



State Election Commission, Jharkhand

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ORDER:

Appeal Case No. 09 of 2017

Promit Kumar Sah Appellant

Versus

The District Panchayat Raj Officer, Sahebganj and Anr Respondents.

18.04.2018

The instant appeal has been preferred by Shri Promit Kumar Sah, Up-Mukhiya- cum - Mukhiya in-charge, Panchayat- Laxhipur, Block Rajmahal, District Sahebganj praying therein for setting aside the order contained in letter issued by the District Panchayat Raj Officer, Sahebganj vide Memo No. 880 dated 23.09.2017, whereby and where under the appellant has been removed from his post. The appellant has also prayed for setting aside the No Confidence Motion dated

27.05.2017 and also prayed for restoring his position and allowing him to continue as Up-Mukhiya of Lakhipur Panchayat.

The grounds enlisted in the memo of appeal are as under:-

- (i) There is no fulfillment of quorum as required under Section- 26(1) of the Jharkhand Panchayat Raj Act, 2001;
- (ii) No Confidence Motion signed by the members is not in accordance with Rule-3(ii) of the Jharkhand Panchayat (Gram Panchayat Ke Up-Mukhiya/Panchayat Samiti Ke Pramukh Awam Up-Pramukh/ Zila Parishad Ke Adhyaksha Awam Upadhyaksha) Ke Virudh Awiswas Prastav Sanchalan Prakriya Niyamawali, 2012;
- (iii) No Confidence Motion was said to be brought on 27.05.2017 and the meeting was held on 21.08.2017 which was much beyond the prescribed period of 15 days.

Notices were issued to the Respondents. The District Panchayat Raj Officer, Sahebganj (Respondent No.1) appeared and submitted that that on 27.05.2017 a meeting of Ward Members was held in which 14 (Fourteen) members were present and an unanimous decision regarding No Confidence was taken against the Appellant, Promit Kumar Sah, Up-Mukhiya- cum - Mukhiya in-charge, Lakhipur Panchayat, Rajmahal. It was further submitted by the District Panchayat Raj Officer, Sahebganj that the said meeting was presided over by Md. Israil, Ward Member (Ward No. 01) of Lakhipur Panchayat. Unanimous decision expressing No Confidence against Up-mukhiya- cum - Mukhiya in-charge of Lakhipur Panchayat was reviewed by the Respondent no.1- District Panchayat Raj Officer, Sahebganj in a meeting held on 21.08.2017. The said review meeting was attended by 19 members (Appellant included).



12(Twelve) members supported the No Confidence resolution taken on 27.05.2017 while 6 (Six) members expressed their support for the Appellant. The District Panchayat Raj Officer, Sahebganj could not clarify whether prior notices were issued to the members for the meeting on No Confidence Proposal and whether Block Panchayat Raj Officer examined the appropriateness or desirability of calling the meeting of Ward Members for discussion on No Confidence Motion.

Provision regarding No Confidence Motion against Up-Mukhiya as prescribed in the Jharkhand Panchayat (Gram Panchayat Ke Up-Mukhiya/Panchayat Samiti Ke Pramukh Awam Up-Pramukh/ Zila Parishad Ke Adhyaksha Awam Upadhyaksha) Ke Virudh Awiswas Prastav Sanchalan Prakriya Niyamawali, 2012 reads as follows:-

3. अविश्वास प्रस्ताव संचालन प्रक्रिया:-

(i) ग्राम पंचायत, पंचायत समिति या जिला परिषद का निर्वाचित सदस्य यथा स्थिति किसी ग्राम पंचायत के उपमुखिया, पंचायत समिति के प्रमुख एवं उप प्रमुख तथा जिला परिषद के अध्यक्ष एवं उपाध्यक्ष के विरुद्ध अविश्वास प्रस्ताव पेश कर सकता है।

(ii) क) अविश्वास प्रस्ताव पेश करने के इच्छुक सदस्य के द्वारा इसकी विधिवत सूचना संलग्न प्रपत्र- "क" भाग-I में ग्राम पंचायत/पंचायत समिति/जिला परिषद के कार्यालय में देनी होगी।

ख) अविश्वास प्रस्ताव की सूचना प्राप्त होने पर ग्राम पंचायत का सचिव, पंचायत समिति का सचिव (कार्यपालक पदाधिकारी), जिला परिषद का मुख्य कार्यपालक पदाधिकारी यथास्थिति उप नियम

(ii)(क) के तहत अविश्वास प्रस्ताव पेश करनेवाले सदस्य को सूचना प्राप्त होने की अभिस्वीकृति प्रपत्र-"क" भाग-II में देगा।



(iii) अविश्वास प्रस्ताव निर्वाचित कुल सदस्य संख्या के कम से कम एक चौथाई सदस्यों द्वारा हस्ताक्षरित एवं समर्थित होना चाहिए।

(iv) ग्राम पंचायत के उपमुखिया के विरुद्ध पेश अविश्वास प्रस्ताव का पीठासीन पदाधिकारी सहायक सचिव, पंचायत समिति होगा।.....

(v) अविश्वास प्रस्ताव की सूचना प्राप्त होने पर ग्राम पंचायत का सचिव/पंचायत समिति का सचिव(कार्यपालक पदाधिकारी) तथा जिला परिषद का मुख्य कार्यपालक पदाधिकारी यथास्थिति ग्राम पंचायत/पंचायत समिति/जिला परिषद के लिए उपरोक्त कंडिका में निहित प्रावधानानुसार पीठासीन पदाधिकारी को लिखित में सूचना देगा.....

(vi)

(vii) ग्राम पंचायत/पंचायत समिति/जिला परिषद के लिए घोषित पीठासीन पदाधिकारी अविश्वास प्रस्ताव की सूचना प्राप्त होने पर उसकी ग्राह्यता के संबंध में अपना समाधान करेगा और समाधान हो जाने पर वह यथास्थिति ग्राम पंचायत, पंचायत समिति या जिला परिषद के बैठक के लिए तारीख, समय तथा स्थान निश्चित करेगा।

(viii) ग्राम पंचायत, पंचायत समिति, जिला परिषद की पीठासीन पदाधिकारी यथास्थिति सूचना प्राप्त होने के 15 दिनों के भीतर बैठक कराने की कार्रवाई करेगा, परन्तु बैठक हेतु प्रत्येक सदस्य को बैठक आयोजित करने के सात दिन पूर्व पीठासीन पदाधिकारी द्वारा इस नियमावली में संलग्न प्रपत्र "ख" के द्वारा सूचना दी

जायेगी।

(ix) जिसके विरुद्ध अविश्वास प्रस्ताव पेश किया गया है उसे मतदान का अधिकार नहीं होगा।

(x)



(xi)

(xii)

4. उपमुखिया के विरुद्ध पेश अविश्वास प्रस्ताव:-

(i) अविश्वास प्रस्ताव पर चर्चा के लिए बुलाई गई बैठक में उस पंचायत के सदस्यों (अधिनियम की धारा 15 के प्रावधानानुसार) के कुल संख्या के तीन चौथाई से अधिक सदस्यों की उपस्थिति तथा उपस्थित सदस्यों के कम से कम तीन चौथाई बहुमत से पारित संकल्प द्वारा अविश्वास का प्रस्ताव पारित कर दिए जाने पर वह उपमुखिया जिसके विरुद्ध ऐसा प्रस्ताव यपारित किया जाता है, तत्काल प्रभाव से अपने पर पर नहीं रह जाएगा।

(ii) कोई उपमुखिया अपने विरुद्ध प्रस्ताव की चर्चा हेतु बुलाई गयी बैठक की अध्यक्षता नहीं करेगा तथा बैठक की अध्यक्षता उस पंचायत समिति के सहायक सचिव द्वारा की जाएगी।

परन्तु उप मुखिया को बैठक में बोलने या अन्यथा भाग लेने का अधिकार होगा।

(iii) थकसी उप-मुखिया के विरुद्ध अविश्वास प्रस्ताव निम्न शर्तों के अधीन पेश की जायेगी।

(क) उनके पदावधि के प्रथम वर्ष में अविश्वास प्रस्ताव नहीं लाया जाएगा।

(ख) उनके पदावधि की समाप्ति की तिथि से 6 माह पूर्व नहीं लाया जायेगा।

(ग) पूर्व के अविश्वास प्रस्ताव के नामंजूर किये जाने की तिथि के एक वर्ष के भीतर नहीं लाया जाएगा।

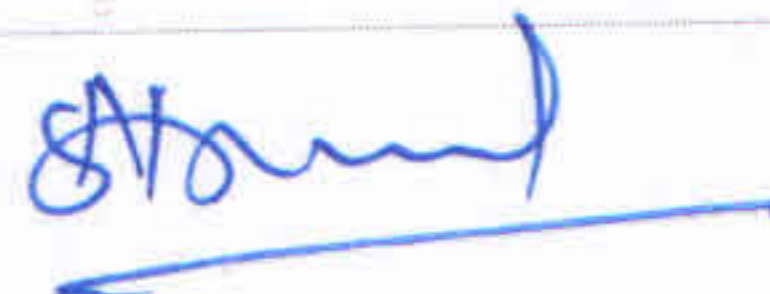
(घ) यदि यथास्थिति उपमुखिया उप नियम 4(i) के अधीन पारित किए गए प्रस्ताव की न्यायसंगता को चुनौती देने की इच्छा प्रकट करता है तो वह उस तिथि से जिस तिथि से ऐसा प्रस्ताव पारित किया गया है के 10 दिनों के भीतर राज्य निर्वाचन आयुक्त को विवाद निर्दिष्ट करेगा जो यथासंभव प्राप्ति की तिथि से 30 दिनों के भीतर उसे विनिश्चय करेगा और उसका विनिश्चय अंतिम होगा।



From perusal of the Rules mentioned above, it is clear that:-

- (i) a Member who desires to bring No Confidence Motion against Up-Mukhiya has to submit intimation to that effect in Praptra 'Ká', Bhag-I, under Rule -3(ii). Grounds for bringing any such No Confidence Proposal have to be enlisted in the said notice in Prapatra 'Ká'. One fourth of total members of the Gram Panchayat have to sign such notice as expression of their support for the proposal.
- (ii) Secretary of the Gram Panchayat (Panchayat Sewak) has to acknowledge the notice and inform the members in Prapatra 'Ká', Part-II
- (iv) Meeting for taking up No Confidence Motion against Up-Mukhiya has to be presided over by the Assistant Secretary (Block Panchayat Raj Officer). It is obligatory on the part of Secretary of the Gram Panchayat to send information to Block Panchayat Raj Officer-cum-Presiding Officer regarding such No Confidence Motion.
- (v) The Presiding Officer has to satisfy himself regarding appropriateness and desirability of taking up such No Confidence Proposal and after he is so satisfied, he will fix up date, time and place for such meeting and the members have to be informed of such meeting 7 days prior to the date on which such meeting shall be held.
- (vi) Up-Mukhiya against whom such No Confidence Motion has been taken up is entitled to put forth his point of view/ defence, if any, though he will not be entitled to cast vote.

Heard the parties and perused papers available on the record. From perusal of relevant documents it appears that provisions prescribed in Rule-3 as mentioned above were completely ignored while taking up No Confidence Proposal against the appellant. Nothing is available on record to establish that



proposal in Form "Ka", Bhag-I was given for taking up No Confidence Proposal against the appellant. There is nothing on record to show that prior notice was not issued to the members as required under Rule-3 (viii) of the Rule, 2012 nor is there any evidence to establish that the meeting was called for after the Assistant Secretary, Panchayat Samiti satisfied himself regarding the desirability or appropriateness of taking up No Confidence Proposal. The Assistant Secretary, Panchayat Samiti (Block Panchayat Raj Officer) did not preside over the meeting rather it was presided over by Md. Israil, Ward Member (Ward No. 01) of Lakhipur Panchayat. Clearly, No Confidence Resolution against the appellant passed on 27.05.2017 in impromptu meeting of the ward members does not legally sustain as it is violative of the procedure prescribed in Rule-3 mentioned above. Subsequently the District Panchayat Raj Officer, Sahebganj called a meeting of Ward Members on 21.8.2017 for review of the said No Confidence Resolution. This meeting was attended by 19 members including the appellant, of whom 12 members supported the No Confidence Resolution taken on 27.5.2017. There is no provision for such review of No Confidence Motion in the Jharkhand Panchayat Raj Act, 2001 and Rules framed thereunder. It is a settled principle of law that if a Statute prescribes certain act to be done in certain prescribed manner, that action has to be done in that prescribed manner only or not at all.

In the present instance not only No Confidence passed on 27.5.2017 was without any legal basis, but also subsequent decision taken for review was also devoid of legal or procedural backing. It is very surprising that report called for from the District Election Officer (Panchayat)-cum-Deputy Commissioner, Sahebganj vide letter no. 1038 dated 2.11.2017 and subsequent reminder issued vide letter no. 1097 dated 14.11.2017 and letter No. 1245 dated 13.12.2017 also remained unanswered till date. Perhaps,



any report in the matter would have further exposed the illegality in passing of No Confidence Resolution against the appellant.

In that view of the matter, No Confidence Resolution dated 27.5.2017 and subsequent decision in the meeting presided over by the District Panchayat Raj Officer, Sahebganj and communicated vide letter no. 880 dated 23.09.2017 do not legally sustain, and therefore, both are hereby quashed. Resultantly, the Appellant, Promit Kumar Sah is restored to his original post of Up-Mukhiya, Lakhipur Panchayat, Block Rajmahal, District Sahebganj, with immediate effect and allowed to function as such.

Of late, many instances have come to the notice of the Commission in which No Confidence Resolutions have been passed without properly observing the procedure prescribed in the Act and Rules. The Secretary, State Election Commission is hereby directed to issue instruction to all the Deputy Commissioners and concerned officials impressing upon them to ensure that provisions of the Act and the Rules framed thereunder are properly followed while taking up proposal for No Confidence Motion against the office bearers at different tiers of Local Self Government.

Copy of this order be sent to all concerned.

Dictated and corrected by me.



State Election Commissioner,

Jharkhand



State Election Commissioner,

