

A.F.R.

Court No. - 32

Case :- WRIT - C No. - 13665 of 2020

Petitioner :- Tripti Rani

Respondent :- State Of U P And 5 Others

Counsel for Petitioner :- Atiqur Rahman Siddiqui, Rakesh Pande (Senior Adv.), Vishakha Pande

Counsel for Respondent :- C.S.C., D.C. Mathur

Hon'ble Shashi Kant Gupta, J.

Hon'ble Piyush Agrawal, J.

1. This writ petition has been filed, inter alia, for the following reliefs;

i. Issue a writ, order or direction in the nature of certiorari quashing the impugned order/notice dated 21.08.2020 (Annexure No. 3 to the writ petition) passed by Collector, Bijnor.

ii. Issue a writ, order or direction in the nature of mandamus directing the respondent no. 1 to initiate appropriate against the District Magistrate/Collector, Bijnor for violation of mandatory instructions issued under the Disaster Management Act, 2005.

2. The petitioner is the Pramukh of the Kotwali Kshetra Panchayat, Bijnor. The petitioner assumed the charge of Pramukh on 29.07.2019. On 21.08.2020, a no confidence motion, as per section 15 of the Uttar Pradesh Kshetra Panchayat & Zila Panchayat Act, 1961 (hereinafter referred to as, 'the Act of 1961'), was made in accordance with the procedure laid down under the Act of 1961.

3. In pursuance of the no confidence motion, the District Magistrate, Bijnor issued a notice dated 21.08.2020 convening a meeting for consideration of the motion of no confidence on 15.09.2020 at 11.00 a.m. at the Kotwali Kshetra Panchayat Office. In view of the aforesaid notice of the District Magistrate, Bijnor, a

meeting for consideration of no confidence motion is to be held at 11.00 a.m. on 15.09.2020.

4. It is contended by the learned counsel for the petitioner that since there are about 185 Members in the Kotwali Kshetra Panchayat, District – Bijnor, they exceed the number of persons permitted under the Guidelines for Phased Re-opening (Unlock-4) issued by the Ministry of Home Affairs, Government of India on 29.08.2020. It was further submitted that in view of the aforesaid Guidelines, the proposed meeting for consideration of no confidence motion cannot be convened on 15.09.2020 since it would be in violation of the provisions of the Disaster Management Act.

5. Per contra, learned counsel for the respondents submitted that convening the meeting for the purposes of consideration of no confidence motion cannot be said to be a political function and in order to buttress the submission, he has further stated that sessions of Parliament have also been convened during this period of the pandemic. Similarly, amid the pandemic, Rajasthan Assembly, having more than 200 Members, was also convened for considering a no confidence motion. As such, there is no legal impediment in convening such a meeting.

6. Learned counsel has also brought to the notice of this Court that number of exams have also been held during the period of COVID-19 where a large number of students appeared in the examinations. Thus, the contention of the learned counsel for the respondents is that there is no prohibition to hold such statutory meeting for consideration of a no confidence motion. It is further submitted that a meeting can be held by adhering to the safety

norms as stipulated by the Government.

7. Heard Shri Rakesh Pandey, learned Senior Counsel, assisted by Shri Atiqur Rahman Siddiqui, learned counsel for the petitioner; Shri D.C. Mathur, learned counsel for the respondent nos. 4 & 5; Shri Amit Manohar Sahay, learned standing counsel for the State - respondents and Shri Kharag Singh and Shri Brij Kumar Saroj, learned counsel for the caveator - Jasram Singh and perused the record.

8. It is true that the Central Government has issued the Guidelines for Phased Re-opening (Unlock-4) and in clause 1(iii) thereof, it has been mentioned that social/ academic/ sports/ entertainment/ cultural/ religious/ political functions and other congregations with a ceiling of 100 persons will be permitted with effect from 21st September, 2020, with mandatory wearing of face masks, social distancing, provision for thermal scanning and hand wash or sanitizers.

9. During the COVID-19 pandemic, everybody has to act with utmost caution so that the spread of infection may be curtailed as much as possible.

10. The Act of 1961 provides for local self-governance where the people of Gaon Sabhas have been given the right to manage their own affairs and perform governmental function through a democratic process, under which they have been given the right to elect a Pradhan and remove him by passing a motion of no confidence. Election and removal by a motion of no-confidence are two important aspects in democratic set-up for which the Act of 1961 has made ample provisions.

11. Democracy is a system of government in which a country's political leaders are chosen by the people in regular, free, and fair elections. In a democracy, people have a choice between different candidates and parties who want the power to govern. The people are sovereign. They are the highest authority and government is based on the will of the people. Elected representatives at the national and local levels must listen to the people and be responsive to their needs. Thus, the voters have right to elect their representatives and also criticize and replace them if they do not perform well.

12. In view of the above inherent political philosophy and principle, the provision for bringing a no confidence motion for removing the representatives, has been introduced in the present Act of 1961. The Will of people is supreme. It cannot be lightly interfered with. Under no circumstance can the will of the people be permitted to be frustrated. In a democratic set up where right to govern depends on the will of the people, the person who has lost the majority cannot be permitted to hold office. If a representative no longer enjoys the confidence of the people, elected representatives have a right to remove him and he cannot be permitted to remain in power even for a second and has to be immediately replaced by a newly elected representative.

13. Therefore, considering the facts & circumstances of the case, we direct the District Magistrate, Bijnor to ensure all the protocols applicable for social and physical distancing are adhered to. The sitting arrangements be made in such a manner so that it may adhere to the prescribed norms. The District Magistrate, Bijnor may also explore the possibility of seating the Members of the Kotwali Kshetra Panchayat in two or three separate rooms, a big

hall or in open space. The Authority concerned may also explore the possibility of holding a virtual session, with the help of modern technological tools.

14. The District Magistrate or his representative, who would be present on the spot, will be the best person to understand the ground reality for holding the proposed no confidence motion in the best possible manner, and we hope and trust he would ensure that all the protocols, as prescribed under the guidelines and norms issued by the State and Central Governments and the observations made hereinabove, would be followed.

15. At a time, when the State is reeling from a monstrous pandemic, it is imperative that detailed modalities for holding statutory meetings of local bodies, including those for considering 'No Confidence Motions', are put in place and implemented. Accordingly, we direct the State Government to consider framing detailed Guidelines in this regard, expeditiously, if possible, within a period of three weeks from today. A copy of this order be sent to the Chief Secretary for its necessary compliance.

16. In view of the aforesaid discussions, we do not see any justification to interfere in the matter. The writ petition lacks merit and it is hereby dismissed.

Order Date :- 10.9.2020

Amit Mishra