

(2011) 04 AHC CK 0270

In the Allahabad High Court

Case No : Writ Petition No. 328 (M/S) of 2011 with Writ Petition No. 1566 (M/S) of 2010

Madhu Chauhan

APPELLANT

Vs

State of Uttarakhand & others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 29

Citation : (2011) 04 AHC CK 0270

Hon'ble Judges : Tarun Agarwala, J

Final Decision : Allowed

Judgement

Tarun Agarwala, J.

In a democracy governed by rule of law, an incumbent who is elected to hold an office for a term for which he has been elected unless his election is set aside by a prescribed procedure known to law, such removal, if not done through a process of law, becomes a serious matter. It curtails the statutory term of the holder of the office and a stigma is cast on the holder of the office in view of the allegations levelled against him and if proved, renders him unworthy of holding the office which he held. This is precisely the Supreme Court has held in the case of Trilochan Dev Sharma vs. State of Punjab and others, (2001) 6 SCC 260, holding that a singular or casual aberration or failure in the exercise of power was not enough; a course of conduct or plurality of aberration or failure in the exercise of power and that too involving dishonesty of intention was an 'abuse of powers'. The Supreme Court further held that the legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown the exit for a single innocuous action or error of decision. The exercise of power given to the State Government under Section 29 of the U.P. Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961, has serious civil consequences on the status of an office bearer. After the commencement of the provisions of Part IX and Part IXA in the Constitution of India, a constitutional status has been

conferred upon the Adhyaksha of a Zila Panchayat and an Adhyaksha cannot be removed in an unceremonious manner. Serious insinuations have been levelled on the State. This is what has led the petitioner to approach this Court invoking the writ jurisdiction under Article 226 of the Constitution of India.

The facts leading to the filing of the writ petition is, that the petitioner is the wife of an ExM.L.A. who was in the ruling party of the State Government when he was elected in the year 2007. On account of certain reasons, he resigned as M.L.A. and also from the primary membership of the ruling party and thereafter contested the byelection as an independent candidate from Vikas Nagar Constituency in which he lost the election in the year 2009.

In the meanwhile, the petitioner stood for election as Adhyaksha of the Zila Panchayat as an independent candidate and was elected in October, 2008 after defeating her nearest rival and a candidate of the ruling party, namely, Smt. Neeru Devi.

Smt. Neeru Devi had an axe to grind and, in order to show her allegiance to the political bosses filed a complaint before the Secretary, Panchayat Raj, levelling as many as eight charges against the petitioner contending that the petitioner had misused her office and abused her powers. The District Magistrate was directed to conduct a preliminary inquiry under the Rules, who submitted a report, on the basis of which, the Secretary, Panchayat Raj, passed an order dated 31st August, 2010 under Section 29 of the U.P. Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961 (hereinafter referred to as the "Act") ceasing the financial and administrative powers of the petitioner. The petitioner, being aggrieved by the said action, filed Writ Petition No. 1566 of 2010, in which an interim order dated 17th September, 2010 was passed staying the effect and operation of the order passed by the Secretary, Panchayat Raj. As a result of the interim order, the petitioner continued to function and exercise her powers as the Adhyaksha of the Zila Panchayat.

Notwithstanding the aforesaid, the Secretary, Panchayat Raj, being the competent authority, directed that a fullfledged inquiry be initiated against the petitioner for the alleged malpractices and accordingly, appointed the Commissioner, Garhwal, to make the necessary inquiry. The Commissioner submitted his report dated 26.10.2010 holding that out of eight charges levelled against the petitioner, five charges could not be proved and that two charges were partially proved and one charge was fully proved. On the basis of this inquiry report, the Secretary, Panchayat Raj, issued a show cause notice dated 13th December, 2010 to show cause as to why further action should not be taken against the petitioner. The petitioner submitted her reply and contended that no financial irregularity was committed by her nor has gained any financial benefit through any of the transactions alleged against her. The petitioner further contended that in the issuance of the work orders, she had no personal role to play and that the issuance of the work orders was routed through the proper channel wherein the Niyojan Samiti recommended the said work orders and that

a collective decision was taken by the Zila Panchayat recommending the execution of these work orders. The petitioner further submitted that the Model Code of Conduct was never violated and that all the schemes were passed by the House of Zila Panchayat prior to the issuance of the notification for holding the byelection. The petitioner refuted the allegation that the schemes sanctioned was to give undue benefit to the petitioner's husband who stood as an independent candidate from the same constituency where the schemes were to be implemented.

In spite of the objections raised by the petitioner, the Secretary, Panchayat Raj, passed the impugned order dated 18th February, 2011 under Section 29 of the Act removing the petitioner from the post of Adhyaksha of the Zila Panchayat on the ground of abuse of powers. The petitioner, being aggrieved by her removal, has filed writ petition no. 328 of 2011.

In this writ petition, an averment was made that after the issuance of the show cause notice by the Secretary, Panchayat Raj and after hearing the submission of the petitioner, a note was prepared by the Secretary, Panchayat Raj on the files of the case, which makes it an interesting reading and reads somewhat like this:

The Secretary, Panchayat Raj, in its note after dwelling into the pros and cons concluded and recorded two options, namely, that on the basis of the averments which has been brought on record, the petitioner should be exonerated from the charges levelled against her and in the alternative, the matter be proceeded under Section 29 of the Act.

This noting was placed before the Minister of Panchayat for his consideration, who passed an order dated 12.1.2011 directing the Secretary, Panchayat Raj to proceed under Section 29 of the Act. Based on the said direction of the Minister dated 12th February, 2011, the impugned order was passed on 18th February, 2011.

Before proceeding further, it would be essential to bring on record, in brief, the charges levelled against the petitioner which are alleged to have been partially and fully proved. Charge No. 4 contemplated that four schemes/work orders, which were executed, were not done in public interest, but were done in personal interest. This charge was partially proved by the Inquiry Officer. Charge No. 5 relates to violation of Model Code of Conduct during the period 12th August, 2009 to 17th September, 2009 when the byelection was taking place. It is alleged that a large number of payments were made by the Zila Panchayat for the work executed in order to influence and sway the voters.

The charge was partially proved on the ground that one cheque was paid to the contractor during the period when the Model Code of Conduct was invoked. Charge No. 8 contemplated that the majority of the work sanctioned by the Zila Panchayat was executed in the constituency where the husband of the petitioner stood for election. This charge, according to the Inquiry Officer, was fully proved.

Both the writ petitions have been clubbed and are being decided together.

Heard Sri Rajendra Dobhal, the learned senior counsel assisted by Sri D.C.S. Rawat and Sri Manoj Sah, the learned counsel for the petitioner. On an earlier occasion, Sri L.P. Naithani, the learned senior counsel for the petitioner was also heard. Sri S.N. Babulkar, the learned Advocate General assisted by Sri J.P. Joshi, the learned Chief Standing Counsel for the State has also been heard at length.

The learned counsel for the petitioner submitted that on the question of the legality of the order of the authority ceasing the financial and administrative powers, the authority was required to give not only an opportunity of hearing before passing the impugned order but was also required to record its subjective satisfaction which has not been done. The learned counsel further submitted that there is no finding that the petitioner has been benefitted from any of the schemes/work orders executed on behalf of the Zila Panchayat and that no financial benefit was made by the petitioner. The learned counsel submitted that no finding of financial irregularity has been made out against the petitioner. The learned counsel submitted that the petitioner had no role to play and that the Niyojan Samiti had sanctioned/approved the work to be executed which was ultimately sanctioned and approved by the House of the Zila Panchayat which was done in accordance with the rules and regulations and consequently, the petitioner had no individual role to play in the entire matter. The learned counsel submitted that even the charges, which have been partially proved and fully proved, are based on no evidence and at best, the evidence has wrongly been appreciated which no reasonable person could arrive at. The learned counsel submitted that the question of violation of Model Code of Conduct does not arise since an identical allegation was also made by Smt. Neeru Devi to the District Election Officer, who conducted an inquiry and concluded that the Model Code of Conduct had not been violated. The learned counsel submitted that once a competent authority had held that there was no violation of the Model Code of Conduct, the same was binding upon the authority concerned and could not digress from the said findings. The learned counsel further submitted that the impugned order has been passed on the dictates of the Minister and that the authority had not applied his own mind and consequently, on this short ground, the impugned order was liable to be set aside. The learned counsel submitted that when an authority has been given a statutory duty to pass an order under an Act, he has to apply his mind independently and could not be guided by the whims and dictates of others, especially, that of the Minister concerned. The learned counsel further submitted that the impugned order does not disclose any reasons and that the entire order clearly indicates nonapplication of mind by the authority concerned. The authority has only mentioned the charge, the findings given by the Inquiry Officer and thereafter in one paragraph has concluded that he concurs with the findings of the Inquiry Officer, which requires no interference and consequently, directed the removal of the petitioner. The learned counsel submitted that the impugned order was passed without any application of mind and has been passed mechanically without giving any reasons. In support of his

submissions, the learned counsel has placed certain decisions which will be referred to at the appropriate place.

On the other hand, the learned Advocate General submitted that the petitioner has been removed for the malpractices committed by her and abuse of powers by her as Adhyaksha and that the authority was justified in passing the order of removal once the charges were found to be correct which were proved in the course of inquiry. The learned counsel submitted that the instruction issued by the Minister was made pursuant to the Rules of Business framed under subclause (3) of Article 166 of the Constitution and that under Rule (3), the Secretary was bound to make the notings and place the same for its approval before the Minister concerned. The learned Advocate General submitted that the notings on the files by the Secretary and thereafter by the Minister concerned have no evidentiary value and these notings have been done as per the Rules of Business under Article 166 of the Constitution. The learned Advocate General further submitted that the authority was not required to give any reasons while concurring with the findings of the Inquiry Officer and that it was sufficient for the authority to hold that he had concurred with the findings of the Inquiry Officer which was sufficient to indicate that the authority had applied his mind and that the impugned order was not passed mechanically or on the dictates of the Minister concerned. The learned Advocate General further submitted that no malafides have been alleged nor have been proved and the decisions cited by the petitioner are not ratio decidendi and not applicable to the facts and circumstances of the present case.

The petitioner has been removed by the State Government in exercise of the powers conferred to it under Section 29 of the Act. For facility, Section 29 of the Act is extracted hereunder:

29. (1) If in the opinion of the State Government the Adhyaksha or the UpAdhyaksha while acting in place of Adhyaksha willfully omits or refuses to perform his duties or functions under this Act or abuses the powers vested in him or is found to be guilty of misconduct in the discharge of his duties, [or because physically or mentally incapacitated for performing his duties] the State Government, after giving the Adhyaksha or UpAdhyaksha, as the case may be, a reasonable opportunity for explanation may by order remove him from office [and such order shall be final and not open to be questioned in a Court of law]:

[Provided that where in an enquiry held by such person and in such manner as may be prescribed, an Adhyaksha or Upadhyaksha is prima facie found to have committed financial and other irregularities such Adhyaksha or Upadhyaksha 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 exercise and performed by a committee consisting of three elected members of the Zila Panchayat appointed in this behalf by the State Government.

(2) [x x x]

(3) An Adhyaksha or UpAdhyaksha, removed from his office under this section, shall not be eligible for election as Adhyaksha or UpAdhyaksha for a period of three years from the date of his removal.?

A perusal of Section 29 of the Act indicates that if in the opinion of the State Government the Adhyaksha willfully omits or refuses to perform his duties or functions under this Act or abuses the powers vested in him or is found to be guilty of his misconduct in the discharge of his duty, the State Government, after giving a reasonable opportunity, may by order remove him from office. The proviso provides that if a prima facie case is made out, the authority may cease the financial and administrative powers of the Adhyaksha. Subclause (3) of Section 29 of the Act indicates that the Adhyaksha who has been removed from the office shall not be eligible for election as Adhyaksha for a period of three years from the date of his removal.

It is clear that the aforesaid provision provides one punishment, namely, the removal from the post of Adhyaksha. Subclause (3) of Section 29 of the Act further disqualifies the person to contest the election for a period of three years. This statutory provision has a serious repercussion. Not only it has civil consequences but a stigma is cast upon the person who has been elected by a popular mandate. It is therefore imperative and obligatory on the part of the authority to ensure strict adherence to the provisions of the Act. The authority has to act cautiously and should not act on the whims and fancies or on the dictates of others. A statutory power has been given to remove the Adhyaksha who has been given a constitutional status under Part IX and Part IXA of the Constitution of India. Consequently, Adhyaksha cannot be removed in an unceremonious manner on flimsy grounds. The charges must be serious warranting removal on the finding of useful misuse of powers, etc. This is what is required in a democracy which is governed by the rule of law.

The petitioner has been removed for abusing her powers as an Adhyaksha of the Zila Panchayat. The Supreme Court has explained the expression 'abuse of powers' in Trilochan Dev Sharma's case (supra) as under:

'11. The expression 'abuse of powers' in the context and setting in which it has been used cannot mean use of power which may appear to be simply unreasonable or inappropriate. It implies a willful abuse or an intentional wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power which would render a Councillor unworthy of holding the office of President. Inasmuch as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed. Yet again, the expression employed in Section 22 is 'abuse of his powers or of habitual failure to perform his duties'. The use of plural powers, and the setting of the expression in the framing of Section 22 is not without significance. It is suggestive of legislative intent. The phrase 'abuse of powers' must take colour

from the next following expression 'or habitual failure to perform duties'. A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving dishonesty of intention is 'abuse of powers' within the meaning of Section 22 of the Act. The legislature could not have indented the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision.?

The Supreme Court has clearly expressed that the expression 'abuse of powers' has to be narrowly construed. The Supreme Court said that the legislative intent is that a singular or casual aberration or failure in exercise of power is not enough and that a person who has been elected by a popular verdict should not be shown the exit for a single innocuous action or on an error of decision. The petitioner has been removed on account of two charges being partially proved and one charge being fully proved. Lengthy arguments were made on either side. The learned counsel for the petitioner dwelt at length to show and prove to the Court that the charges so proved partially and fully are without any basis. On the other hand, the learned Advocate General indicated that the existing rules were violated and the schemes were illegally sanctioned and consequently, the petitioner being the Adhyaksha and being overall responsible, was guilty of the charges. This Court, after considering the matter, finds that it is not necessary to dwell into the merits and demerits on each charge levelled against the petitioner since the Court finds that the writ petition can be disposed of on other grounds.

Section 29 of the Act gives power to the State Government to remove the Adhyaksha from office. The power of the State Government is required to be exercised statutorily by the Secretary, Panchayat Raj. In the Indian democratic system, senior officers, such as, Secretaries are not supposed to mortgage their own discretion or their decision making authority to give way to the directions of the politicians and to carry out their commands which have no sanctity in law. No government servant shall in the performance of his official duties or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior.

In *Anirudhsinhji Karansinhji Jadeja vs. State of Gujarat*, (1995) 5 SCC 302, the Supreme Court held that a statutory authority vested with jurisdiction must exercise it according to its own discretion and discretion exercised under the direction or instruction of some higher authority was a failure to exercise discretion altogether.

As far back in the year 1970, the Supreme Court in *Purtabpur Co. Ltd. vs. Cane Commissioner, Bihar*, AIR 1970 SC 1896 held that the power exercised by the Cane Commissioner was a statutory power and could not be replaced by the Chief Minister. The Supreme Court further held that the Executive Officers entrusted with statutory discretion may, in some cases, be obliged to take into account considerations of public policy and in some context, the policy of a Minister or the Government, but that would not absolve them from their duty to

exercise their personal judgment in individual cases. The Supreme Court held:

¶13. The power exercised by the Cane Commissioner under clause 6(1) is a statutory power. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of anyone not even in favour of the State Government or the Chief Minister. It was not proper from the Chief Minister to have interfered with the functions of the Cane Commissioner. In this case what has happened is that the power of the Cane Commissioner has been exercised by the Chief Minister, an authority not recognized by clause (6) read with clause (11) but the responsibility for making those orders was asked to be taken by the Cane Commissioner.

14. The executive officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context the policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior.?

Similar view was reiterated by the Supreme Court in *Trilochan Dev Sharma's* case (supra) in the year 2001.

On the other hand, the learned Advocate General submitted that in the light of the powers conferred under Articles 154 and 166 of the Constitution of India and the Rules of Business framed therein, the action of the Secretary was not illegal in seeking approval of his action from the Minister concerned and such an exercise was in conformity with the provisions of Article 166 of the Constitution. In support of his submission, the learned Advocate General placed reliance upon a decision of the Supreme Court in *Union of India and another vs. Kartick Chandra Mondal and another*, (2010) 2 SCC 422, wherein the Supreme Court, in paragraph 18, held that an order would be deemed to be a government order as and when it is issued and publicized. The learned Advocate General submitted that internal communications while processing a matter cannot be said to be an order issued by the competent authority unless they are issued in accordance with law. The Supreme Court further expressed that notings in a note file do not have behind them the sanction of law as an effective order. It is only an expression of a feeling by the officer concerned on the subject under review.

In the opinion of the Court, the said ruling nor Article 166 of the Constitution has any application whatsoever to the facts and circumstances of the present case. Article 166 directs all executive actions to be expressed and authenticated in the manner laid therein. Articles 166(1) and 166(2) of the Constitution expressly envisage authentication of all executive actions and shall be expressed to be taken in the name of the Governor and shall be authenticated in such manner specified in the rules made by the Governor. Under Article 166 (3) of the Constitution, the Rules of Business have been framed for the more convenient

transaction of the business of the Governor of the State. In the present case, the order passed under Section 29 of the Act does not come within the fold of an executive order or of an executive action contemplated to be made in the name of the Governor under Article 166 of the Constitution. A statutory order is required to be passed under Section 29 of the Act and the impugned order is not an order passed under Article 166 of the Constitution.

In the light of the aforesaid, the Court finds that the authority was not guided by his discretion and did not exercise his power independently, but was guided by the orders and dictates of his political bosses.

The Court further finds that the impugned order is a case of nonapplication of mind. As stated earlier, the order entails civil consequences and not only a person elected is removed from his office but is debarred from contesting the election for a period of three years. Such valuable rights of the petitioner holding an office cannot be dispensed with mechanically without recording the reasons in the order. In the present case, the Court finds that the authority had first placed the charge levelled against the petitioner, then extracted the findings of the Inquiry Officer on that particular charge and, in this manner, after narrating the three charges and the findings given by the Inquiry Officer, has in one paragraph held that he concurs with the findings of the Inquiry Officer, which requires no interference and therefore, directs the removal of the petitioner from the office of the Adhyaksha. This Court has no hesitation in holding that the impugned order betrays utter nonapplication of mind to the facts of the case and the relevant law. The manner in which the authority has exercised his power under Section 29 of the Act suggests clear nonapplication of mind. It is settled law that the authority passing administrative orders or quasijudicial orders is required to record the reasons.

In *Mahabir Prasad Santosh Kumar vs. State of U.P.*, (1969) 3 SCC 868, the District Magistrate had cancelled the licence granted under the U.P. Sugar Dealers Licensing Order, 1962 without providing any reasons and the State Government had dismissed the appeal without recording the reasons. The Supreme Court held:

?The practice of the executive authority dismissing statutory appeals against orders which prima facie seriously prejudice the rights of the aggrieved party without giving reasons is a negation of the rule of law.

?Recording of reasons in support of a decision on a disputed claim by a quasijudicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was

just.?

Similarly, in *Siemens Engineering & Manufacturing Co. of India Limited vs. Union of India*, (1976) 2 SCC 981, the Supreme Court held:

It is now settled law that where an authority makes an order in exercise of a quasijudicial function, it must record its reasons in support of the order it makes. Every quasijudicial order must be supported by reasons. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasijudicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasijudicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

The Supreme Court held that the rule is that reasons are required to be given to support the order, which is a basic principle of natural justice.

In *S.N. Mukherjee vs. Union of India*, (1990) 4 SCC 594, the Supreme Court held:

36. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasijudicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decisionmaking. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasijudicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or

revisional authority agrees with the reasons contained in the order under challenge.?

The Supreme Court held that even in an administrative order reasons are required to be given and even though it may not be as elaborate as in the decision of a court of law, but the extent and nature of the reasons would depend on particular facts and circumstances of the case.

In the light of the aforesaid, the submission of the learned Advocate General relying upon a decision of the Supreme Court in AIR 1977 SC 567, Tara Chand Khatri vs. Municipal Corporation of Delhi and others, is patently erroneous. The Supreme Court in the said case held as under:

?16. Regarding the first limb of the contention, it may be stated that although it may be necessary for the disciplinary authority to record its provisional conclusions in the notice calling upon the delinquent officer to show cause why the proposed punishment be not imposed upon him if it differs from the findings arrived at by the enquiring officer with regard to the charge, it is not obligatory to do so in case the disciplinary authority concurs with the findings of the enquiring officer.?

In my opinion, the said conclusion drawn by the Supreme Court is totally distinguishable and is not applicable in the present case. In that case, the disciplinary authority was not required to give reasons while issuing show cause notice to the delinquent with regard to the proposed punishment and it was just sufficient for the disciplinary authority to concur with the findings given by the Inquiry Officer. In the present case, the authority is passing an order for the removal of the Adhyaksha, which is a serious matter and consequently, is required to give independent reasons arriving at a conclusion that the petitioner had misused her powers.

In the present case, the Court finds that no such reasoning has been given by the authority in the impugned order. In the light of the aforesaid, the Court finds that a clear case of legal malice is made out. The State was under an obligation to act fairly without ill will. A deliberate act was done in utter disregard to the rights of the petitioner. Consequently, the impugned order cannot be sustained and is accordingly quashed.

In so far as the order passed by the Secretary, Panchayat Raj, ceasing the financial and administrative powers of the petitioner is concerned, the Court finds from a bare reading that prima facie satisfaction of the authority was not recorded in the impugned order. The proviso to Section 29 of the Act makes it apparently clear that the authority is prima facie required to be satisfied that the Adhyaksha had committed financial and other irregularities and consequently, a direction to cease the financial and administrative powers could be passed. The impugned order does not indicate the prima facie satisfaction of the authority concerned with regard to the financial irregularities. This Court further finds that before ceasing the financial and administrative powers, no opportunity of hearing

was provided to the petitioner. A Division Bench of the Lucknow Bench of the Allahabad High Court in the case of Smt. Chinta Yadav vs. State of U.P. and others, 2009 (107) RD 492, has held that an opportunity of hearing is also required to be given at that stage. In the present case, since neither an opportunity of hearing was given nor prima facie satisfaction was recorded, the impugned order ceasing the financial and administrative powers cannot be sustained and is also quashed.

Accordingly, the writ petitions are allowed. The authorities are directed to restore the petitioner to the post of Adhyaksha of Zila Panchayat forthwith.

Since an order of removal of the petitioner from the post of Adhyaksha is being set aside for the reasons stated aforesaid, it would be open to the State Government to pass fresh orders in accordance with law in the light of the observations made aforesaid. In the circumstances of the case, parties shall bear their own costs.