
(2001) 12 AHC CK 0075
In the Allahabad High Court
Case No : C.M.W.P. No. 39340 of 2001

Mukhtar Ahmad

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 01-12-2001

Acts Referred:

Constitution of India, 1950 — Article 227
Uttar Pradesh Panchayat Raj Act, 1947 — Section 95(1)

Citation : (2002) 1 AWC 95

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : Viqar Ahmad Ansari, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

R.R. Yadav, J.—Heard the learned counsel for the petitioner as well as the learned Standing Counsel. Perused the order impugned dated 12.9.2001 (Annexure-1 to the writ petition) whereby the petitioner has been removed from the office of Up-Pradhan.

2. Although present writ petition is posted today for admission but with the consent of the learned counsel for the parties, I propose to decide this writ petition finally at admission stage on merit.

3. A close scrutiny of the order impugned reveals that some irregularities were found against the petitioner in the meeting dated 31.7.2001 and five persons of the village have made allegations against the petitioner in the aforesaid open meeting.

4. The petitioner was served with a show cause notice. Annexure-2 to the writ petition and it appears that since the petitioner has not given any explanation to the show cause notice Issued to him, therefore, he was removed from the office of Up-Pradhan.

5. It Is to be admitted that the order impugned, Annexure-1 to the writ petition, passed by District Magistrate, Bijnor, is amenable to writ Jurisdiction under Article 227 of the Constitution. Therefore, this Court is entitled to know the reasons which persuaded the District Magistrate to remove the petitioner from the office of Up-Pradhan. The reasons are linked to the conclusion. As a matter of fact, the conclusion arrived at relating to allegations made against the petitioner must be based on definable evidence. In the present case, from perusal of order impugned, it is apparent that no reference has been made what was the definable evidence before the District Magistrate, Bijnor which persuaded him to believe that allegations made against the petitioner are proved. Since the order impugned is amenable to writ jurisdiction, therefore, the petitioner is entitled to demonstrate before this Court that the order of based on non-existent ground and the reasons which persuaded the District Magistrate, Bijnor, to arrive at the conclusion that the petitioner is entitled to hold the office of Up-Pradhan are erroneous.

6. A close scrutiny of the order Impugned reveals that the District Magistrate. Bijnor, has not referred any evidence whatsoever In support of the order impugned. It seems to me that he was under Impression that since petitioner has not given reply to the show cause notice, therefore, the allegations contained in the show cause notice are sufficient evidence to remove him from the office of Pradhan. It Is held that a show cause notice cannot be a substitute of evidence for removing a person from the office of Up-Pradhan. There must ,be some definable evidence in support of the allegations contained In the show cause notice served upon him. Even In those cases where the delinquent Up-Pradhan falls to adduce any evidence, still it is the duty of the district administration to adduce evidence in support of the allegation made in the show cause notice. Here in the present case from the order impugned, it does not appear that even five persons who made allegations against Up-Pradhan were examined in presence of the petitioner. Examination of witnesses in presence of delinquent is an integral part of natural Justice. It goes without saying that prior to removal of Pradhan or Up-Pradhan, a charge-sheet is to be served on the delinquent disclosing the articles of charges and evidence sought to be relied upon in support of each charge. In the instant case neither charge-sheet was served upon the petitioner nor evidence in support of charges were disclosed to him.

7. It is contended by the learned standing counsel that evidence was recorded by the Enquiry Officer. The basic question would be whatever report is submitted and evidence recorded by the Enquiry Officer is subject to approval or disapproval of the District Magistrate and the order passed by the District Magistrate must indicate his application of mind and his application of mind can be inferred only from the reading of the order passed by him. But, from reading of the order passed by the District Magistrate, no such definable evidence is referable from the order impugned and no reason has been given by the District Magistrate in support of the order impugned except stating therein that the petitioner fails to give explanation to show cause notice.

8. The order impugned has civil consequences, therefore, reasonable opportunity of being heard is to be afforded to the petitioner. In the facts and circumstances of the present case, reasonable opportunity of being heard is denied to the petitioner before passing the impugned order, hence the order impugned deserves to be quashed. It is held that denial of reasonable opportunity of being heard to the petitioner in the present case is sufficient prejudice caused to him which makes the order impugned per se illegal.

9. As a result of the aforementioned discussion, the instant writ petition is allowed. The order impugned dated 12.9.2001, Annexure-1 to the writ petition, is hereby quashed and the case is remanded to the District Magistrate, Bijnor, to take action u/s 95 (1) (g) of U. P. Panchayat Raj Act in accordance with law against the petitioner after serving a charge-sheet upon him disclosing evidence in support of articles of charges in the charge-sheet. It is made clear that the petitioner will co-operate with the enquiry and if he fails to co-operate with the enquiry, the District Magistrate, Bijnor, would be at liberty to proceed ex parte against him and pass a fresh order disclosing definable material in support of the order in light of the observation made in the body of the order.