

ALLAHABAD HIGH COURT

Asst. District Panchayat Officer

Vs.

Jai Narain Pradhan

Special Appeal No. 85 of 1965. against judgment of G.D. Sahgal, J. in W.P. No.683 of 1963

(V. Bhargava, C.J. and Lakshmi Prasad, J.)

27.07.1965. 18.03.1966

JUDGMENT

Bhargava, C. J.

1. This special appeal has been filed by the Assistant District Panchayat Officer, Rai Bareli, Assistant Development Officer, Rahi, Rai Bareli, the District Panchayat Officer, Rai Bareli, and the State of Uttar Pradesh against a judgment of a learned Single Judge of this Court allowing a petition filed by respondent Jai Narain under Article 226 of the Constitution and quashing an order of appellant No. 1 dated 21st August 1963, directing the holding of a meeting to consider a no-confidence motion which was presented by five members of the Gram Sabha before appellant No. 2, having been signed by more than half the number of members. When this special appeal came up for hearing, a preliminary objection was raised on behalf of the respondent that the appeal had not been properly filed as it was filed under the signature of the Standing Counsel, who merely had authority to appear and plead on behalf of the appellants but was not entitled to act on their behalf. It appears from a notification reproduced in annexure C of the Legal Remembrancer's Manual that the Standing Counsel was appointed to act for the State Government as well as for public officers in the service of the State Government in all judicial proceedings pending before the High Court if the defense of the public officers was undertaken on their behalf by the State Government. This notification was issued in pursuance of rules 2 and 8 and clause (c) of rule 8-B of Order 27 of the first schedule to the Code of Civil Procedure, 1908. This notification makes it clear that the Standing Counsel was entitled to act on behalf of the appellants in all judicial proceedings to which the provisions of the Code of Civil Procedure are applicable. We may at this stage take

notice of the submission that there is in this case no specific assertion that the defense in the writ petition or in this special appeal was undertaken by the State Government on behalf of the appellants Nos. 1 to 3, but we consider that on this point no specific assertion was needed. The very fact that the Standing Counsel was instructed to appear and did appear on behalf of these three appellants also in the writ petition and has also filed the appeal on their behalf, shows that their defense was also undertaken by the State Government. No positive assertion on this point could be made because this ground, which depended partly on a question of fact, was not raised at any earlier stage and was raised here for the first time during the course of the hearing of arguments in this special appeal. In the circumstances, we are inclined to accept the submission made by the Standing Counsel that the defense of appellants Nos. 1 to 3 in the writ petition was undertaken by the State Government and, therefore, he is entitled to act on behalf of those three appellants just as he is entitled to act on behalf of the State of Uttar Pradesh.

The learned counsel, however, urged that this notification authorizes the Standing Counsel to act on behalf of the appellants only in proceedings to which the provisions of Code of Civil Procedure are applicable; while, to a petition under Article 226 of the Constitution and a special appeal arising out of it, the Code of Civil Procedure does not apply. It appears to us that proceedings started by a petition under Article 226 of the Constitution, if they relate to a civil right, must be held to be civil proceedings to which the provisions of Code of Civil Procedure are applicable. That the proceedings in a High Court on a petition under Article 226 of the Constitution, when they relate to civil rights are civil proceedings has already been decided by the Supreme Court in *S. A. L. Narayan Row v. Ishwarlal Bhagwan Das*.¹ Being a civil proceeding, the provisions of the Code of Civil Procedure would apply to it under section 141 of the Code of Civil Procedure, in so far as the provisions of the Code of Civil Procedure can be made applicable. This last qualifying clause means that the provisions of the Code of Civil Procedure would apply to the proceedings under Article 226 of the Constitution except to the extent to which their applicability may be affected by the Rules of Court or any special law or rule applicable to these proceedings. In the matter of representation of the State Government and public officers in proceedings under Article 226 of the Constitution, there is no specific rule either in the Rules of Court or anywhere else and consequently, we must hold that the provisions of Order 27 of the Code of Civil Procedure will govern such a matter. In these circumstances, it must be held that the learned Standing Counsel was competent to act on behalf of the four appellants. Being competent to act on behalf of the four appellants in the proceedings

relating to the petition he is also competent to act on their behalf in the special, appeal, which arises out of those proceedings so that the preliminary objection fails.

2. We then come to the main point raised in this case on behalf of the respondent which has been accepted by the learned Single Judge for allowing the petition. It appears that in this case the notice of motion was presented under rule 33-B (1) of the Panchayat Raj Rules to the District Panchayat Officer appellant no. 3 and subsequently it was the Assistant Panchayat Officer, appellant no. 1 who passed orders under rule 33-B (2) fixing the date for holding the meeting and appointing appellant no. 2 to preside in that. The point raised was that the notice of motion having been presented to appellant no. 3, the District Panchayat Officer, he was the only officer competent to take further action under rule 33-B (2) and this submission has been accepted by the learned Single Judge.

3. We are unable to agree with the view taken by the learned Single Judge. We do not think that there is anything specific in rule 33-B (1) (2) which requires that the same individual before whom the notice of motion is presented must take the further action under sub-rule (2). Under section 2 (q) of the Panchayat Raj Act, the State Government is empowered to notify the prescribed Authority whether generally or for any particular purpose in respect of any of the provisions of the Panchayat Raj Act. It is not disputed that for the purposes of rule 33-B (1) and (2) the prescribed Authorities notified as such were both the Assistant District Panchayat Officer as well as the District Panchayat Officer. Consequently, both appellant no. 1 as well as appellant no. 3 were prescribed Authorities for the purposes of Sub-rules (1) and (2) of rule 33-B. In these circumstances, either of them could competently act under any of these two sub-rules.

4. In the present case, the notice of motion was presented before appellant no. 3 in his capacity as the prescribed Authority. Once that presentation was made competently by five members and the motion was otherwise in order, the action which had to be taken under sub-rule (1) of Rule 33-B was complete. Thereafter, under that sub-rule, no further action was required to be taken by the prescribed Authority. Subsequent to that presentation, action had to be taken for the purposes of holding a meeting under sub-rule (2) of rule 33-B. That sub-rule specifically mentions that that action has to be taken after the receipt of the notice. When an action has to be taken after the receipt of

the notice it cannot be held that that subsequent action is in any way in continuation of the previous action. It is only an action consequent upon the earlier act. The earlier act of proper presentation being over, the subsequent act of convening the meeting could be taken by the prescribed Authority competently in exercise of the powers conferred on the Authority by Sub-rule (2) of rule 33-B. This exactly what was done in the present case.

The Assistant District Panchayat Officer was also a competent authority for the purpose of sub-rule (2) of rule 33-B and he, in convening the meeting, only exercised the powers vested in him in his capacity as prescribed Authority. Sub-rules (1) and (2) of rule 33-B did not contain any limitation in their language that the particular individual acting as the prescribed Authority under sub-rule (1) must be the same who must take the further action under sub-rule (2). In fact, a situation can easily be envisaged where a notice of no confidence motion is presented to a particular individual who is a prescribed Authority, but before he can pass orders convening the meeting under sub-rule (2), he may die or for any other reason may cease to function as a prescribed Authority. We do not think that in these circumstances the successor, who becomes the prescribed Authority, will not be competent to take action under sub-rule (2) of rule 33-B.

It appears that sub-rules (1) and (2) of rule 33-B are not concerned with the identity of the individual action as prescribed Authority at all and that is why there is no specific mention of the individuality of that authority. All that is needed is that, under each sub-rule, the person acting must be a prescribed Authority under the U. P. Panchayat Raj Act for the purpose of this rule, and, since in this case both the District Panchayat Officer and the Assistant District Panchayat Officer were prescribed Authorities, either of them could perform the duties under sub-rules (1) and (2). In performing those duties, either of them could discharge both the duties or in the alternative either one of them could discharge one duty and the other the other duty. We are unable to agree with the decision of the learned Single Judge that the notice issued by appellant no. 1 on a notice of motion of no confidence presented to appellant no. 3 was invalid.

5. We may further add that in this case nothing has appeared before us which would indicate that, even if there was a slight irregularity in the calling of the meeting inasmuch as the meeting was convened by appellant no. 1 instead of appellant no. 3, any prejudice has been caused to the respondent. While no prejudice was caused, it was not an appropriate case where this Court should have exercised its writ jurisdiction to interfere. It was a mere technical defect and the equitable writ

jurisdiction is not to be exercised purely for the purpose of unsettling acts done even though they have not resulted in any injustice to any party.

6. For all the reasons we allow this special appeal, set aside the order of the learned Single Judge and dismiss the petition filed by the respondent. The appellants will be entitled to their costs of the petition as well as the special appeal.

Appeal allowed.

Cases Referred.

1. AIR 1965 SC 1818