
(2003) 08 AHC CK 0078
In the Allahabad High Court
Case No : C.M.W.P. No. 27857 of 2003

Mukesh Rajput

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

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

Citation : (2003) 4 AWC 3289 : (2003) 3 UPLBEC 2587

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : W.H. Khan and J.H. Khan, for the Appellant; Shashi Nandan and Avanish Mishra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju and R.S. Tripathi, JJ.—This writ petition has been filed against the impugned order dated 23.6.2003 Annexure-1 to the writ petition by which administrative and fiscal powers of the petitioner have been taken away from him till the completion of the enquiry against him.

2. Heard learned counsel for the parties.

3. The petitioner has alleged that he was elected Adhyaksh of Zila Panchayat, Farrukhabad on 8.8.2000 and is functioning as such since then. It appears that there were serious allegations against him and a preliminary enquiry was held by the Commissioner, Kanpur Division, into those charges. In that enquiry, the petitioner was given a show cause notice but he did not give reply.

4. We have perused the findings of the preliminary enquiry and they are very serious in nature. A large number of them are regarding grave financial irregularities.

5. u/s 29 of the U. P. Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961 the State Government can remove an Adhyaksha if in an enquiry, he is found

guilty of misconduct in the discharge of his duties. The proviso to Section 29 states that if an Adhyaksha is prima facie found to have committed financial and other irregularities, he can be stopped from performing financial and administrative functioning until he is exonerated in the enquiry.

6. A perusal of the impugned order shows that a preliminary enquiry was held against the petitioner. Although in the preliminary enquiry, it is not necessary to give opportunity of hearing to the accused since it is only a fact-finding enquiry to determine whether a regular charge-sheet should be given or not, yet the authorities acted very fairly and gave a show cause notice to the petitioner but the petitioner did not reply to the same.

7. The findings in the impugned order are only prima facie findings and they are subject to the findings in the regular enquiry. This Court under Article 226 of the Constitution cannot sit as a court of appeal over the findings in the preliminary enquiry.

Moreover, the impugned order is only interlocutory in nature since the guilt or innocence of the petitioner has yet to be established in the regular enquiry.

8. A counter-affidavit has been filed by the respondent No. 3 who has refuted the allegations in the petition. It is denied in the said affidavit that the deponent has any relation with Vijay Singh. The allegation of mala fide against the Chief Minister, Vijay Singh, officials, namely, Sri Krishan, P.L. Punia etc, have also been denied. The petitioner had earlier filed Writ Petition No. 55252 of 2002 in which he had prayed that the enquiry be conducted either by the Commissioner or by the District Magistrate. In the present case, the Commissioner has conducted the enquiry and hence, the petitioner can have no grievance. In paragraph 10 of the counter-affidavit, it is stated that an Inspection was made on 28.3.2003 in presence of the petitioner and the petitioner wrote a letter dated 29.3.2003 asking for copy of the preliminary enquiry report. In the letter dated 29.3.2003, the petitioner has himself stated that the inspection was carried out in his presence. In paragraph 13 of the counter-affidavit, it is stated that in his earlier Writ Petition No. 55252 of 2002, the petitioner has annexed the reply to the complaint against him and thus it is evident that all the documents were provided to the petitioner in the preliminary enquiry and he failed to reply to the complaint. In paragraph 16 of the counter-affidavit, it is stated that the petitioner had submitted a detailed reply to the complaint and all the documents were provided to him along with the show cause notice dated 13.5.2003 with the enquiry report submitted by the learned Commissioner. Copy of the show cause notice and report of the Commissioner are Annexures-14 and 15 to the Writ Petition No. 55252 of 2002. Thus, the petitioner was provided all the necessary documents and had full knowledge of the preliminary enquiry.

9. In paragraph 19 of the counter-affidavit, it is stated that a regular enquiry has been ordered by the State Government by the impugned order dated 23.6.2003. The charges against the petitioner are serious and the impugned order calls for

no interference.

10. For the reasons given above there is no force in the writ petition and it is dismissed.