

(2014) 09 AHC CK 0049

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 49946 of 2014

Nagar Palika Parishad

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Citation : (2014) 10 ADJ 667 : (2015) 109 ALR 813 : (2015) 2 UPLBEC 967

Hon'ble Judges : Vivek Kumar Birla, J;A.P. Sahi, J

Bench : Division Bench

Advocate : Nipun Singh, Advocate for the Appellant; Anand Kumar, Advocate for the Respondent

Judgement

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1. Heard Sri Nipun Singh learned counsel for the petitioner, Sri Rajiv Singh learned Standing Counsel for the respondent Nos. 1 to 3 and Sri Anand Kumar for the respondent No. 4. The Office of the Executive Officer of the Nagar Palika, Mawana, was lying vacant and one Mr. Manoj Kumar Rastogi was transferred for taking over charge as such by the State Government. However, Mr. Rastogi has not taken over charge as yet.

2. The District Magistrate, Meerut as an interim measure, pending taking over charge by a regular appointee, has passed the impugned order whereby he has directed the respondent No. 4 Shailendra Kumar Singh, who is the Executive Officer, Hastinapur to also additionally take charge of Nagar Palika Parishad, Mawana.

3. The petitioner is the Chairman of the Nagar Palika Parishad, Mawana and it is alleged that this order of the District Magistrate is without jurisdiction keeping in view the ratio of the decision in the case of Girdhari Lal Swarnkar Vs. State of U.P. and Others, . Paragraph 29 of the said judgment is extracted hereinunder:

"29. The U.P. Palika (Centralized) Service Rules, 1966, do not contemplate any

delegation of powers by the State Government in the matter of appointment upon the District Magistrate or any other authority. Therefore, the Government Order impugned also suffers from the vice of excessive delegation."

4. This matter was taken up and we had called upon the learned Standing Counsel to obtain instructions about the exercise of powers by the District Magistrate in such a contingency keeping in view the aforesaid decision of the Court.

5. Learned Standing Counsel has invited the attention of the Court to the Government Order dated 24.1.2014 to urge that the State Government has already issued instructions as per the judgment in the case of Girdhari Lal Swarnkar (Supra) and any such proposal for additional or temporary charge as provided under Rule 31 of the U.P. Palika (Centralized) Service Rules, 1966 has to be sent to the State Government for orders. The said rule is extracted hereinunder:

"31. Temporary Arrangements--Ad hoc and temporary officiating appointments--Notwithstanding anything contained in Rule 21 the State Government may also make ad hoc appointments or temporary officiating arrangements for the posts falling vacant Substantively or temporarily."

6. A perusal thereof leaves no room for doubt that any ad hoc or temporary officiating appointment is within the jurisdiction of the State Government and which stands fortified by the judgment in paragraph 29 aforesaid. The Government Order dated 24.1.2014 is also to the same effect.

7. There is no ambiguity in the source of the power available with the State Government in this regard. The petitioner therefore is correct in her submission that the District Magistrate did not have any jurisdiction to pass any order with regard to such arrangement as per Rule 31 aforesaid. The writ petition therefore deserves to be allowed. The impugned order dated 12.8.2014 Annexure 1 to the writ petition is quashed leaving it open to the State Government-respondent No. 1 to pass an appropriate order with regard to proposal of appointment of the Executive Officer of the Nagar Palika Parishad concerned in accordance with law.