

(1999) 02 AHC CK 0030

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4680 of 1999

Munawar Ali Khan

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 17-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Panchayat Raj (Removal of Pradhan, Up-Pradhans and Members)
Enquiry Rules, 1997 — Rule 4
Uttar Pradesh Panchayat Raj Act, 1947 — Section 95(1)

Citation : (1999) 1 UPLBEC 752

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Mahesh Gautam and Vijay Gautam, for the Appellant;

Judgement

O.P. Garg, J.—Heard Sri Mahesh Gautam Learned Counsel for the petitioner and Sri B. D. Mandhayan Learned Counsel appearing on behalf of Smt. Shanti Devi, respondent No. 6.

2. It is an admitted fact that Smt. Shanti Devi respondent No. 6 is a duly elected Pradhan of the Gaon Panchayat. There were serious allegations of squandering of public money against her. A First Information Report was lodged against her. The District Magistrate on the preliminary enquiry report submitted on 29-7-1998 by the S.D.M. passed an order on 14-8-1998, a copy of which Annexure- 4 to the writ petition, stripped her of financial and administrative powers by invoking the provisions of Section 95 (1) (g) of the U. P. Panchayat Raj Act, 1947. A formal enquiry into the conduct of the petitioner is to be held in view of the provisions of U. P. Panchayat Raj (Removal of Pradhans, Up Pradhans and Members) Enquiry Rules, 1997. A three members Committee as contemplated under the provisions of Section 95 (1), clause (g) was appointed to manage the affairs of the aforesaid Gaon Panchayat/Gaon Sabha.

3. It appears that respondent No. 6 Shanti Devi approached the State

Government. The Secretary of the Department in the State of U.P. by order dated 13-11-1998 set aside the order dated 14-8-1988 passed by the District Magistrate and directed that the matter may be enquired into by S.D.M. Shikarpur and till the enquiry is "concluded" financial and administrative powers of respondent No. 6 shall be restored. In pursuance of the order dated 23-11-1998, Annexure-1 to the writ petition, passed by the State Government, the District Magistrate has passed a consequential order dated 6-1-1998 whereby the powers of respondent No. 6 have been restored. Similarly consequential order has been passed by the Block Development Officer dated 15-1-1999. The petitioner who is one of the members of Gaon Panchayat has challenged the order passed by the State Government. It was urged that the State Government has passed the order under some political pressure. It was urged that the order dated 14-8-1998 was passed by the District Magistrate in pursuance of the preliminary enquiry conducted by the S.D.M. dated 29-7-1998 and that there was no valid reason for the State Government to set aside the order passed by the District Magistrate. It was also pointed out that the power to pass the order u/s 95 (1) (g) of the Act is vested in the State Government but the said power has been delegated in favour of the District Magistrates by the Government Order No. 1684 dated 30th April, 1997, Annexure-5 to the writ petition. According to Sri Mahesh Gautam, learned Counsel for the petitioner, powers of the District Magistrate as well as that of the State Government are concurrent and the State Government could not have restored the financial and administrative powers to respondent No. 6 unless the enquiry is concluded. In this connection reference was made to the provisions of first proviso to clause (g) which provides that the "Pradhan 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 exercised and performed by a committee of the three members of Gram Panchayat appointed by the State Government." In the instant case, respondent No. 6 has not been exonerated of the serious charges of financial irregularities in the final enquiry which is going on. The State Government, therefore, was not justified in restoring the financial and administrative power unless the respondent No. 6 is exonerated of the charges in the final enquiry. It would not be out of place to mention that there are grave allegations of financial irregularities and squandering and misappropriation of money against respondent No. 6, Smt. Shanti Devi.. At First Information Report has also been lodged against her. The amount squandered by her runs into lacs of rupees. In the wake of this fact, it was wholly unjustified on the part of the State Government to have restored financial and administrative powers in favour of present respondent No. 6 who is facing criminal charges and against whom the enquiry is to be concluded.

4. The writ petition is finally disposed of with the direction that the final enquiry against respondent No. 6 shall be concluded by the enquiry officer appointed under Rules of 1997 within a period of three months from the date a certified copy of this order is produced before the District Magistrate/Enquiry Officer.

5. In the meantime the order dated 23-11-1998 passed by the State Government, a copy of which is Annexure-1 to the writ petition and the consequential order passed pursuant thereto, shall remain in abeyance. The effect of this order is that the committee appointed by the District Magistrate under the order dated 14-8-98 under the first proviso to clause (6) of sub-section (1) of Section 95 shall exercise the financial and administrative powers and perform the functions of Pradhan.