
(1970) 03 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 400 of 1968

Kashi Nath Singh

APPELLANT

Vs

District Magistrate and Collector, Mirzapur and Others

RESPONDENT

Date of Decision : 26-03-1970

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 95(1)(g), 96A

Citation : (1970) 40 AWR 577

Hon'ble Judges : T. Ramabhadran, J;H.C.P. Tripathi, J;C.D. Parekh, J

Bench : Full Bench

Advocate : Sankatha Rai, for the Appellant; Girish Chandra and S.C. for Opposite Parties, for the Respondent

Judgement

H.C.P. Tripathi, J.—When this petition first came up for hearing, before the Bench, it noticed a conflict of opinion between two Division Benches of this Court, one reported in Ganga Ram v. ASDO II, Etmadpur 1967 ALJ 988 and the other reported in The District Magistrate, Unnao v. Paras Nath Shukla 1967 AWR 485. Accordingly the Bench hearing the petition directed that "the papers be laid before Hon'ble the Chief Justice to form a larger Bench to resolve the conflict". That is how the case has come up before us.

Learned Counsel for the parties agree that the entire case has not been referred to the Full Bench and it has only to resolve the conflict of judicial opinion on the question in controversy.

2. The question which requires consideration is formulated as follows:

Whether the power enjoyed by the State Government u/s 95(1)(g) of the UP Panchayat Raj Act 1947, having been delegated u/s 96-A of the Act to the SDO can be exercised by the Addl. SDO also within the meaning of the Act Section 95(1)(g) reads:

The State Government may suspend or remove a member of a Gaon Panchayat or joint committee (or Bhumi Prabandhak Samiti), an office-bearer of a Gaon

Sabha or a Panch, Sahayak Sarpanch or Sarpanch of a Nyaya Panchayat....

Section 96-A, which provides for the delegation of powers by the State Government is as follows:

The State Government may delegate all or any of its powers under this Act to any officer or authority subordinate to it subject to such conditions and restrictions as it may deem fit to impose.

3. By Notification No. 4483P-XXX-111-50-57, dated 19-12-58, published in Part III of the UP Gazette dated 27-12-1958, the State Government, in exercise of the powers conferred on it u/s 96-A of the Act, delegated its powers to take action Under Clause (g) of Sub-section (1) of Section 95 of the Act to the SDO subject to the condition that an order of removal passed by him shall be appealable to the DM, within 30 days from the date of such order.

4. It is contended that as the aforesaid delegation of the powers is in favour of the SDM, who is a persona designata, it cannot be construed to vest those powers in the Addl. SDO. On the other hand, it has been urged by the learned Standing Counsel that as the powers have been delegated to an officer and not to a person there is no reason why, in view of Section 2(ss) of the UP Panchayat Raj Act, 1947, those powers cannot be exercised by the Addl. SDO.

5. Section 2(ss) of the UP Panchayat Raj Act, 1947 provides that:

"SDO" includes an Addl. SDO designated or appointed as such by the appropriate authority.

It, however, does not define a SDO. It is therefore necessary to look to the provisions of the UP Land Revenue Act on this point.

Section 18 of the UP Land Revenue Act reads:

(1) The State Government may place any Asstt. Collector of the first class in charge of one or more Sub-Divisions of a district and may remove him therefrom.

(2) Such Asstt. Collector shall be called an Asstt. Collector in-charge of a sub-division of a district or a SDO and shall exercise all the powers and discharge all the duties conferred and imposed upon him by this Act or by any other law for the time being in force, subject to the control of the Collector.

(3) The State Government may designate any Asstt. Collector of the first class appointed to a district to be Addl. SDO in one or more sub divisions of the district.

(4) The Addl. SDO shall exercise such powers and perform such duties of an Asstt. Collector in-charge of a subdivision of a district, in such cases or classes of cases as the State Government may direct.

(5) The provisions of this Act and of every other law for the time being applicable to a SDO shall apply to every Addl. SDO when exercising any powers or discharging any duties Under Sub-section (4) as if he were a SDO.

(6) The State Government may delegate its powers under this section to the Collector of the district and may revoke such delegation.

6. Sub-section (2) of the aforesaid provides that "the Assistant Collector in charge of the sub-division shall exercise all the powers and discharge all the duties conferred and imposed upon him by the UP Land Revenue Act or by any other law for the time being in force...". It is thus obvious that the SDO, contemplated by the UP Panchayat Raj Act, is the same who has been defined by Section 18 of the UP Land Revenue Act as he is to exercise all the powers and discharge all the duties conferred not only under the UP Land Revenue Act but also by any other law for the time being in force. Section 2(ss) of the Panchayat Raj Act has to be interpreted, therefore, in the light of the provisions of Section 18 of the UP Land Revenue Act.

7. Sub-section (4) of Section 18 of the UP Land Revenue Act (supra) lays down that the Addl. SDO shall exercise such powers and perform such duties of the SDO, in the district in such cases or classes of cases as the State Government may direct and Sub-section (6) of the aforesaid section has authorised the State Government to delegate its powers under this section to the Collector of the district.

8. A plain reading of Section 18 of the UP Land Revenue Act, makes it evident that the Addl. SDO can exercise such powers and perform such duties of an Assistant Collector in charge of a subdivision of a district, in such cases or classes of cases as the Collector enjoying the delegated powers of the State Government under Sub-section (6) of Section 18, may direct. Therefore, the result is that if in a district, the Addl. SDO has been directed by the Collector enjoying the powers of the State Government Under Sub-section (6) of Section 18, or by the State Government itself to exercise the powers and to perform the duties of the SDO as defined in Sub-section (1) of the aforesaid section in a particular class of cases or classes of cases arising in the sub-division, he can exercise the powers and perform the duties of the SDO in respect of such cases or classes of cases. As the Panchayat Raj Act specifically lays down that the SDO includes the Addl. SDO designated or appointed as such by the appropriate authority, it is evident that where there is an Addl. SDO designated or appointed as such by the State Government in exercise of its powers u/s 18 of the UP Land Revenue Act and authorised by it or by the Collector to exercise the powers of the SDO and to perform his specific duties in respect of cases relating to Panchayat Raj Act, he will have the authority, in law, to perform those functions and to exercise those powers within the meaning of the UP Panchayit Raj Act. In other words, if the Addl. SDO appointed by the State Government as such has been authorised either by it or by the Collector of the district to exercise the powers of the SDO, conferred on him under the Panchayat Raj Act, he will have the authority to exercise the powers u/s 95(1)(g) of the UP Panchayat Raj Act.

9. In the case of *Gaya Dutt v. SDO II Maharajganj* 1964 ALJ 145 a Division Bench of this Court, inter alia, held that an election petition can be presented

only before one officer and it is the particular officer who can be called "the SDO" and the other officer designated as Addl. SDO cannot be the SDO, within the meaning of Rule 24 and the election petition could not be heard by him. That case is distinguishable on facts. There has no evidence before the Bench, that Sri Saun Ram who had disposed of the election petition had been designated by the State Government as the Addl. SDO. Moreover, the burthen of that judgment is that an election Petitioner cannot be given a choice to select the Officer to whom he should present the election petition. This consideration does not arise where the Addl. SDO is exercising powers of the SDO u/s 95(1)(g) of the UP Panchayat Raj Act in specified cases under the direction of the State Government or the Collector, because, the SDO shall not be exercising those powers in those cases.

10. In the case of *DM Unnao v. Paras Nath Shukla* 1967 AWR 458 a Division Bench of this Court propounded the view that an Addl. SDO has no authority to exercise the powers u/s 95(1)(g) of the Act which had been conferred by the State Government on the SDO by the notification referred to above. While delivering the judgment of the Bench, Hon"ble Mr. Justice Lakshmi Prasad noticed the case of *Gaya Dutt* and expressed the agreement of the Bench with the reasons advanced by the learned Judges in arriving at their conclusion.

11. In the case of *Ganga Dutt v. ASDO II, Etamadpur* 1967 ALJ 988 a contrary view was taken by another Division Bench of this Court. Hon"ble Chief Justice Oak, delivering the judgment of the Bench distinguished the case of *Gaya Dutt* on facts and inter alia, held that, in view of the definition of SDO, contained in Clause (ss) of Section 2 of the UP Panchayat Raj Act, 1947 which was brought in by the UP Amendment Act No. XIX of 1957, the relevant Government Notification, issued in the year 1958 delegating the powers of the State Government to the SDO, must be deemed to have included the Addl. SDO as well. Accordingly the learned Chief Justice held that for the purposes of the aforesaid notification the term "SDO" will include an "Addl. SDO" and as such the Addl. SDO will be competent to exercise the powers u/s 95(1)(g) of the UP Panchayat Raj Act.

12. In *Central Talkies Ltd., Kanpur v. Dwarika Prasad* 1961 AWR 238 SC it was held that an Addl. DM who has been appointed, as such by a notification u/s 10(2) Code of Criminal Procedure, where under he is invested with all the powers of the DM, under that Code as well as under any other law for the time being in force, is competent to deal with an application u/s 3 of the UP (Temp.) Control of Rent and Eviction Act for permission to file a civil suit, without special authorisation from the DM. It was further held that the DM mentioned in Section 3 of the UP Act is not a persona designata. Under the definition of DM in Section 2(d) of that Act the special authorisation by the DM had the effect of creating Officers exercising the powers of a DM under the Eviction Act. To that extent, those officers would, on authorization, be equated to the DM and persona designata is "a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular

character".

13. In Messrs. Jain Transport and General Trading Co., Mathura v. The Distt. Judge, Agra AIR 1966 All. 534 which was a case under UP Road Transport Services (Development) Act, while interpreting Section 11(5) of the Act a Division Bench of this Court held that "merely because the section speaks of a Distt. Judge and not the Court of the Distt. Judge it does not mean that the Court of the Distt. Judge was not intended". It was held further that the Distt. Judge was not to be treated as persona designata and the Addl. Distt. Judge can also perform the functions of the Distt. Judge in cases referred to by him.

14. In the State of UP v. Dulichand Kashiprasad AIR 1967 All 34 it was, inter alia, held that although the Sales Tax Act requires the Assessing Authority to be designated or appointed as such the Sales Tax Officer appointed for a circle is automatically authorised to be the Assessing Authority for that circle.

15. In the light of the observations made in the aforesaid decisions and for the reasons stated above our answer to the question formulated by us is as follows:

An Addl. SDO, designated or appointed as such, by the appropriate authority, can exercise the powers of the State Government u/s 95(1)(g) of the UP Panchayat Raj Act, which have been delegated to the SDO by the notification referred to above in case he has been directed by the State Government or the Collector to exercise such powers and to deal with such cases arising under the UP Panchayat Raj Act within his territorial jurisdiction.

16. Let the papers of the case be returned to the Bench concerned.