

**(2009) 10 UK CK 0015**

**In the Uttarakhand High Court**

**Case No : Writ Petition (M/S) No. 1252 of 2009**

Gulfam Ali and Others

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

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**Date of Decision : 26-10-2009**

**Acts Referred:**

Uttar Pradesh Panchayat Raj Act, 1947 — Section 29, 32, 32(4), 41

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 125A

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 178, 178(1), 178(4), 180, 187(1)

**Citation : (2009) 10 UK CK 0015**

**Hon'ble Judges : Brahma Singh Verma, J**

**Bench : Single Bench**

**Advocate : A. Rab, for the Appellant; K.P. Upadhyay, Addl. C.S.C. for State, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

B.S. Verma, J.—Heard learned Counsel for the Petitioners as well learned Additional Chief Standing Counsel for the State-Respondents and perused the record.

2. Learned Counsel for the parties have agreed that this writ petition be disposed of finally at the admission stage.

3. By means of this writ petition, the Petitioners have sought a writ in the nature of certiorari to quash and strike down point No. 1 and 3 of the Government Order No. 128/XXIV(1)/ 2009-05/09 dated 20th July, 2009 (Annexure 3) passed by the Respondent No. 2.

4. Learned Counsel for the Petitioners has submitted that there is no need of rejoinder affidavit since the controversy is not factual but legal in nature. Learned Counsel for the Petitioners has confined his prayer only to the legality of Clause 3 of the impugned Government Order.

5. According to the Additional Chief Standing Counsel, the State Government has power as per Section 29 of the U.P. Panchayat Raj Act, 1947 (for short the Act) to constitute the committee for effective assistant to the Gaon Panchayat and by virtue of Section 29, which has been amended by Act No. 28 of 2003 formation of the committee is within the competence of the State Government.

6. In reply to the argument advanced by the learned Additional Chief Standing Counsel for the State, learned Counsel for the Petitioners has not denied the competence of the State Government to form committee and he has conceded to this argument. He submitted that the preposition of law regarding formation of committee to assist the Gaon Panchayat is well within the competence of the State Government.

7. The grievance which was raised by the Petitioners in the writ petition pertains to Clause 3 of the Government Order No. 128/XXIV(1)/2009-05/09 dated July 20,2009 (Annexure No. 3 to the writ petition) regarding the Gram Panchayat fund.

8. It is further contended by the learned Counsel for the Petitioners that the State Government by this Government Order has given power to open separate account by the construction committee and the said account be operated by the President and Secretary of the said committee jointly. This power is in violation of the provision of Section 32(4) of the Act and de hors the Rule 187(1) and 178(4) of the Rules framed under the Act.

9. I have perused the contents of paragraph Nos. 14 and 15 writ petition as well the reply given by the State in counter affidavit.

10. In paragraph No. 14 in which the Petitioners have challenged the Clause 3 of the impugned Government Order, it is stated that Section 32 of the Act clearly provides that all money received or collected by the Gram Sabha shall be credited to the Gram Fund including sums handed over by the Government. Thus, point No. 3 of the impugned G.O. (Annexure 3), which provides for crediting the funds to the separate account of the Construction Committee is in clear violation and contravention of Section 32 of the said Act.

11. In Paragraph No. 15 of the memo of petition, it is stated that Rules 178(1) of the Act clearly envisages that administration of the gram funds shall be in the hands of the gram panchayat alone. Rule 178(4) provides that the account of all income and expenditure of the Gram Fund shall be maintained by the Pradhan. The account shall be closed and balanced at the end of every month and shall be examined and passed by the gram panchayat at a meeting in the next following month. Thus the impugned Government Order (Annexure 3) gives sole control over the fund to the Chairman of the committee and the Gram Panchayat Adhikari and the same is in clear contravention and violation of Rule 178 of the Act. It is further stated that the impugned G.O. seeks to amend the statutory provisions of law by an executive order, which is not permissible under law.

12. Counter Affidavit has been filed on behalf of the Respondent No. 2. The answer to the averments made in paragraph No. 14 and 15 of the petition has been give in paragraph No. 12, which reads as under:

12. That in reply to the contents of paras 14, 15, 16, 17, 18, 19 and various grounds set forth in the writ petition it is submitted that the Petitioner is wrongly invoking and interpreting Section 32 of Panchayat Raj Act as well as Rule 178(4) of Panchayat Raj Rules, 1947. By said Government Order vide which Construction Committee was constituted in pursuant to Amended Act 28/2003 of Panchayati Raj Act the separate account for construction of School building in Gram Panchayat shall be opened which shall be operated in similar manner by Secretary, who is Gram Panchayat Adhikari and in place of Gram Pradhan the power has been delegated to nominated member of Gram Panchayat who shall be the Chairman of the said Construction Committee.

So far the language of Rule 178(4) in respect to the Gram Fund is concerned it is stated that same should not have been disturbed except the School Construction Fund the Gram Fund shall be operated by the arrangement earlier vested with the Gram Panchayat. Hence the Rule 180 does not come in the way.

13. For a just decision of the writ petition a reference to Section 32 of the Act and Rules 178(1) and 178(4) of the Rules framed thereunder is necessary.

14. Relevant extract of Sub-section 32 of the Act reads as under:

32. Gaon Fund. - (1) There shall be a Gaon Fund for each Gram Panchayat and the same shall, subject to the provisions of the annual estimate of income and expenditure passed u/s 41, be utilized for carrying out the duties or obligation imposed upon the Gram Sabha or the Gram Panchayat or any committee thereof by this or any other enactment:

Provided that such amount up to the total of all sums credited to the Gaon Fund under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, minus the amount credited to the Consolidated Gaon Fund u/s 125-A of that Act as may be required by the Bhumi Prabandhak Samiti for being utilized in carrying out its duties or obligations shall be made available out of the Gaon Fund to the Bhumi Prabandhak Samiti every year:

Provided further that in the event of any difference between the Bhumi Prabandhak Samiti on the one hand and the Gram Panchayat or Gram Sabha on the other hand about the requirements of funds by the Bhumi Prabandhak Samiti the matter shall be referred by the Pradhan to the prescribed authority whose decision shall be binding.

15. Sub-section (4) of Section 32 of the Act reads as under:

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

16. Rule 178 deals with the maintenance of Gram Fund and its transaction, which

is reproduced as under:

178. Maintenance of Gram Fund and its transaction:- The administration of the Gram Fund shall be in the hand of the Gram Panchayat subject to the general control of the prescribed authority.

(2) All money transactions to which any member of the Gram Panchayat or Nyaya Panchayat or any office or servant of the Gram Panchayat in his official capacity is a party, shall without any reservation be brought to account and all the money shall be credited in full to the Gram Fund with the exception of authorized advances.

(3) Money due to the Gram Panchayat shall be collected either by payment at the Panchayat Office or by out-door collections, or by both methods, as the prescribed authority may direct. Receipts for all moneys, received shall be issued by the persons authorised to receive the money.

(4) Accounts of all income and expenditure of the Gram Fund and the Nyaya Panchayat Fund shall be maintained by the Pradhan and the Sarpanch in Form No. 6. The account shall be closed and balanced at the end of every month and shall be examined and passed by the Gram Panchayat at a meeting in the next following month.

17. I have perused the relevant provisions of Section 32 of the Act and the rules framed thereunder. Section 32(4) of the Act clearly provides that all withdrawal of moneys from the Gaon Fund and disbursement thereof shall be made jointly by the Pradhan and the Secretary of the Gaon Panchayat. Nowhere under the Act, power is given to the Government that it may give direction either in Section 29 or any other Sections under the Act whereby power to keep Gaon Fund in separate account or operation of such account by the Chairman of the Construction Committee and the Member Secretary jointly.

18. It is well settled that the Government Order cannot override the provisions of the Act. Therefore, I am of the considered view that Clause 3 of the impugned Government Order dated 20-07-2009 (Annexure-3 to the petition) is not in conformity with the provisions of Section 32(4) the Act and the same is also in violation of the Rule 178(1) and Rule 178(4) framed thereunder.

19. Consequently, Clause 3 of the impugned Government Order (Annexure-3 to the petition) being violative of Section 32 of the Act is declared ultra vires and accordingly Clause 3 of the said Government Order is struck down. The writ petition deserves to be allowed.

20. The writ petition is allowed. Clause 3 of the impugned Government Order dated 20-07-2009 is hereby quashed. So far as the withdrawal of moneys from the Gaon Fund and its disbursement is concerned, the same shall be operative in accordance with the provisions of Section 32(4) of the Act read with Rules 178(1) and 178(4) of the Rules framed under the U.P. Panchayat Raj Act 1947 jointly by the Pradhan and Secretary of the Gram Panchayat. No order as to

costs.