

(2002) 02 AHC CK 0017

In the Allahabad High Court

Case No : C.M.W.P. No's. 23928 of 1998 and 40892 of 1999

Algu

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Uttar Pradesh Municipal Board Surcharge Rules, 1948 — Rule 3, 4, 6
Uttar Pradesh Municipalities Act, 1916 — Section 81

Citation : (2002) 3 AWC 2530 : (2002) 3 UPLBEC 2717

Hon'ble Judges : R.B. Misra, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Rakesh Pandey, for the Appellant; Anil Kumar Misra, S.C., for the Respondent

Final Decision : Allowed

Judgement

G. P. Mathur and R. B. Misra, JJ.—This writ petition under Article 226 of the Constitution has been filed praying that the order dated 7.7.1998 passed by District Magistrate, Azamgarh for recovery of amount of Rs. 78,278.52 p. from the petitioner as arrears of land revenue be quashed. A further prayer has been made that the respondents may be restrained from taking any coercive measure to recover the amount from the petitioner.

2. The petitioner was President of Nagar Panchayat, Nizamabad. In the District of Azamgarh during the year 1992-93. The accounts of the Nagar Panchayat were audited by the Examiner, Local Funds Accounts. U. P. and an audit report was prepared. According to the said report, the petitioner was responsible for misappropriation and misutilisation of a sum of Rs. 78,278.52 p. The District Magistrate by his order dated 10.7.1996. Issued a notice to the petitioner to show cause as to why the said amount may not be recovered from him. The petitioner himself did not give any reply to the notice. However, the then President of Nagar Panchayat, Nizamabad, namely, Smt. Madhuri gave a reply to the notice. Thereafter the District Magistrate. Azamgarh passed an order dated

7.7.1998 directing that the amount of Rs. 78.278.52. be recovered from the petitioner as arrears of land revenue. It is this order, which has been challenged in the present writ petition,

3. Sri Rakesh Pandey, learned counsel for the petitioner has submitted that the procedure followed by the respondents for recovery of the amount, is wholly illegal and the District Magistrate has no authority in law to recover the amount from an erstwhile President of the Nagar Panchayat on the basis of the report of Examiner, Local Funds Accounts, U. P. The stand taken in the counter-affidavit is that the amount could be recovered under the provisions of Public Accountants Defaults Act. 1850. However, during the course of arguments, learned standing counsel has submitted that in view of Section 81 of U. P. Municipalities Act, any loss, wastage or misapplication of the money or property of a Municipal Board can be recovered from the President, Vice-President and every member, officer and servant of the Municipal Board if the same has been caused as a direct consequence of his neglect or misconduct. He has further submitted that in view of Sub-section (2) of Section 81. such an amount can be recovered as arrears of land revenue.

4. Section 81 of U. P. Municipalities Act. clearly provides that a President of the Municipal Board shall be liable to surcharge for the loss, wastage and misapplication of any money or property of the Municipality if such loss, wastage or misapplication is a direct consequence of his neglect or misconduct while acting as such President. Therefore, in view of (his provision, any loss or wastage or misapplication of money or property of the Municipality, if it has been caused as a direct consequence of neglect or misconduct of the President, can be recovered from him. The procedure for recovery of amount has been provided in U. P. Municipal Board Surcharge Rules, 1948. Rule 3 of the Rules provides that in any case where the Examiner, Local Funds Accounts, U. P. considers that there has been a loss, wastage or misuse of any money or other property belonging to the Board as a direct consequence of the misconduct or negligence of the President, he may call upon the President to explain in writing why such President should not be surcharged with the amount misused or which represents the loss or wastage caused to the Board or to its property. Rule 4 provides that the Examiner shall submit all the papers to the Government which shall consider the matter and pass order of surcharge against the President. Rule 6 provides that the President who has been surcharged shall pay the amount for which he has been surcharged within 3 months from the date of communication by the Government or the Examiner as the case may be. The facts of the present case show that the petitioner did not personally submit any explanation but an explanation was submitted by the then President of the Nagar Panchayat. The explanation has not been examined and considered by the State Government and straightway, the Collector has issued the recovery certificate. The procedure followed in Issuance of recovery certificate against the petitioner is not in accordance with the Rules. It is averred in paragraph 4 of the writ petition that the explanation submitted by the current President of the Nagar Panchayat may

be treated to be that on behalf of the petitioner. Learned counsel for the petitioner has also made a statement that the explanation of the current President may be treated to have been filed by the petitioner himself. We are, therefore, of the opinion that the explanation given by the current President should be considered by the State Government in accordance with the Rules and thereafter, a final order should be passed.

5. In the result, the writ petition succeeds and is hereby allowed. The order passed by the District Magistrate, Azamgarh, dated 7,7.1998 (Annexure-3 to the writ petition) is quashed. The Examiner, Local Funds Accounts shall submit the explanation of the current President of the Nagar Panchayat along with his report and other papers to the State Government in accordance with Rule 4 and thereafter the State Government will pass a final order in the matter. The Examiner may forward the necessary papers to the State Government within one month of production of certified copy of this order before him and the State Government may pass final orders within two months of receipt of the papers.

6. The petitioner has already deposited the amount of Rs. 78,278.52 p. After the order of the State Government has been passed, necessary adjustment of the aforesaid amount shall be made and if the petitioner is found entitled to refund of any amount, the same shall be refunded to him.