

(1999) 12 AHC CK 0078

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32072 of 1997 and C.M.W.P. Nos. 25547 & 38722 of 1999

Bhikham Kharwar : Bhikham Kharwar : Rakesh Kumar Pandey APPELLANT
Vs

State of U.P.& Ors.: District Magistrate Chandauli & Ors. RESPONDENT

Date of Decision : 20-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Panchayat Raj Act, 1947 — Section 95(1)(g)(a), 95(1)(g)(iii)

Citation : (1999) 12 AHC CK 0078

Hon'ble Judges : S.K.Phaujdar, J

Final Decision : Disposed Of

Judgement

S. K. Phaujdar; J.

1. The three writ petitions were, taken up for hearing together as the primary question involved . in this writ petition is the cancellation of caste certificate of Bhikham Kharwar. He was given a caste certificate by the Tehsildar Chakiya, Chandauli, on 21/11/1994 certifying him to have belonged to Khatwar community, a schedule caste. On the basis of this certificate he contested an election for the post of the Pradhan of a gram panchayat and candidature therein was reserved for scheduled caste candidates only. He was elected as the Pradhan. Subsequent to this election certain persons questioned his caste and upon an enquiry it was found that he belonged to Kaharsect, a backward class but not scheduled caste. Caste certificate was cancelled by Tehsildar on 5/9/1997 pursuant to an order of the, District Magistrate dated 28/8/1997.

2. The cancellation of the caste certificate has been challenged in Civil Misc. Writ Petition No. 32072. of 1997 on the ground that he was not given any hearing .before cancellation of his caste certificate and the concerned authorities had no right to cancel the caste certificate once given.

3. As a consequence to the cancellation of the caste certificate the District

Magistrate took an action under Section 95(1)(g), of the U.P. Panchayat Raj Act in removing the Pradhan and the order in this respect was passed on 1061999. This order of removal was challenged in Civil Misc. Writ Petition No. 25547 of 1999 by Bhikham Kharwar on the ground that the provisions of Section 95(1)(g), and the Rules under the U.P. Panchayat Raj (Removal of Pradhan, UpPradhan and .members) Rules were not followed. This petition was contested" not only by the State but also by R.K. Pandey who was the UpPradhan, put in charge of the post of the Pradhan after the removal of Bhikham Kharwar.

4. After the removal of the Pradhan by an order dated 1061999 a direction was issued on 1461999 to make over the charge of the office of the Pradhan to the UpPradhan within three days. The UpPradhan. made out a case that the charge was made over to him as, directed. In the meantime, there had been an interim order in the second mentioned writ petition staying the operation of the order dated 1061999. When this order, reached the .authorities charge was taken away from R.K. Pandey and was placed in the hands of Bhikham Kharwar again. Being aggrieved, R.K. Pandey moved the third writ petition to say that the interim order could not have nullified the accomplished fact of charge having been made over to him. This prayer was contested by Bhikham Kharwar. The State was also heard.

5. In the first mentioned writ petition the question that arises for determination is whether the cancellation was made according to law and the point raised by the petitioner was to the effect that he was not heard at all and on this point reliance was placed on a decision of the Supreme Court in the case of Guizar Singh v. SubDivisional Magistrate and another as reported in (1999) 3 SCC at page 107. The learned counsel for R.K. Pandey pointed out to certain admission of by Bhikham Kharwar in Annexure No. 15 to his second mentioned writ petition wherein .he had admitted to have shown cause before the UpZila Adhikari. A perusal of paragraph 10 of Annexure No 15 to the Writ Petition No. 25547 of 1999 indicates that the petitioner had placed his evidence before the UpZila Adhikari but the same were not .acted upon. It appears that when the complaint regarding the caste of Bhikham Kharwar was made before the District Magistrate, he caused an enquiry to be conducted and the enquiry revealed, as per Annexure No. 1 to the amendment petition filed in Writ Petition No. 32072 of 1997, that the earlier certificate, certifying Bhikham Kharwar as belonging to Kharwar caste was based merely on the revenue . record and. basically the record had indicated his caste as "Kahar" but only in 199495 it was abruptly changed to "Kharwar". Enquiry revealed that the papers were tampered with to indicate the caste as Kharwar. From an enquiry of the records only, the earlier certificate was cancelled. If an officer is authorised to issue a caste certificate, it must be deemed to be an in built power in him to cancel the certificate obtained from him on misrepresentation of fact. Thus the authority exercised by the officer in cancelling the caste certificate may not be challenged. The Supreme Court decision in the case of Gulzar Singh stated that when the appellant was issued a caste certificate any action towards cancellation thereof should have been taken

after giving him an opportunity of showing cause on the principles of the natural justice and audi alterem partem. In this case papers are not there to indicate whether the show cause was demanded from him or not. But he will be bound by his own admission in the concerned second Writ Petition No. 25547 of 1999 wherein he had accepted that he appeared before the UpZila Adhikari. The learned counsel for the petitioner proposed to indicate that this was in respect of the order of his removal but the trend of submissions indicate that it related to the cancellation of the caste certificate only. That suggest that he had very much taken part in the proceeding before his caste certificate was cancelled and it is not for the writ Court to determine which caste he belongs to. The authorities competent determine that disputed question had arrived at a conclusion on the basis of document both for grant and for cancellation and materials indicate further that the petitioner had an opportunity of presenting his case before the authorities. There was thus no violation of the principles of natural justice and the petition was not condemned without hearing. Seen in this light the order of cancellation cannot be interfered with. This answers the controversy in Writ Petition No. 32072 of 1997.

6. Even with this back ground a question still remains in Writ Petition No. 25547 of 1999 whether the removal of the Pradhan was made according to law and following the procedure. It was contended by the learned counsel of R.K. Pandey that Section 95(1)(g)(iiia), provided for removal of a Pradhan if he stood elected on a false declaration of his caste and the District Magistrate was within his competence to remove a Pradhan. The power of the District Magistrate to remove the Pradhan upon such allegation is not disputed but the law requires a particular course to be followed. In this respect the

U.P. Panchayat Raj (Removal of Pradhan, UpPradhan and Members) Enquiry Rule, 1997 maybe looked into. These Rules have been made in exercise of powers conferred by Section 110, read with clause (g) of subsection (1), of Section 95 of the U.P. Panchayat Raj Act. Rules 3, 4, 5 and 6 are relevant in respect of complaint, preliminary enquiry and financial enquiry into a matter. For this reason, we must back to the provision to Section 95(1)(g) of the Panchayat Raj Act itself. The proviso to this section speaks that where in an enquiry held by such person and in such manner as maybe prescribed, a Pradhan or UpPradhan is prima facie found to have committed financial and other irregularities, such Pradhan or UpPradhan shall cease to exercise and perform the financial and administrative powers and functions, which shall, until he is exonerated of the charges in the final enquiry, be exercised and performed by a Committee consisting of three members of Gram Panchayat appointed by the State Government. A further proviso says that no action shall be taken under Clause (I) and Clause (g), except after giving to the Pradhan a reasonable opportunity to show cause against action proposed. The learned counsel for R.K. Pandey submitted that subsection (3) to Section 95, provided that no order made by the State Government under Section 95, shall be called in question in any Court. If the term "any Court" excluded the writ jurisdiction of the High Court that would

be taking away a valuable right of a person aggrieved by an arbitrary act of the State. Subsection (3), must not, therefore, be meant to exclude even a writ petition challenging an order under Section 95.

7. A question could arise whether the enquiry sought of under the first proviso to Section 95(1)(g), would be concerned with financial and other irregularities only. Section 95, permits the State Government (meaning acting through the District Magistrate) to hold inspection and require production of books etc. by the Gram Panchayat in exercise of external control over the panchayat and even removing a Pradhan on the grounds mentioned in different clauses of Section 95 (1)(g), as quoted below:

"Remove a Pradhan, UpPradhan or member of Gram Panchayat or a Joint Committee or Bhumi Prabandhak Samiti or a Panch, Sahayak Sarpanch or Sarpanch of a Nyaya Panchayat if he,

(i) absence himself without sufficient cause from more than three consecutive meetings or sittings,

(ii) refuses to act or becomes incapable of acting for any reason whatsoever or if he is accused of or charged for an offence involving moral turpitude,

(iii) has abused his position as such or has persistently failed to perform the duties imposed by this Act or rules made thereunder or his continuance as such is not desirable in public interest,

(iiia) has taken the benefit of reservation under subsection (2), of Section 11A, or subsection (5). of Section 12. as the case may be, on the basis of a false declaration subscribed by him slating that he is a member of the Scheduled Castes, the Scheduled Tribes or the Backward classes, as the case may be,

(iv) being a Sahayak Sarpanch or a Sarpanch of the Nyaya Panchayat takes active part in politics, or

(v) suffers from any of the disqualifications mentioned in clauses (a) to (m) of Section 5A."

A proviso under this subclause reads as follows:

"Provided that where in an inquiry held by such person and in such manner as may be prescribed, a Pradhan or UpPradhan is prima facie found to have committed financial and other irregularities, such Pradhan or UpPradhan shall cease to exercise and perform the financial and administrative powers and functions, which shall, until he is exonerated of the charges in the final inquiry be exercised and performed by a Committee consisting of three members of Gram Panchayat appointed by the State Government."

8. It appears that the proviso speaks of an enquiry in respect of financial and other irregularities and only on prima facie proof thereof certain action is permitted to be taken by the District Magistrate pending a final inquiry.

9. Of the different Clauses of 95(1)(g), Clause (iiia), is a matter which may not be brought under the description of financial and other irregularities as it is not an action touching the activities of a Pradhan while holding office rather it covers certain declarations by him before he sought the election. Thus the above clause is not covered by the proviso to Section 95(1)(g). An action under Section 95(1)(g)(iiia), however, will be covered by the next proviso which requires that no action shall be taken under Clause (g), except after giving, to person concerned, a reasonable opportunity of showing cause against the action proposed.

10. Once we are of the view that the first proviso to Section 95(1)(g), is not applicable in the case of contemplated action under subclause (iiia), the necessity of an inquiry by a particular person in a particular manner as prescribed in the Rules may not be required. In the instant case, the District Magistrate had definitely acted under Section 95(1)(g) (iiia), on the basis of the fraudulent caste certificate produced by Bhikham Kharwar and it was within his competence, exercise of external control to direct removal of the Pradhan after giving him a notice of show cause. The order itself indicates that a show cause was given by way of asking explanations and the explanation was not satisfactory. Under this circumstance, it can only be held that the order of the District Magistrate impugned in Writ Petition No. 25547 of 1999 cannot be quashed. This writ petition is, accordingly, dismissed.

11. We may now turn to the Writ Petition No. 38722 of 1999 filed by R.K. Pandey who was put in charge of the affairs of the panchayat in his capacity as the UpPradhan and was again relieved of that responsibility by a subsequent order. The subsequent order was passed on the basis of an interim order recorded in Writ Petition No. 25547 of 1999. That writ petition having been dismissed, the interim order stands merged into the final order of dismissal and action taken thereon must be and is recalled. The petitioner R.K. Pandey is, therefore, entitled to be put in charge of the responsibility of the Pradhan of Lehra Khas Gram Panchayat with immediate effect till a fresh election is conducted for the post of Pradhan which had fallen vacant due to removal of Pradhan as per the Rules. This writ petition thus stands allowed.

12. In the result, the Writ Petitions No. 32072 of 1997 and 25547 of 1999 stand dismissed and the interim orders recorded "therein stand discharged, while Writ Petition No. 387.22 of 1.999 stands allowed with the directions given above.