are that the petitioner was elected as President of Zila Panchayat Haridwar on 06.08.2000. However she assumed charge of office only on 26.08.2000. Pursuant to the complaint made by one Chaudhary Rajendra Singh notice dated 31.07.2001 was issued by the State government to show cause within 15days for the allegations made in the complaint. The petitioner submitted her reply dated 14.08.2001 refuting all allegations. On 11.03.2002 an order was passed by the respondent no1 suspending administrative and financial powers of the petitioner and three members committee was constituted for exercising the powers of the Presiding. However, the said order dated 11.03.2002 was ultimately cancelled by the government vide order dated 25.05. 2002 and the administrative and financial powers of the petitioner were restored. Aggrieved by the order dated 28.05.2002 passed by the State government Sri Nazim Kureshi who was one of the member of the committee appointed for exercising administrative and financial power of the President challenged the order dated 28.05.2002 in which this court on 11.07.2002 restrained the petitioner from taking any important decisions having financial implications till further orders.

In the mean time notice under section 28 (2) of the U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 (hereinafter referred to as the Act) for formulating non- confidence motion against the petitioner was submitted before the Collector Haridwar who by order dated 05.09.2002 convened a meeting of Zila Panchayat on 21.09.2002. The petitioner challenged the order-dated 05.09.2002 by means of writ petition no.577/2002. Hon'ble court on 17.09.2002 while disposing of the writ petition held that irregularities in case, if any, can be discussed and objection, if any, may be raised in the meeting which is convened to consider the motion of no- confidence. On 21.9.2002 the meeting was held and no- confidence motion was passed against the petitioner. The petitioner has challenged this order by means of this writ petition.

Heard Sri Manoj Tiwari learned counsel for the petitioner, learned S.C. and Sri Sharad Sharma learned counsel for private respondent.

Learned counsel for the petitioner has submitted that section 28 (13) of the Act provides that no notice of the motion of no confidence shall be received within two years of the assumption of office by an Adhyaksha. Section 28 (13) reads as under:-

"No notice of a motion under this section shall be received within the (one year) of the assumption of office by an Adhyaksha or Up-Adhyaksha, as the case be."

One year has been inserted by U.P. Act no.20 of 1990. The petitioner was elected as Adhyaksha Zila Panchayat on 6.8.2000. According to the petitioner she has assumed charge of office on 26.8.2000. The notice for no confidence motion was received by the Collector on 2.9.2002 and as such in any case the petitioner had completed more than two years as President of Zila Panchayat. Therefore, this submission made by the petitioner has no force.

The petitioner further submitted that the Collector after fixing a date for convening meeting of Zila Panchayat shall give to the members notice not less than 15 days of such meeting in such manner as prescribed. Section 28(3) of the Act is quoted hereunder:-

"The Collector shall thereupon_____

- (i) convene a meeting of the Zila Panchayat for the consideration of the motion at the office of the Zila Panchayat on the 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 notice of not less than fifteen days of such meeting in such manner as prescribed."

The notice was received by the Collector on 02.09.2002. On 05.09.2002 the Collector Haridwar passed order for convening a meeting of Zila Panchayat on 21.09.2002. Thus there was clear fifteen days notice to the members.

Learned counsel for the petitioner further submitted that he was not given fifteen days time from the date of receipt of notice. The contention of the petitioner is not tenable. Actual period of 15 days is meant from issuance of notice and it has no relevance with the service of the notice. The petitioner was given clear 15 days time. The period of fifteen days notice is to be computed from the date of issue of the notice and not from the date of service because it is always possible that a person evades the service for a longer period and frustrate the holding of the meeting for passing the motion of non-confidence. In view of the above reasons the second submission of the petitioner is also not sustainable.

No confidence motion against the petitioner was carried out on 21.09.2002 and the petitioner was removed from the office of the President of Zila Panchayat Haridwar. From perusal of record, it appears that after removal of the petitioner election process for holding bye-election for the office of the President of Zila Panchayat was notified by the District Election Officer on 14.01.2003. On 04.02.2003 election was held and one Smt. Barkha has been declared elected unopposed President of Zila Panchayat Haridwar.

In view of the reasons stated above and the subsequent development the writ petition has no merit and is accordingly dismissed. No order as to costs.

(M.M. Ghildiyal, J.) (A.A. Desai, C.J.)

March 31, 2003
MPS

