
(2003) 07 AHC CK 0243
In the Allahabad High Court
Case No : Special Appeal No. 549 of 2003

Matloob Ahmad Khan

APPELLANT

Vs

Smt. Krishna Devi and Others

RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

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

Citation : (2003) 6 AWC 5611

Hon'ble Judges : S.P. Srivastava, J;K.N. Ojha, J

Bench : Division Bench

Advocate : Vishnu Sahai and B. Dayal, for the Appellant; D.K.S. Rathore and S. C., for the Respondent

Judgement

1. Heard the learned Counsel for the Appellant as well as the learned Counsel representing the Petitioner-Respondent.
2. The learned standing counsel representing Respondent Nos. 2 to 4 has also been heard on advance notice.
3. The facts, in brief, shorn of details and necessary for the disposal of this special appeal directed against an interlocutory order, lie in a narrow compass.
4. The District Magistrate, purporting to exercise the jurisdiction vesting in him as envisaged under the provisions contained in U.P. Panchayat Raj Act, 1947 read with U.P. Panchayat Raj (Pradhanon, Up-Pradhanon Aur Sadasyon Ka Hataya Jana) Niyamawali, 1997, initiated proceedings against the Pradhan-the contesting Respondent. Vide the order dated 21.6.2003, he called for an inquiry report from the Assistant Registrar, Cooperative Societies in respect of the various misconducts alleged to have been committed by the Petitioner-Respondent-Pradhan. On receiving the inquiry report, the District Magistrate issued a notice to the Pradhan-the contesting Respondent, which was replied by her on 13.6.2003 by showing cause.
5. The District Magistrate exercising the jurisdiction envisaged under the first

proviso to Section 95 (g) of the U.P. Panchayat Raj Act, 1947, being prima facie satisfied that the Respondent-Pradhan had committed financial and other irregularities; vide his order dated 19.6.2003, issued a restraint order prohibiting the Respondent-Pradhan from exercising any financial or administrative power and discharging any duties in connection therewith. Under the same order, the District Magistrate required the calling of a meeting of the Gram Panchayat for recommending the names for constituting a three members Committee as contemplated under the first proviso to Section 95 (1) (g) of the Act for discharging the duties exercising financial and administrative powers which could not be performed by the Pradhan in view of his ceasing to hold the office.

6. It is not disputed that the three members committee indicated hereinabove has since been constituted. The learned single Judge vide the impugned order dated 4.7.2003, while granting time to learned standing counsel to file a counter-affidavit within one month and the caveator-Respondent to file a counter-affidavit within the same period, granted two weeks" time thereafter to the Petitioner to file rejoinder-affidavit. The writ petition was directed to be listed for admission thereafter. During the interregnum, the operation of the impugned order passed by the District Magistrate dated 19.6.2003, was directed to remain stayed till further orders.

7. It has been strenuously urged by the learned Counsel for the Appellant that while granting the interim relief of the nature as indicated above, the learned single Judge had without any justifiable basis departed from the known rule of practice and procedure regulating the grant of an interim relief and infact had exceeded the jurisdiction vesting in him in this regard.

8. It may be noticed that in its decision in the case of U.P. Junior Doctors" Action Committee and Others Vs. Dr. B. Sheetal Nandwani and Others, , the Apex Court had indicated that it is a well-known rule of practice and procedure that at an interlocutory stage, a relief which is asked for and is available at the disposal of the matter is not granted unless there is very special reason to be indicated in clear terms in the interlocutory order.

9. We have searched in vain for any special reason for the grant of an interlocutory order of the nature as in question, in the impugned interlocutory order passed by the learned single Judge.

10. It should not be lost sight of that the purpose of an interlocutory order is to preserve the rights of the parties so that the proceedings do not become infructuous by any unilateral overt act by one side or the other during its pendency. Further, the interlocutory order may be justified to prevent landslide changes rendering the proceedings ineffective or infructuous.

11. Taking into consideration the facts and circumstances, as brought on record, including the fact that the writ petition has not been admitted as yet and further the nature of the financial irregularities and the facts noticed by the District Magistrate in his order dated 19.6.2003, this special appeal is disposed of finally

providing that the writ petition itself be listed for admission/disposal before the appropriate Bench on 29.7.2003 by which date the learned standing counsel undertakes to file a counter-affidavit in opposition to the writ petition.

12. It will, however, be open to the learned single Judge, in case the writ petition is not finally disposed of on the date fixed, to consider again the matter regarding the grant of an appropriate interim relief.

13. It is further directed that till the next date fixed, the status-quo, as on today in respect of the extent of the financial and administrative powers as envisaged in the first proviso to Section 95 (1) (g) of the U.P. Panchayat Raj Act, 1947, shall be maintained.

14. Ordered accordingly.