

(1999) 05 AHC CK 0107

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20606 of 1999

Ishwar Chand Singh Yadav

APPELLANT

Vs

Nagar Palika Parishad, Ballia and Others

RESPONDENT

Date of Decision : 19-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 05 AHC CK 0107

Hon'ble Judges : D.K.Seth, J

Final Decision : Allowed

Judgement

D.K. Seth, J.—The order dated 1941993 contained in Annexure2 has since been challenged in this writ petition.

2. Mr. R.R. Singh, learned Counsel for the petitioner contends that the interim order dated 2851999 passed in writ petition No. 18789 of 1998 had never contemplated that the petitioner who had taken over charge should be removed.

Despite such a situation, on the alleged ground that in order to comply the interim orders and to avoid contempt, the impugned order has since been passed by the Chairman, who is not the competent Authority to transfer the petitioner. He relies on Rule 25 of U.P. Municipalities Centralised Service Rules, 1966 which prescribes that the State Government is the authority to make such transfer. Therefore, the impugned order has been passed by an incompetent authority and as such the order cannot be sustained. On these grounds he prays that the impugned order should be quashed.

3. I have heard learned Counsel for the petitioner Sri R.R. Singh at length.

4. Admittedly, the petitioner was respondent No. 5 in writ petition No. 18789 of 1998 in which the interim order dated 2851998 was passed. In the interim order the operation of the order dated 1251998 was stayed till the next day of listing provided the respondent No. 5 had not already taken over charge. It is argued by Mr. Singh that the interim order was not unconditional. On the other hand, there

was a condition that the interim order could be operative only if the petitioner herein had not taken over charge. He has annexed the order dated 1251998 wherein it was mentioned that the petitioner had already taken over charge. On this ground he contends that there was no question of removing the petitioner in compliance of the said interim order. He further contended that the interim order was never extended though the matter was listed days together. Therefore, there is no interim order subsisting. He further contends that there is a gap of almost one year between passing of the interim order and passing of the present impugned order. He further contends that the appointment of Shri Virendra Verma was only for a period of one year and that he did not possess the requisite qualification whereas the petitioner is fully qualified. Therefore, the said Sri Virendra Verma could not claim to continue on the said post and the petitioner could not be removed."

5. But the fact remains that the impugned order was passed on the ground of compliance of the interim order and to avoid contempt. The petitioner is also a party to the writ petition. He has every right to either get the interim order vacated or make his own submission about the facts. He has also every right to intervene in the contempt proceeding and place the proper fact. Whether the petitioner could be removed or could not be removed is a question dependent on the interpretation of the interim order passed in the pending writ petition and is a question to be determined in the contempt proceeding. If a separate proceeding is initiated and during the pendency of the earlier writ proceeding and contempt proceeding, this Court undertakes to determine the implication of the interim order in that event it would be interference in the jurisdiction of the Court in respect of the contempt proceeding as well as in the writ petition No.18789 of 1998.

6. Whatever decision is to be arrived in this petition is dependent on the interpretation of the interim order and decision on the question of facts involved. It is not a case that the petitioner was not a party to the earlier proceeding. The petitioner is very much party in the earlier proceeding. It is open to ask for suitable relief in the pending proceeding itself. Since he is party in the proceeding and he is being deprived of his alleged right on the basis of the interim order it is open to him to challenge the impugned order even in the pending writ petition. The scope and ambit of pending writ petition and contempt petition cannot be stretched to an independent proceeding.

7. In such circumstances, this writ petition is not maintainable. Accordingly, I am not inclined to entertain this writ petition, However, on the prayer of the learned Counsel for the petitioner this writ petition is treated as an application in the writ petition No. 18789 of 1998 as well as in the resultant contempt proceeding. On the prayer of the learned Counsel for the petitioner let this application be placed in the record of said writ petition and the contempt proceeding as the case may be and be listed/placed before the appropriate Court as early as possible preferably on 2451999.