
(2020) 02 UK CK 0033
In the Uttarakhand High Court
Case No : Special Appeal No. 36 Of 2020

Mange Ram Saini	Vs	APPELLANT
State Of Uttarakhand And Others		RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Uttarakhand Panchayat Raj Act, 2016 — Section 138(4), 146, 185
Constitution Of India, 1950 — Article 226

Citation : (2020) 02 UK CK 0033

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Vivek Shukla, B.S. Parihar, Parikshit Saini

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Vivek Shukla, learned Advocate for the appellant, Mr. B.S. Parihar, learned Standing Counsel for the State of Uttarakhand-respondent

Nos. 1 to 4, and Mr. Parikshit Saini, learned Advocate for respondent no. 5.

2. This intra-Court appeal is preferred against the order passed by the learned Single Judge in WPMS No. 3876 of 2019 dated 02.01.2020 whereby

the jurisdiction of this Court was invoked by the fifth respondent-writ petitioner. The appellant herein seeks leave to appeal against the said order

contending that, though he had filed a caveat in the writ petition, he was not arrayed as a party respondent; he had filed Writ Petition (PIL) No.193 of

2019 questioning the irregularities committed by the fifth respondent-writ petitioner as the Gram Pradhan; the specific allegations levelled by the

applicant-appellant related to the corruption and nepotism of the respondent-writ petitioner; it is after the petitioner had invoked the public interest

litigation jurisdiction of this Court, was the Gram Pradhan placed under suspension by order dated 12.12.2019; and in a writ petition, challenging the validity of the order of suspension, the appellant herein is a necessary and proper party.

3. While the order of suspension, passed against the Gram Pradhan, can always be questioned by him in proceedings under Article 226 of the

Constitution of India, it is the District Magistrate, who passed the order of suspension, who is a necessary party. The appellant herein may not,

therefore, be justified in contending that he is also a necessary party. We are, however, satisfied that the petitioner would be a proper party in the light

of the fact that he had earlier filed WPPIL No. 193 of 2019; and it is only after he had brought the alleged corrupt practices of the fifth respondents-

writ petitioner to light, was action taken by the District Magistrate to place the fifth respondent-writ petitioner under suspension. Leave to appeal is,

therefore, granted and the application, seeking leave to appeal, is disposed of accordingly.

4. In the interlocutory order under appeal, the learned Single Judge opined that the power of suspension of a Gram Pradhan lies with the State

Government under Section 138(4) of the Uttarakhand Panchayat Raj Act, 2016 (hereinafter referred as, the 2016 Act); the power to suspend an

elected representative is not merely an administrative power but is quasi judicial in nature; whether these powers can be delegated at all, under Section

146 and 185 of the 2016 Act, is a question which is already pending consideration before this Court in several writ petitions; and, prima facie, the

impugned order was without jurisdiction. The learned Single Judge stayed the operation and effect of the impugned order dated 12.12.2019 till the next

date of hearing.

5. Section 138(4) of the 2016 Act, admittedly, confers the power, to place the Gram Pradhan under suspension, on the State Government. Irrespective

of whether or not it has the power, to delegate the power to place the Gram Pradhan under suspension to the District Magistrate, it is not in dispute

that the State Government has been specifically conferred power, under Section 138(4) of the 2016 Act, to place the Gram Pradhan under suspension.

In the light of the impugned order passed by the learned Single Judge, staying the operation and effect of the order of suspension, the said order of

suspension passed by the District Magistrate, would not operate as long as the interim order continues to remain in force. Consequently, as on date, there is no order of suspension against the fifth respondent-writ petitioner. While the question whether the State Government can delegate the power, of placing a Gram Pradhan under suspension, to the District Magistrate would necessitate examination in the writ petition, that would not denude the State Government from exercising the power conferred on it, under Section 138(4) of the Panchayati Raj Act to place the Gram Pradhan under suspension, on fulfilment of the conditions stipulated therein. The proviso to Section 138(4) requires the effected person to be given an opportunity to make a representation before an order of suspension is passed.

6. We, therefore, direct the State Government to examine the matter and, if it is satisfied that the allegations are of such a nature as to warrant suspension of the Gram Pradhan, they shall issue a notice to the fifth respondent-writ petitioner within one week from the date of production of a certified copy of this order. In case any such notice is issued to him by the first-respondent, the fifth respondent-writ petitioner shall submit a representation thereto within three weeks thereafter. The first respondent shall, within two weeks from the date of receipt of the fifth-respondent's representation, consider the matter and pass appropriate orders in accordance with law as to whether or not, in the light of the allegations levelled against the fifth respondent-writ petitioner, he should be placed under suspension thereby preventing him from indulging in such activities in future.

7. We are satisfied that, in the light of the serious allegations levelled against the Gram Pradhan, the State Government, which undoubtedly has the power to place him under suspension, should consider the nature of allegations levelled against the fifth-respondent; and take a decision regarding exercise of its powers, under the 138(4) of the 2016 Act, with utmost expedition and, in any event, within six weeks from the date of receipt of a certified copy of this order. The appellant herein shall stand impleaded as the fifth-respondent in the writ petition.

8. The Special Appeal is, accordingly, disposed of. No costs.

9. Let a certified copy of this order be furnished to the learned counsel for the parties, on payment of the prescribed charges, by 19.02.2020.