
(2012) 12 AHC CK 0050

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37427 of 2012

Narendra Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 1 ADJ 228 : (2013) 2 ALJ 737 : (2013) 2 AWC 1665 : (2013) 2 AWC 1663

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Advocate : Mahendra Narayan Singh and Manoj Kumar Gupta, for the Appellant; Neeraj Dube and S.D. Dube, for the Respondent

Final Decision : Allowed

Judgement

Dilip Gupta, J.—The petitioner, who was declared elected as Pradhan of Gram Panchayat-Dakani Rajpuri, Block-Bhuta, District Bareilly in the elections held in 2010, has filed this petition for quashing the order dated 7th July, 2012 passed by the District Magistrate, Bareilly by which the financial and administrative powers have been ceased u/s 95(1)(g) of the U.P. Panchayat Raj Act, 1947 (hereinafter referred to as the "Act") and a direction for constitution of a Three Member Committee to exercise such powers has been given. It is stated that a complaint was filed by Mohd. Taufeeq on 18th April, 2012 before the Block Development Officer with the allegation that illegalities had been committed by the Pradhan in the construction of the Rajiv Gandhi Sansadhan Sewa Kendra. The Block Development Officer constituted a committee consisting of the Technical Assistant at the Block Level, Sector Prabhari and the Junior Engineer to enquire into the allegations levelled against the Pradhan in the said complaint dated 18th April, 2012. A report dated 3rd May, 2012 was submitted by the aforesaid committee and this report was forwarded by the Block Development Officer to the District Magistrate by the letter dated 10th May, 2012. It is on the basis of

the said report that the District Magistrate issued the notice dated 30th May, 2012 to the Pradhan calling upon him to file a reply within ten days as to why the financial and administrative powers may not be ceased and a Three Member Committee may not be constituted to discharge such functions. The petitioner submitted a reply dated 11th June, 2012 with documents to substantiate that the charges levelled against him were factually not correct. The District Magistrate, however, passed the order dated 7th July, 2012 for ceasing the financial and administrative powers of the Pradhan u/s 95(1)(g) of the Act and also issued directions for constitution of a Three Member Committee to discharge such powers as the Pradhan was prima facie found guilty of the financial irregularities in the preliminary enquiry.

The impugned order dated 7th July, 2012 passed by the District Magistrate mentions that the complaint filed by Mohd. Taufeeq was got enquired through the Block Development Officer and an enquiry report dated 10th May, 2012 was submitted with the recommendation that action should be taken against the Pradhan. The order further mentions that a show-cause notice dated 30th May, 2012 was issued to the Pradhan to which he submitted a reply on 11th June, 2012 and denied the allegations but the reply was not satisfactory as the Pradhan did not produce sufficient evidence in support of his defence.

2. Learned counsel for the petitioner submitted that the order passed by the District Magistrate deserves to be set aside for the reason that the preliminary enquiry report submitted by the committee constituted by the Block Development Officer could not have been made the basis for ceasing the financial and administrative powers of the Pradhan. In this connection, learned counsel for the petitioner pointed out that a factually incorrect statement has been made in the impugned order by the District Magistrate that the enquiry was got conducted through the Block Development Officer whereas in fact the Block Development Officer had formed a committee of three members and the report submitted by the committee constituted by him on the complaint filed by Mohd. Taufeeq was forwarded to the District Magistrate. Learned counsel also submitted that the preliminary enquiry which could have been made the basis for passing an order u/s 95(1)(g) of the Act was required to be made either by the District Panchayat Raj Officer or a "district level officer" as contemplated under Rule 2(c) of the Uttar Pradesh Panchayat Raj (Removal of Pradhan, Up-Pradhans and Members) Enquiry Rules, 1997 (hereinafter referred to as the "Rules") or the District Magistrate himself. In support of this contention, he has placed reliance upon the Full Bench judgment of this Court in Vivekanand Yadav Vs. State of U.P. and Others . Learned counsel for the petitioner further submitted that even otherwise, the reply submitted by the Pradhan to the show-cause notice issued by the District Magistrate was not considered and only a bald statement has been made in the impugned order that it was not satisfactory.

3. Learned Standing Counsel has filed a counter-affidavit on behalf of the respondents.

Impleadment Application No. 230723 of 2012 has also been filed by Niyaz Ahmad, Adara Begum, Rajpal and Mohd. Taufeeq for impleadment as respondent Nos. 8, 9, 10 and 11 to the writ petition respectively with the averment that the first three applicants are the three members of the Committee constituted by the District Magistrate u/s 95(1)(g) of the Act, while the fourth applicant is the complainant. With the impleadment application, a counter-affidavit has also been filed by the said applicants.

4. Learned counsel for the petitioner strongly opposed the impleadment application and submitted that the applicants have no locus to be impleaded as respondents and in support of his contention, learned counsel placed reliance upon the Division Bench judgments of the Court in Smt. Kesari Devi Vs. State of U.P., Commissioner, Allahabad Division, Collector/Distt. Magistrate and Chief Development Officer/Mukhya Adhikari, ; Amin Khan Vs. State of U.P. and Nirmala Verma, and Dharam Raj Vs. State of U.P. and Others, and of a learned Judge in of the Court Suresh Singh Vs. Commissioner and Others, .

5. Sri. Shakti Dhar Dube, learned counsel appearing for the four applicants, however, submitted that the applicants, as members of the Committee constituted by the District Magistrate to discharge the functions of the Pradhan and the complainant, are necessary parties to the writ petition and, therefore, the application for impleadment should be allowed. In support of his contention, learned counsel placed reliance upon the decisions of the Supreme Court in Girjesh Shrivastava and Others Vs. State of M.P. and Others, ; M.D., H.S.I.D.C. and Others Vs. Hari Om Enterprises and Another, ; Kasturi Vs. Iyyamperumal and Others, ; U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., and the Division Bench judgment of this Court in Special Appeal No. 994 of 2006 (Nasir Ali and another v. Mohd. Qasim), decided on 1st September, 2006. Learned counsel for the applicants has also placed before the Court the decision of the Supreme Court in Dr. K. Krishna Murthy and Others Vs. Union of India (UOI) and Another, , for emphasising the objects and reasons for introducing the 73rd Amendment in the Constitution dealing with Panchayat Raj.

6. On merits, learned Standing Counsel and Sri. Shakti Dhar Dube, learned counsel for the applicants have submitted that the impugned order does not call for any interference under Article 226 of the Constitution as opportunity was given to the petitioner to file a reply to the show cause notice and the reply filed by the petitioner was considered by the District Magistrate; It is also their submission that when in the preliminary enquiry the Pradhan was prima facie found to be involved in financial irregularities in the construction of the Rajiv Gandhi Sansadhan Sewa Kendra, it will not be appropriate to permit him to function as the Pradhan.

7. I have considered the submissions advanced by the learned counsel for the parties.

The first issue that needs to be decided is whether the impleadment application

filed by the three members of the Committee constituted by the District Magistrate as also by the complainant for their impleadment as respondent Nos. 8 to 11 to the writ petition should be allowed.

The objection of the learned counsel for the petitioner is that the applicants do not have the locus to defend the impugned order as they are neither necessary nor proper parties, while the contention of learned counsel for the applicants is that they are necessary parties as the three members will be ousted if the writ petition is allowed and the action was initiated on the basis of the complaint filed by the fourth applicant.

8. This issue was examined at length by the Division Bench of the Court in Smt. Kesari Devi (supra). The said decision arose out of proceedings initiated against Kesari Devi, who had been elected as Chairperson of the Zila Panchayat in the elections held in November 2000 under the provisions of the U.P. Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961 (hereinafter referred to as the "Zila Panchayats Act"). An application was filed by Uma Devi Yadav for holding an enquiry against Kesari Devi and the District Magistrate constituted a committee which submitted the preliminary enquiry that was forwarded to the State Government. The State Government issued a show-cause notice dated 16th April, 2004 to Kesari Devi to submit an explanation and thereafter an order dated 19th June, 2004 was passed by the State Government depriving her of the financial and administrative powers and a Three Member Committee was appointed for this purpose which also included the complainant Uma Devi Yadav. This order was assailed by Kesari Devi in a writ petition in which an interim order was passed but the Special Appeal filed by the State Government against the interim order was allowed. Kesari Devi filed a SLP before the Supreme Court and the Supreme Court stayed the operation of the order passed in the Special Appeal. As a result of the order passed by the Supreme Court, Kesari Devi continued as the Chairperson of the Zila Panchayat. A final enquiry was, however, conducted and the State Government by the order dated 30th July, 2005 removed Kesari Devi from the office of Chairperson of the Zila Panchayat and A.K. Dubey, Vice-Chairperson of the Zila Panchayat, was asked to officiate against the casual vacancy. A.K. Dubey, therefore, filed an application in the writ petition for impleadment as a respondent contending that if the petition was allowed, the applicant would be adversely affected. The impleadment application was rejected by the Division Bench of the Court. The Court noticed that the right of the Vice-Chairperson of the Zila Panchayat to occupy the office was entirely dependent on the vacancy and not otherwise. In this context the Court, after noticing the earlier decision of the Court in Suresh Singh (supra) and the decisions of the Supreme Court, observed:

13. The question has to be examined also from the angle that in case the order had been passed by the State Government in favour of the petitioner, could the Upadhyaksha have claimed any right to challenge such an order. Looking to the provisions of the Act that an Upadhyaksha can only occupy the office of

Adhyaksha upon a casual vacancy, it is obvious that the answer to the aforesaid question would be in the negative inasmuch as none of the rights of the Upadhyaksha are being affected by passing of such an order. It cannot be said that the Upadhyaksha suffers a legal injury so as to be defined as an aggrieved person having locus to challenge any State action taken against the Upadhyaksha. Conversely, applying the said principles, the Upadhyaksha will have no right to claim his impleadment as a matter of right to support an order which is against the petitioner. To support our aforesaid reasoning, it would be apposite to refer to certain decisions of the Apex Court on the question of locus standi and person aggrieved.

....

38. Thus, it is evident from the aforesaid that "person aggrieved" is to be considered in context of the Act involved and is to be restricted to the person, who has wrongfully been deprived of something or wrongfully refused something or his interest/title is adversely affected, but the same does not require a very liberal and wide interpretation. A person having a mere chance to officiate would have no locus standi in such a matter. The party has to satisfy as what is the legal injury caused by that violation of law for the redressal of which the party has approached the Court. Mere violation of law or making out a legal issue is not enough to maintain the writ petition.

....

40. In the instant case, the applicant cannot claim to have any vested right to the office, He has merely a chance to officiate in case the Adhyaksha is removed..... His application is liable to be rejected....

41. The question can be examined from another angle namely that if the State Government had acquitted the petitioner of all charges levelled against her, then whether the applicant have could approached this Court to challenge the order. The only possible answer is no.

42. In view of the above, the application for impleadment stands rejected. However, since the issues raised in this writ petition have wide repercussions and since the questions to be answered are of a serious nature, we have heard Shri Shashi Nandan, learned Senior Counsel solely for the assistance of the Court in view of the provisions of Chapter XXII Rule 5-A of the Allahabad High Court Rules, 1952 in order to secure the ends of justice and. in order to prevent any miscarriage of justice.

(emphasis supplied)

This decision of the Division Bench was challenged before the Supreme Court in Special Leave to Appeal (Civil) No. 19761 of 2005 which was dismissed on 3rd October, 2005.

9. The Division Bench of the Court in Amin Khan (supra) also examined the locus

of a person who had filed the complaint and was also a member of the Three Member Committee constituted by the District Magistrate u/s 95(1)(g) of the Act to discharge the financial and administrative powers of the Gram Pradhan, to file an application for leave to file Special Appeal against the judgment and order of a learned Judge of the Court by which the writ petition filed by the Pradhan for setting aside the order passed by the District Magistrate was allowed. The Court, after placing reliance on the decision in Smt. Kesari Devi (supra), held that such a person had no locus and the observations are:

6. Admittedly, the applicant is a complainant and has also been included by the District Magistrate in the three Members Committee to look, after the work of the Pradhan pending final enquiry. The issue as to whether such a beneficiary of order, impugned in writ petition could be heard by a Court was considered at length by the Division Bench of this Court to which one of us (Dr. B.S. Chauhan, J.) was a member in Smt. Kesari Devi Vs. State of U.P., Commissioner, Allahabad Division, Collector/Distt. Magistrate and Chief Development Officer/Mukhya Adhikari, wherein after noticing large number of judgments of the Hon"ble Supreme Court, the Court reached the conclusion that such an applicant cannot be a party in litigation for the reason that he can--not be a person aggrieved. The said judgment was challenged before the Hon"ble Apex Court in SLP (Civil) No. 19761 of 2005 and the same was dismissed vide order dated 3.10.2005.

14. We may further clarify that the right of the petitioner to continue as one of the Members of three Members Committee pending regular enquiry against the Pradhan, is not a vested right nor he has a legal right to continue. More so, as the petitioner claims to be the complainant, he ought not to have been allowed to be a member of the Committee to look after the work of Pradhan. In case he was a complainant, he could be, at the most, examined as a witness in the enquiry but he cannot be permitted to become a party in the lis. Thus, we are of the considered opinion that the petitioner does not have any locus standi to maintain the appeal, and the application for leave to appeal is liable to be rejected.

15. In view of the above, we record that none of the rights of the petitioner has adversely been affected under the impugned judgment so as to categorize him an "aggrieved party.

(emphasis supplied)

10. The Division Bench of the Court in Dharam Raj (supra) also examined whether a complainant is a person "aggrieved" who has the locus to assail the order passed by the Appellate Authority for annulling the order passed by the Authority for cancelling the fair price shop license and held that the complainant is not a person "aggrieved" and does not have the locus to assail the order.

11. In Suresh Singh (supra), a learned Judge of the Court examined whether the petitioner, who was the Up-Pradhan of the Gaon Sabha and was holding the charge temporarily during the suspension period of the Pradhan, had a right to

challenge the order by which the suspension order was recalled and the Pradhan was reinstated. While holding that the petitioner had no locus to challenge the order, the Court observed:

... The petitioner, who is Up-Padhan of the Gaon Sabha and who claims to have made complaints and on the basis whereof an enquiry was conducted against respondent No. 4, cannot be said to be a necessary party. He has no locus standi in such a case. He can at the best be a witness in the said enquiry. None of his personal or statutory rights are affected. He has no independent power under the Act except that he exercises the powers of Pradhan temporarily in his absence or in the event of his suspension or removal. It, therefore, follows that if the suspension or removal order is revoked and the Pradhan is reinstated, he has no right to continue in the office of Pradhan thereafter. The petitioner has, therefore, no right either to file a revision against the order passed by respondent No. 2, by which the suspension of respondent No. 4 was recalled and he as reinstated to the post of Pradhan, or to file the present writ petition, as no such right to challenge the impugned order can be said to have been conferred on any person other than the person concerned, such as who has been suspended or removed....

12. Learned counsel for the applicants has, however, placed reliance on the decisions of the Supreme Court referred to above.

The decision of the Supreme Court in *Girjesh Shrivastava and others* (supra) relates to public interest litigation. The persons whose appointments were cancelled were not impleaded and it is in this context that the Supreme Court observed that non impleadment goes to the root of the matter as it violates the principles of natural justice. This case, therefore, does not help the applicants.

The decision of the Supreme Court in *Managing Director, Haryana State Industrial Development Corporation and others* (supra) also does not help the applicants as it relates to the impleadment of a subsequent allottee of a plot after an order was passed for resumption of the plot allotted to the original allottee.

In *Kasturi* (supra), the Supreme Court held that person who claims an independent title and possession adversely to the title of vendor is not a necessary party since an effective decree for specific performance of the contract can be passed in his absence and no relief can be claimed against such a party. This decision also, therefore, does not help the applicant.

The decision in *Gyan Devi* (supra) also does not help the applicants. The Supreme Court pointed out that the local authority for whose benefit the land is acquired is a proper party in the proceedings before the Reference Court so that it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in this regard.

In Nasir Ali and another (supra), the Division Bench of the Court did not examine the locus of the appellants to file a Special Appeal against an interim order passed by the Writ Court by which the order of the District Magistrate ceasing the financial and administrative powers of the writ petitioner was stayed.

13. As noticed hereinabove, the Division Bench of the Court in Smt. Kesari Devi (supra) had examined the issue of locus standi at length and observed that the Vice-Chairperson of the Zila Panchayat who had been asked to hold the office of the Chairperson of the Zila Panchayat against a casual vacancy arising out of removal of the Chairperson, had no right to be heard in the writ petition filed by Chairperson of the Zila Panchayat for setting aside the order passed by the State Government for removing her from the office. In Amin Khan (supra), the Division Bench, while examining the locus standi of a complainant who was also a member of the Three Member Committee to discharge the functions of the Gram Pradhan, held that such a person does not have the locus to file an application for leave to file Special Appeal.

14. The first three applicants in this petition are the three members of the Committee appointed by the District Magistrate to discharge the financial and administrative powers of the Pradhan after such powers of the Pradhan were ceased by the District Magistrate u/s 95(1)(g) of the Act. In view of the decisions of the Division Benches of the Court in Smt. Kesari Devi (supra), Amin Khan (supra) and Dharam Raj (supra), they do not have a locus to be impleaded as respondents in the writ petition to defend the impugned order as they do not have a vested right and they can only discharge the functions of the Pradhan only when the powers of the Pradhan are ceased. The remaining applicant is the complainant, who also does not have the locus to assail the order in view of the Division Bench judgments in Amin Khan (supra) and Dharam Raj (supra).

Thus, for the aforesaid reasons, Impleadment Application No. 230723 of 2012 filed by the applicants for impleadment as respondent Nos. 8 to 11 in the writ petition deserves to be rejected and is, accordingly, rejected.

Sri. Shakti Dhar Dube, learned counsel for the applicants was heard solely for the purpose of assisting the Court in view of the judgment of the Court in Smt. Kesari Devi (supra).

15. The contentions raised by learned counsel for the petitioner for setting aside the impugned order now need to be examined.

The impugned order for ceasing the financial and administrative powers of the Gram pradhan has been passed by the District Magistrate exercising powers u/s 95(1)(g) of the Act. It will, therefore, be useful to reproduce Section 95(1)(g) of the Act which is as follows:

95(1). The State Government may-

(g). remove a Pradhan. Up-Pradhan or member of a Gram Panchayat or a Joint Committee or Bhumi Prabhandhak Samiti or a Panch, Sahayak Sarpanch or

Sarpanch of a Nyaya Panchayat if he--

- (i) absents himself without sufficient cause for more than three consecutive meetings or sittings,
- (ii) refuses to act or becomes incapable of acting for any reason whatsoever or if he is accused of or charged for an offence involving moral turpitude,
- (iii) has abused his position as such or has persistently failed to perform the duties imposed by the Act or rules made thereunder or his continuance as such is not desirable in public interest, or
- (iii-a) has taken the benefit of reservation under sub-section (2) of Section 11-A or sub-section (5) of Section 12, as the case may be, on the basis of a false declaration subscribed by him stating that he is a member of the Scheduled Castes, the Scheduled Tribes or the Backward Classes, as the case may be.
- (iv) being a Sahayak Sarpanch or a Sarpanch of the Nyaya Panchayat takes active part in politics, or
- (v) suffers from any of the disqualifications mentioned in clauses (a) to (m) of Section 5-A:

Provided that where, in an enquiry held by such person and in such manner as may be prescribed, a Pradhan is prima facie found to have committed financial and other irregularities such 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 consisting of three members of Gram Panchayat appointed by the State Government.

It is not in dispute that the State Government has delegated the powers to the District Magistrate.

16. It is, thus, seen that u/s 95(1)(g) of the Act, the District Magistrate can remove a Pradhan for the reasons mentioned in clauses (i) to (v). The proviso, however, stipulates that where in an enquiry held by such person and in such manner, as may be prescribed, a Pradhan is prima fade found to have committed the financial and other irregularities, such Pradhan shall cease to exercise and perform the financial and administrative powers and functions until he is exonerated of the charges in the final enquiry and such powers of the Pradhan shall be performed by a Committee consisting of three members of Gram Panchayat appointed by the District Magistrate.

17. There is a detailed procedure prescribed under Rules 3, 4 and 5 of the Rules regarding the making of a complaint against a Pradhan, the preliminary enquiry and the Enquiry Officer and the same are as follows:

3. Procedure relating to complaints.--(1) Any person making a complaint against a Pradhan or Up-Pradhan may send his complaint to the State Government or

any officer empowered in this behalf by the State Government.

(2) Every complaint referred to in sub-rule (1) shall be accompanied by the complainant's own affidavits in support thereof and also affidavits of all persons from whom he claims to have received information of facts relating to the accusation, verified before a notary, together with all documents in his possession or power pertaining to the accusation.

(3) Every complaint and affidavit under this rule as well as any schedule or annexure thereto shall be verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings and affidavits, respectively.

(4) Not less than three copies of complaint as well as each of its annexures shall be submitted by the complainant.

(5) A complaint which does not comply with any of the foregoing provisions of this rules shall not be entertained.

(6) It shall not be necessary to follow the procedure laid down in the foregoing provisions of this rule, if a complaint against a Pradhan or Up-Pradhan is made by a public servant.

4. Preliminary Enquiry.--(1) The State Government, on the receipt of a complaint or report referred to in Rule 3, or otherwise order the Enquiry Officer to conduct a preliminary enquiry with a view to finding out if there is a prima fade case for a formal enquiry in the matter.

(2) The Enquiry Officer shall conduct the preliminary enquiry as expeditiously as possible and submit his report to the State Government within thirty days of his having been so ordered.

5. Enquiry Officer.--Where the State Government is of the opinion, on the basis of the report referred to in sub-rule (2) of Rule 4 or otherwise, that an enquiry should be held against a Pradhan or Up-Pradhan or Member under the proviso to clause (g) of subsection (1) of Section 95, it shall forthwith constitute a committee envisaged by proviso to clause (g) of sub-section (1) of Section 95, of the Act and by an Order ask an Enquiry Officer, other than the Enquiry Officer nominated under sub-rule (2) of Rule 4, to hold the enquiry.

Rule 2(c) of the Rules defines "Enquiry Officer" and is as follows:

2.(c) "Enquiry Officer" means the District Panchayat Raj Office or any other district level officer, to be nominated by the District Magistrate.

18. It is seen that under Rule 3(1) of the Rules, any person making a complaint against a Pradhan or. Up-Pradhan may send his complaint to the District Magistrate which shall be in the manner provided in sub-rule (2) of Rule 3. Under sub-rule (5) of Rule 3, a complaint which does not comply with any of the provisions of sub-rules (1) to (4) of Rule 3 shall not be entertained. Under Rule 4 of the Rules, the District Magistrate, on the receipt of a complaint or report

referred to in Rule 3, or otherwise, order the Enquiry Officer to conduct a preliminary enquiry with a view to finding out if there is a prima facie case for a formal enquiry in the matter. Under Rule 5 of the Rules, where the District Magistrate is of the opinion, on the basis of the report referred to in sub-rule (2) of Rule 4 or otherwise, that an enquiry should be held against a Pradhan or Up-Pradhan or Member, he shall forthwith constitute a Three Member Committee and by an order ask an Enquiry Officer, other than the Enquiry Officer nominated earlier, to hold the enquiry. The enquiry officer for conducting the preliminary enquiry should be the District Panchayat Raj Officer or any other district level officer" to be nominated by the District Magistrate.

It has, therefore, to be examined whether the aforesaid provisions of the Rules had been followed by the District Magistrate while passing the order u/s 95(1)(g) of the Act.

19. The records indicate that a complaint dated 18th April, 2012 was submitted by one Mohd. Taufeeq before the Block Development Officer regarding the illegalities committed by the Pradhan in the construction of the Rajiv Gandhi Sansadhan Sewa Kendra. The complaint was not submitted in the manner prescribed under sub-rules (2) to (4) of Rule 3 and nor was it submitted to" the District Magistrate. It was addressed to the Block Development Officer who on his own constituted a three member committee to make an enquiry and submit a report and the report of the committee was merely forwarded by the Block Development Officer to the District Magistrate. This factual position has also been stated in the counter-affidavit filed by the applicants and is also admitted to the learned Standing Counsel. This factual position is also stated in the show-cause notice dated 30th May, 2012 issued by the District Magistrate.

20. The preliminary enquiry has to be conducted by an Enquiry Officer contemplated under Rule 2(c) of the Rules namely either the District Panchayat Raj Officer or any other district level officer to be nominated by the District Magistrate. The District Magistrate, as noticed hereinabove, had not nominated the Enquiry Officer and nor the members of the Committee were "district level officers". The District Magistrate could form his prima facie satisfaction for holding a final enquiry only on the basis of the report submitted by the Enquiry Officer defined under Rule 2(c) of the Rules.

21. The Full Bench of the Court in Vivekanand Yadav (supra) examined at length the provisions of Section 95(1)(g) of the Act and the Rules and observed that the District Magistrate could form his prima facie satisfaction for holding a formal enquiry and cease the financial and administrative powers of the Pradhan only on the preliminary enquiry report submitted by the Enquiry Officer defined under Rule 2(c) of the Rules or on the basis of the preliminary enquiry conducted by the District Magistrate himself. The observations are as follows:

68. In view of our decision and reasons detailed in the Hafiz case, a pradhan is neither entitled to be associated in the preliminary enquiry nor is he entitled to

get the copy of the preliminary enquiry report--his only right is to have his explanation or point of view or version to the charges considered before the order for ceasing his financial and administrative power is passed.

....

71. It is not only necessary that the explanation or point of view or the version of the affected pradhan should be obtained but should also be considered before being prima facie satisfied of his being guilty of financial and other irregularities and ceasing his powers. Of course the consideration of the explanation does not have to be a detailed one. There should be indication that mind has been applied. This has also been explained in the Hafiz case. Nevertheless, we would like to clarify it.

....

80. The counsel for the petitioner submitted that:

? The proviso to Section 95(1)(g) contemplates ceasing of financial and administrative powers only on a preliminary enquiry;

? The preliminary enquiry cannot be conducted unless the enquiry officer is asked to do so;

? Any other report would merely be a report under Rule 3(6) of the Enquiry Rules and on its basis only preliminary enquiry under Rule 4 can be ordered and not an order ceasing financial and administrative powers or a final enquiry;

? The word "otherwise" in Rule 5 is ultra vires the proviso to Section 95(1)(g) of the Panchayat Raj Act.

Some Words in Rule 5-Useless

....

85. The question is, what is the meaning of word "otherwise" in Rule 5:

? Can it include a report by anyone or information coming into hands of the DM;

? Has the DM suo motu power to cease the power and refer the case for the final enquiry?

88. Under proviso to Section 95(1)(g) right to exercise financial and administrative powers can only be ceased if the DM prima facie finds that the pradhan was guilty of financial and other irregularities in an enquiry (preliminary or fact finding) by such person and in the manner prescribed. It is only on such a report that might come within the purview of the word "otherwise" in Rule 5 of the Rules. All kinds of reports or information may not be relied under Rule 5 lest the rule may be hit by the statutory provision.

89. In our opinion, in view of proviso to Section 95(1)(g) it cannot be given as wide a meaning as we gave to the words "otherwise" in Rule 4. It has to have

restricted meaning. Let's consider, what kind of reports may be covered by the proviso to Section 95(1)(g) and the word "otherwise" in Rule 5 of the Enquiry Rules.

90. Rule 2(c) defines "Enquiry Officer". It means the DPRO or any other district level officer to be nominated by the DM. The following contingencies may be there:

- (i) A complaint can be made directly to the DM who may ask the enquiry officer as defined under Rule 2(c) to conduct a preliminary inquiry under Rule 4; or
- (ii) A complaint can be made directly to the enquiry officer defined u/s 2(c), who may submit a report without the DM asking for it; or
- (iii) A complaint can be made to the DM with copy to the enquiry officer, who may submit a report without the DM asking for it; or
- (iv) A DM can himself conduct a preliminary enquiry; or
- (v) A report can be submitted by any other public servant.

91. In all the aforesaid alternatives, a preliminary enquiry is conducted and a preliminary report is there. The question is, which one of these can be acted upon under Rule 5 to cease the power under proviso to Section 95(1)(g) of the Panchayat Raj Act. According to,

? The petitioners only first of the aforesaid report can be relied upon;

? The respondents all five reports can be relied upon.

? In our opinion, answer lies somewhere in between and only the first four reports can be so relied.

92. There is no dispute so far as first contingency is concerned. The fifth one has to be rejected. In case it is accepted, then this would make Rule 3(6) otiose. In our opinion this cannot be the case. However this cannot be said about contingencies number two to four.

.... 96. A report by an enquiry officer defined under Rule 2(c) is also a report by a person and the manner is prescribed under the Rules--irrespective of the fact that he was so asked by the DM or not. In our opinion, it is also a preliminary report within the meaning of the proviso to Section 95(1)(g) of the Panchayat Raj Act.

97. The DM exercises the powers of the State Government u/s 95(1)(g) as well as under the Enquiry Rules as the powers are delegated to him. He also appoints the enquiry officer. He is higher than all enquiry officers. He can himself conduct a preliminary enquiry. It would be anomalous that on a preliminary report of a subordinate officer, a final enquiry and cessation of power can be ordered but the DM, who appoints him, cannot conduct a preliminary enquiry.

98. In our opinion, action under proviso to Section 95(1)(g) can also be taken on the preliminary report of the DM as well as on a report of a person defined as enquiry officer under Rule 2(c) of the Enquiry Rules. Only these reports would be covered in the word "otherwise" of Rule 5. Any other report would be a report under Rule 3(6) of the Enquiry Rules or can be considered by the DM under his suo motu power to order a preliminary enquiry but final enquiry with cessation of power cannot be ordered on its basis.

(emphasis supplied)

It is clear from the aforesaid decision of the Full Bench that the report of the committee constituted by the Block Development Officer on the complaint filed by Mohd. Taufeeq could not have formed the basis for the District Magistrate to cease the financial and administrative powers of the Gram Pradhan and nor could it form the basis for ordering the formal enquiry. It could, at best, be considered by the District Magistrate under his suo motu power to order a preliminary enquiry.

This apart, what further needs to be examined is whether the explanation offered by the petitioner to the District Magistrate pursuant to the show-cause notice dated 30th May, 2012 was required to be considered by the District Magistrate and was actually considered by the District Magistrate.

22. The order passed by the District Magistrate does not convey the impression that the complaint was filed by Mohd. Taufeeq before the Block Development Officer who constituted a committee to submit the report and the District Magistrate passed the order for ceasing the financial and administrative powers of the Gram Pradhan on the basis of the report submitted by the committee. The order of the District Magistrate, on the other hand, gives an impression that on the complaint filed by Mohd. Taufeeq, an enquiry was got conducted through the Block Development Officer and the order was passed on the basis of the report submitted by the Block Development Officer. Learned counsel for the petitioner is justified in asserting that the said statement was made in the impugned order to give an impression that the "district level officer" had conducted the preliminary enquiry whereas the factual position is otherwise. Infact, in the show-cause notice dated 30th May, 2012 issued by the District Magistrate, it was correctly stated that the complaint was submitted to the Block Development Officer who constituted a committee and the committee submitted a report which was forwarded to the District Magistrate by the Block Development Officer.

23. As noticed hereinabove, the Full Bench in Vivekanand Yadav (supra) specifically observed that before ceasing the financial and administrative powers of the Gram Pradhan, the explanation or point of view or version of the Gram Pradhan to the charges has necessarily to be obtained and also considered by the District Magistrate before being prima facie satisfied about the financial or other irregularities of the Gram Pradhan.

A perusal of the impugned order passed by the District Magistrate shows that the

reply furnished by the Pradhan has not been considered at all and only a bald statement has been made in the impugned order that the reply furnished by the Pradhan was not satisfactory. There is, therefore, no consideration of the reply furnished by the petitioner. The order passed by the District Magistrate, therefore, cannot be sustained for this reason also.

24. Sri. Shakti Dhar Dube, learned counsel for the applicants, however, pointed out that the petitioner has sought the quashing of the order dated 7th July, 2012 passed by the District Magistrate by which only the direction for constitution of a Three Member Committee was given and as the petitioner has not sought the quashing of the subsequent order dated 18th July, 2012 by which the Three Member Committee consisting of Niyaz Ahmad, Adara Begum and Rajpal was actually constituted for discharging such powers and functions of the Gram Pradhan, the writ petition should be dismissed. It is also his submission that even if the impugned order ceasing the financial and administrative powers of the Gram Pradhan is not upheld, a direction to conclude the final enquiry should be given by the Court.

25. It is not possible to accept the contentions of learned counsel for the applicants. The District Magistrate by the order dated 7th July, 2012 had ceased the financial and administrative powers of the Gram Pradhan u/s 95(1)(g) of the Act with a further direction to the Block Development Officer to hold a meeting of the Gram Panchayat for sending the names of the members for constituting a Three Member Committee. The petitioner is aggrieved by the order dated 7th July, 2012 by which the financial and administrative powers were ceased and it is this order that has been assailed in the petition. The petitioner may not have sought the quashing of the consequential order dated 18th July, 2012 for nomination of the three members of the Committee but if the order dated 7th July, 2012 is set aside, the consequential order dated 18th July, 2012 will not survive. It has now to be examined whether even after setting aside the order dated 7th July, 2012, a direction can be given for holding a formal enquiry as contemplated under Rule 5 of the Rules.

This issue was examined by the Division Bench of the Court in Smt. Kesari Devi (supra) and it was also observed:

115. Learned counsel for the petitioner invited the attention of the Court to another feature of this case and submitted that once the basic procedure of preliminary inquiry falls through as being invalid, the consequential action taken by the State Government by holding a regular inquiry and passing the impugned order has also to necessarily be treated to be invalid.

116. There can be no dispute with the settled legal proposition that if an order is bad in its inception, it cannot be made good by efflux of time or by subsequent improvement. In *Upen Chandra Gogoi Vs. State of Assam and Others*, , the Apex Court held that the writ Court should not validate an action which was not lawful at inception.

117. If the basic order falls being illegal, invalid or void the consequential order cannot be given effect to as it automatically becomes inoperative.

118. In *Badrinath Vs. Government of Tamil Nadu and Others*, , the Court held as under:

This flows from the general principle applicable to "consequential orders". Once the basis of a proceeding is gone, may be at a later point of time by order of a superior authority, any intermediate action taken in the meantime-like the recommendation of the State and by the UPSC and the action taken thereon-would fall to the ground. This principle of consequential orders which is applicable to judicial and (sic)-judicial proceedings is equally applicable to administrative orders.

119. The Apex Court held that if the basic order stands vitiated, the consequential order automatically falls.

.... 127. In view of the above, law can be summarised that an inquiry is to be conducted against any such office bearer applying strict adherence to the statutory provisions and principles of natural justice. The provisions of Rule 3 of the 1997 Rules are mandatory in nature. Non-compliance of any of the sub-rules thereof would render the proceedings illegal. The complaint should be filed in the manner prescribed by the 1997 Rules, verification of the complaint as well as of the affidavit has to be made in accordance thereof. As per Rule 5 of the 1997 Rules unless the State Government is of the opinion, that the complaint has been processed strictly in accordance with Rule 3, and the preliminary inquiry has been conducted by the designated authority in accordance with the procedure prescribed under the Rules and strict compliance has been observed, it shall be impermissible for the State Government to proceed any further for regular inquiry.

(emphasis supplied)

The Full Bench of this Court in *Vivekanand Yadav* (supra) also observed that action under the proviso to Section 95(1)(g) of the Act can be taken by the District Magistrate only on the basis of a report of the "Enquiry Officer" defined under Rule 2(c) or on the basis of the preliminary enquiry conducted by the District Magistrate himself and that the final enquiry under Rule 5 of the Rules can be ordered only on the basis of the aforesaid preliminary enquiry reports. In the instance case, the final enquiry has been directed on the basis of the report submitted by the committee appointed by the Block Development Officer and not on the basis of the preliminary enquiry conducted by the Enquiry Officer defined under Rule 2(c) of the Rules or the District Magistrate. The final enquiry cannot, in such circumstances, be held on the basis of the report submitted by the committee appointed by the Block Development Officer.

Thus, for all the reasons stated above, the order dated 7th July, 2012 passed by the District Magistrate, Bareilly cannot be sustained and is, accordingly, set aside.

The writ petition is, accordingly, allowed. The respondents shall, however, be at liberty to take proceedings against the petitioner in accordance with law.