
(2004) 11 AHC CK 0122
In the Allahabad High Court
Case No : C.M.W.P. No. 42429 of 2004

Gram Vikas Adhikari Sangh and Others	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 154, 243G
Uttar Pradesh Panchayat Raj Act, 1947 — Section 25, 25A, 32(4)

Citation : (2005) 2 AWC 1665 : (2005) 1 ESC 73 : (2005) 98 RD 116 : (2005) 1 RD 116

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Advocate : Ashok Khare and Vikram D. Chauhan, for the Appellant;

Final Decision : Dismissed

Judgement

Shishir Kumar, J.—By means of the present writ petition, petitioner No. 1 who has described himself as Gram Vikas Adhikari Sangh, Uttar Pradesh, District Unit Branch, Etawah and two others, have filed the present writ petition challenging the Government Order dated 16.9.2004 Annexure 15 to the writ petition issued by the Principal Secretary, Panchayat Raj which has been addressed to the District Magistrates giving instructions as to how the Gram Nidhi Account of Gram Panchayat shall be operated. The further relief claimed in the writ petition is for quashing the order dated 18.9.2004, Annexure 19-A to the writ petition, which has been issued by the Block Development Officer, Bdhpura, Etawah, and the order dated 20.9.2004 Annexure 19-B to the writ petition issued by the Block Development Officer, Bharthana, district Etawah, to the various Branch Managers of the concerned banks intimating that the Gram Nidhi Account, as per directions of the State Government shall be operated under the joint signatures of Gram Pradhan and Gram Panchayat Vikas Adhikari of the concerned Gram Panchayat and have also intimated about the cancellation of order, dated 4.9.2004, which is alleged to have not been in accordance with the Government Order, dated 16.9.2004. The petitioner further challenged the order dated 22.9.2004 issued

by the Block Development Officer, Saifai, Etawah, Annexure 19-C and the order dated 23.9.2004, Annexure 19-D to the writ petition issued by the Block Development Officer, Jaswant Nagar posting 56 persons as part time tube-well operators as Gram Panchayat Vikas Adhikari in different Gram Panchayats directing that Gram Nidhi Account shall be operated under the joint signatures of Gram Pradhan and Gram Panchayat Vikas Adhikari, who will also work as Secretary.

2. The brief facts arising out of the present writ petition is that by 73rd Amendment of the Constitution inserted part 9 including Article 243G in the Constitution of India in order to strengthen the village Panchayat system in the country and with a view to give more authority and responsibility to Gram Panchayat by empowering the State Government to make such provisions as necessary to enable them to function as institution of self governance by requisite legislative enactments/amendments. The State Government in furtherance of the aforesaid constitutional philosophy issued Government Orders transferring the employees of the certain cadres of eight departments and posting them under the supervision and control of village Panchayats. The said employees were to function as multi purpose workers with the designation of Gram Panchayat Vikas Adhikari and one of such employee in each village Panchayat was to be appointed as officiating Secretary of the Gram Panchayat. On 27.6.1999 U.P. Act No. XVII of 1999 substituted Section 25 and inserted Section 25-A in U.P. Panchayat Raj Act, 1947 empowering the State Government by special/general order to transfer any employee or class of employees serving in connection with the affairs of the State to serve under Gram Panchayat with such designation as may be specified and to be posted by such authority as notified by the State Government. On 30.6.1999 the Government Order dated 12.4.1999 which was issued prior to the aforesaid amendment was cancelled and on 1.7.1999 a new Government Order was issued by the State Government whereby the employees of certain cadres working in the eight departments were transferred to work under the control and supervision of the Village Panchayat. On 1.2.2000 the Government Order dated 1.7.1999 was challenged by the employees sought to be transferred. The Division Bench upholding the same in Special Appeal Nos. 591 and 709 of 1999 along with Writ Petition No. 33920 of 1999, Manbodh Kumar v. State of U.P. and Ors. held that since the aforesaid transfer does not affect the status of the transferee as Government servant and they continued to be Government employee, as such, the Government Order dated 1.7.1999 was valid. The State Government with the passage of time was informed by some of the concerned departments that on account of wholesale transfer of their employees on deputation to Gram Panchayat as they were feeling a lot of difficulties and, as such, the employees belonging to the three cadres were repatriated to their parent department vide Government Orders dated 6.6.2001 and 19.11.2001. The aforesaid repatriation order was challenged by the employees, but the same was upheld by the learned single Judge in the case of Krishna Kant Tiwari v. State of U.P. and Ors. 2002 (3) ESC 500 (All) (DB).

Against the aforesaid order Special Appeal No. 94 of 2002 was dismissed by Hon"ble the Chief Justice and Hon"ble R.K. Agrawal, J. on 28.1.2002 and the order dated 1.8.2002 was upheld.

3. Again the employees of the three cadres namely Kisan Sahayat of Agriculture Department, Cane Supervisor of Cane Department and Gram Vikas Adhikari of Gram Vikas department were repatriated. Writ Petition No. 30054 of 2004, Gauri Shanker and Ors. v. State of U.P. and Ors., connected with various writ petitions was dismissed by the learned single Judge upholding the aforesaid repatriation vide its judgment and order dated 7.8.04. It is also relevant to mention here that certain other writ petition bearing No. 31085 of 2004 connected with other writ petitions Subhash Chandra Pandey v. State of U.P. and Ors. were dismissed by another Court upholding the repatriation of the employees to their parent department vide judgment dated 20.8.2004. Against those orders Special Appeal No. 1005 of 2004 was filed and the Division Bench of this Court has also approved the judgment of the learned Single Judge vide judgment and order dated 25.8.2004. Somehow or the other to maintain the status of the Secretary of Village Panchayat or to retain the work particularly in the financial matter, i.e., village fund, the aforesaid repatriated employees in a surreptitious way have filed the present writ petition to claim right to operate Gram Nidhi Account of the Village Panchayat. Section 32 (4) of the U.P. Panchayat Raj Act, 1947 provides as follows :

"32(4) All withdrawal of moneys from the Gaon Fund and disbursement thereof shall be made jointly by the Pradhan and the Secretary of the Gram Panchayat."

4. The Government order issued in respect to maintenance of Gram Nidhi Account provided that the aforesaid account shall be jointly operated by the Gram Pradhan and Gram Panchayat Vikas Adhikari. The Chief Secretary U.P. Government in respect to Panchayat Raj Department had the approval of the Governor to keep the various funds received for village developments in three accounts known as (1) Gaon Nidhi Khata (2) Gaon Nidhi Khata (Jawahar Gram Sammriddh Yojana Khata) and (3) Gaon Nidhi Khata (Students Scholarship and Pension Account). It was further stated that all the aforesaid accounts should be operated by the Gram Pradhan and Secretary under the joint signatures. The aforesaid Government Order cancelled the earlier Government Order dated 19.8.1999. However, it may be pointed out that so far as the operation of the village account fund is concerned, position continued to be the same and they were to be operated under the joint signatures of Gram Pradhan and Secretary of the Gram Panchayat. Since the Gram Panchayat Vikas Adhikari was to work as Secretary Gram Panchayat, he was the person competent along with Gram Pradhan to operate the aforesaid account. It is also relevant to mention here that after repatriation of Gram Panchayat Vikas Adhikari to their parent department namely Gram Vikas Vibhag, it appears the Commissioner Rural Development sent a proposal for making responsible the Gram Vikas Adhikari for execution of work pertaining to Swarna Jayanti Gram Swarajgar Yojana, Samuh Gramin Rajgar

Yojana/Gramin Peyajal Yojana etc. The Government has communicated the decision to the Gram Vikas Adhikari, Rural Development that, in addition to the various projects of the village rural development, they shall also discharge their duties as instructed by the Block Development Officers. It also appears that the District Officer Etawah misread the Government Order dated 15.8.2004 issued by the Secretary, Rural Development though the proposal was made by the Commissioner, Rural Development and, therefore, issued orders stating that even 51 Gram Vikas Adhikaris who were repatriated to their parent departments shall continue to operate joint account of Gram Nidhi along with Gram Pradhan as they were doing earlier. As it appears that the District Development Officer Etawah having some doubt regarding the correctness of the order dated 13.8.2004 directed that operation of the joint account by the Grain Vikas Adhikari/Gram Vikas Panchayat Adhikari pertaining to Sampurna Gram Rojgar Yojana shall remain stayed. The District Magistrate, Etawah cancelled the order of the District Development Officer and directed that the Gram Nidhi Account No. 2 shall be operated by Gram Vikas Adhikari. The Principal Secretary, Panchayat Raj in order to clear the entire confusion issued a detailed Government Order pointing out that Gram Nidhi funds are to be operated under the joint signatures of Gram Pradhan and Gram Panchayat Vikas Adhikari. In view of the fact that Gram Panchayat Vikas Adhikari is also Secretary of the Gram Panchayat and there should be no deviation from the said decision and for the aforesaid purpose the Principal Secretary has referred to the earlier Government Orders dated 19.8.99 and 25.1.2003. In that view the District. Magistrate communicated the order to all the Block Development Officers and other concerned officers for its compliance. The orders which have been issued by the various Block Development Officers in accordance with Government Order issued by the Government Order dated 16.9.2004 which is the impugned order in the present, writ petition. The petitioner submits that as the Government Order dated 16.9.2004 has been issued by the Principal Secretary, Panchayat Raj and, as such, he has no power to issue the Government Order contrary to Government Order dated 5.8.2004 issued by the Secretary, Rural Development. The petitioner has also referred and relied upon the earlier Government Order dated 19.8.99 as the same has already been superseded vide the Government Order dated 3.11.1999 as such the petitioners working as Gram Vikas Adhikari would be left with no function and will have to work under the Gram Vikas Panchayat Adhikari without there being any justification for the same. The petitioners also stated that they are entitled to work and operate the account/fund pertaining to rural development even though it is a Gram Vikas Khata and there is no justification for discharging such functions by the Secretary of Gram Panchayat.

5. On behalf of the respondents. Mr. Sudhir Agrawal submitted that, on the face of it, this shows that there is no cause of action on the part of the petitioner to challenge the impugned orders and there is no substance in the aforesaid contention. Mr. Agrawal further submits that it is a matter of policy for the Government as to which employee of the Government will discharge what kind of

functions and the employee concerned has no right to interfere in such matters, unless and until any decision is pointed out to the contrary to some statutory provision or in violation of Article 14 of the Constitution. He further submits that executive power of the State vests in Governor and is required to be exercised by His Excellency either directly or through officers subordinate to him according to the constitutional provisions. Article 154 of the Constitution. It has also been submitted that all actions of the Government of State are expressed in the name of Governor but orders and other instruments made and executed in the name of Governor as may be specified in the rule known as Business Rule to be made by the Governor and the validity of such instrument or orders are not open to challenge on the ground that it is not the order or instrument made or executed by the Governor. Thus, all the Government Orders and decisions taken by the State Governor and the allocation of business amongst the various departments has no effect on such legal position. The said position is settled in the case of State of Uttar Pradesh Vs. Om Prakash Gupta, In the present, case, various Government Orders referred to hereinabove at the best constitute decision of the Governor and without adding anything further, it is a matter of common knowledge that the Government Order always stands modified by the subsequent Government Orders if it is contrary to the earlier one and will hold field onwards. Thus, the Government Order dated 16.9.2004 issued by the State Government will hold the field, and since it is not contrary to any statutory provision, it cannot be held that it is illegal by any such imagination. It is also worthy to mention here that the Government Order dated 16.9.04 is absolutely in conformity with Section 32 (4) of U.P. Panchayat Raj Act, 1947 and, hence, it is valid and in accordance with law.

6. From the perusal, it appears that the Government Order dated 16.9.04 refers to earlier Government Order dated 19.8.1999 which was cancelled vide subsequent order dated 3.11.99, but the fact remains that in para 2 whether the Government Order dated 19.8.1999 has been referred to in the Government Order dated 16.9.2004 is basically referred to the fact that Gram Nidhi Account would be operated under the Joint signatures of Gram Pradhan and Gram Panchayat Vikas Adhikari who is also working as Secretary of the Gram Panchayat. The fact that Gram Nidhi Account can be operated under the joint signatures of Gram Pradhan and Gram Panchayat Vikas Adhikari is also consistent with the statute namely Section 32(4) of U.P. Panchayat Raj Act, 1947. So far as the petitioners are concerned, once it is admitted that they have been repatriated to their parent department and are not working as Gram Panchayat Vikas Adhikari and have also not been posted or placed under the administration and financial control of village Panchayat, they cannot claim that they are still entitled to work or discharge any duty of Secretary of village Panchayat or is entitled to operate any Gram Nidhi Account. The aforesaid contention of the petitioner is clearly misconceived. The petitioner has got no right to work and discharge duties which have not been assigned to them. It is absolutely in the domain of the Government to prescribe as to what duties and

responsibility shall be looked after and discharged by the Gram Vikas Adhikari.

7. It has also been submitted that the petitioners have sought to challenge certain Government Orders in respect of certain persons" posting requiring them to discharge duties as Gram Panchayat Vikas Adhikari, but none of the said persons have been impleaded as party in the aforesaid writ petition, therefore, no relief can be granted without their impleadment in the writ petition and, as such, the petition is liable to be dismissed for non-impleadment of necessary parties.

8. I have considered the submissions made on behalf of the petitioners as well as the respondents. From the perusal of the record, it is clear that, as the petitioners have been repatriated, they have no right to challenge the same. The petitioner No. 1 has claimed himself an Association of Gram Vikas Adhikari working in Rural Development of the State and the petitioner Nos. 2 and 3 have claimed themselves to be President and Secretary of the aforesaid Association, admittedly the writ petition has not been filed for the redressal of any grievance of the Association as individual Government servant has not made any complaint regarding any infringement of legal or statutory, or constitutional right. In such circumstances, I am of opinion that the writ petition of the Association itself is not maintainable in view of the decision of this Court in the case of Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi Samiti and Another,

9. In view of above, the petition is devoid of merit and is hereby dismissed. There shall be no order as to costs.