

(2012) 03 AHC CK 0026

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 74630 of 2011

Pramod Kumar Badonia

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 50
Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 29
Uttar Pradesh Kshetra Panchayat and Zila Panchayats (Removal of Pramukhs, Up-
Pramukhs, Adhyakshas and Upadhyakshas) Enquiry Rules, 1977 — Rule 3, 3(5), 4

Citation : (2012) 4 ADJ 238 : (2012) 3 AWC 2961

Hon'ble Judges : Sunita Agarwal, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : Anil Tiwari and Pramendra Singh, for the Appellant; Neeraj Tripathi, P.S. Kesari, V.S. Kushwaha, Shashi Nandan and R.S. Gupta, for the Respondent

Judgement

Hon'ble Mrs. Sunita Agarwal, J.—Heard Sri Anil Tiwari and Sri Pramendra Singh, learned counsel for the petitioner, Sri Shashi Nandan, learned Senior Advocate assisted by Sri R.S. Gupta, learned counsel for respondent No. 5 and Sri C.S. Singh, learned counsel appearing for the State. By means of present petition, the petitioner challenges the order dated 13.12.2012 passed by the Principal Secretary, Panchayati Raj, Government of U.P. Lucknow whereby the administrative and financial powers of the petitioner has been kept in abeyance till he is exonerated of the charges in the final enquiry initiated against him and in the meantime the financial and administrative powers and functions of Adhyaksha, Zila Panchayat are to be performed by three member committee of the elected members of Zila Panchayat appointed in this behalf.

2. Brief facts giving rise to the present petition are that the petitioner was elected as member of Zila Panchayat and became Adhyaksha of Zila Panchayat on 14.1.2011. The case of the petitioner is that the enquiry was initiated against the petitioner on the basis of the complaint moved by respondent Nos. 5 and 6

Smt. Sudama Bai and Smt Munni before the Principal Secretary, Panchayat, U.P. Government, Lucknow. The enquiry was initiated by the State Government in exercise of powers u/s 29 of U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 (hereinafter referred as the Act, 1961).

3. Learned counsel for the petitioner vehemently argued that the complaints filed by respondent No. 5 and 6 elected members of the Zila Panchayat were liable to be thrown away on the ground that they were not supported by any affidavit of the complainants. Photocopies of the complaints dated 17.9.2011 moved by respondent No. 5 Smt. Sudama Bai and Smt. Munni Devi respondent No. 6 have been annexed as Annexure 3 to the writ petition. A preliminary enquiry was conducted by the District Magistrate, Lalitpur with a view to find out if there is prima facie case in the matter. The order in this regard has been passed by the State Government on 4.10.2011 in exercise of powers under Rule 4 of the U.P. Kshettra Panchayat and Zila Panchayat (Removal of Pramukh, Up Pramukh, Adhyaksha and Upadhyaksha) Rules 1997 (hereinafter referred as "Rules, 1997"). Pursuant to the notice issued by the District Magistrate, Lalitpur, the petitioner has submitted a detailed reply dated 19.10.2011. In the said reply it was categorically stated by the petitioner that no enquiry whatsoever can be proceeded on the basis of the said complaint as the complaint itself cannot be entertained at all in view of mandatory provisions of Rule 3(5) of Rules 1997. There is clear violation of provisions of Rule 3 of Rules, 1997 and as such no action can be taken on the basis of the said complaint. Further, a detailed reply was submitted by the petitioner regarding the charges levelled against him. However, the District Magistrate despite categorical objections raised by the petitioner regarding maintainability of the complaint submitted by respondent Nos. 5 and 6 proceeded to hold the said enquiry against the petitioner and submitted report dated 6.11.2011 to the State Government. The order dated 13.12.2011 is on the basis of the report of the District Magistrate.

4. Learned counsel for the petitioner further submits that the entire proceedings against the petitioner is the result of political enmity as the petitioner and the complainants are members of different political parties. He further submits that present proceeding has been initiated with mala fide intention of respondent No. 5 against whose husband an FIR has been lodged by the petitioner. The proceedings are malicious in nature and the charges levelled against him are with an object to disturb the entire democratic set up and to displace the petitioner in view of personal enmity between the petitioner and the complainants.

5. During the course of arguments, learned counsel for the petitioner placed heavy reliance upon Rule 3 of the Rules, 1997 which provides the procedure for submitting complaint against" an Adhyaksha of Zila Panchayat.

6. He contended that the complaint dated 17.9.2011 was not in the prescribed form as required in Rule 3 of the Rules, 1997 which specifically provides that the complaint shall be accompanied by an affidavit of the complainant and the

affidavit should be verified in the manner laid down in the C.P.C, 1908 for the verification of the pleadings and statements respectively. As no affidavit has been filed by the complainants respondent Nos. 5 and 6 alongwith the complaint dated 17.9.2011, the State Government acted illegally in taking cognizance of the complaint. The District Magistrate, Lalitpur also acted in a malicious manner in order to please the then ruling party. The findings recorded by the District Magistrate in the preliminary enquiry report are without consideration of the reply submitted by the petitioner and even otherwise the charges levelled against him are baseless and bogus and no proceedings whatsoever could be initiated on the basis of the said charges. There are personal allegations against the respondent Nos. 5, 6 and 10 that they are out and out to oust the petitioner with the intention to take charge of the financial and administrative powers of Adhyaksha of Zila Panchayat. The said fact is clearly demonstrated and established for the reason that these three members respondent Nos. 5, 6 and 10 who were against the petitioner have been appointed as members of the three member committee which has been entrusted with discharge of duties of Adhyaksha, Zila Panchayat. The respondent No. 5 was a defeated candidate in the election in which she contested against the petitioner and as such with malicious intention she moved complaint with a view to take revenge from the petitioner.

7. Learned counsel for the respondents submitted that the proceedings have been initiated against the petitioner strictly in exercise of powers conferred upon the State Government u/s 29 of the Act. The petitioner was provided full opportunity to defend himself and the action has been taken against the petitioner after the preliminary enquiry was duly conducted by the District Magistrate, Lalitpur. The preliminary enquiry report submitted by the District Magistrate was duly examined by the State Government and only after satisfying itself to the fact that the petitioner has failed to discharge the duties of Adhyaksha, Zila Panchayat and has been prima facie found to have committed financial and other irregularities proceeded against the petitioner. By means of order dated 13.12.2011 the financial and administrative powers of the Adhyaksha of Zila Panchayat has been suspended till the conclusion of the enquiry initiated against him. For the purpose of completing the regular enquiry, the Commissioner, Jhansi Division, Jhansi has been named as enquiry officer. As soon as the final report is received, the matter shall be examined. The order dated 13.12.2011 being interlocutory in nature and having been passed after providing due opportunity to the petitioner to submit his explanation, no interference is called for by this Court under Article 226 of the Constitution of India.

8. Counter-affidavit on behalf of respondent Nos. 5, 6 and 7 have been filed. Refuting the allegations of the petitioner, learned counsel for the respondent No. 5 submits that charges against the petitioner have been clearly narrated in the complaint made by the elected member of the Zila Panchayat. The complaint filed was categorical and specific in nature. The complaint was duly signed by the complainants and the notary affidavit dated 25.10.2011 duly signed and verified

in the manner provided under Rule 3 of the Rules, 1997 has been filed before the Principal Secretary, Panchayati Raj, Government of U.P. Respondent No. 6 Smt. Munni also filed her personal affidavit dated 25.10.2011 before the Principal Secretary, Panchayati Raj, Government of U.P. Both the affidavits filed by respondent Nos. 5 and 6 have been annexed as Annexure CA-1 to the counter-affidavit filed by respondent No. 5. As such, the discrepancy, if any, has been removed prior to the preliminary enquiry conducted against the petitioner.

9. He further contended that Rules, 1997 are directory in nature and the complaints of respondent Nos. 5 and 6 cannot be thrown away on the grounds laid down in the petition. The source of information regarding the charges levelled against the petitioner has been duly disclosed in the complaints. The State Government has rightly proceeded against the petitioner upon submission of the verified affidavits filed by the complainants. Moreover, the charges against the petitioner are serious in nature and entail financial consequences and misappropriation of funds of Zila Panchayat. The same could not have been ignored in view of the highly technical objections raised by the petitioner. The State Government looking to the seriousness of the charges rightly directed the District Magistrate to conduct the preliminary enquiry. The petitioner was put to notice and submitted his explanation. The explanation submitted by the petitioner was not found satisfactory and the State Government directed to conduct the regular enquiry into the matter.

10. In order to prevent further loss to the public exchequer, the State Government had rightly ceased administrative and financial powers of Adhyaksha Zila Panchayat till he is exonerated of the charges leveled against him. The personal allegations made against respondent No. 5 are absolutely wrong. Moreover nothing prevents the elected member of the Zila Panchayat from being one of the members of the three member committee appointed u/s 29 of the Act solely on account of his/her being a member of the then ruling party. The personal allegation made against private respondents are with a view to give colour to the writ petition and in order to get undue sympathy of this Court.

11. We have heard learned counsel for the parties and perused the record.

12. There is no dispute between the parties about the fact that order dated 13.12.2011 under challenge in the present petition has been passed by the State Government in exercise of powers u/s 29 of the Act. The State Government is duly empowered to remove an Adhyaksha of Zila Panchayat after affording him a reasonable opportunity for explanation. Proviso to section 29 of the Act further provides that wherein an enquiry is held and where there is prima facie case having been found of financial and other irregularities by an Adhyaksha, he shall cease to exercise and perform the financial and administrative powers thereof until he is exonerated of the charges in the final enquiry. Section 29 of the Act is quoted below:

29. Removal of Adhyaksha.-(1) If in the opinion of the State Government the

Adhyaksha while acting in place of Adhyaksha willfully omits or refuses to perform his duties or functions under this Act or abuses the powers vested in him or is found to be guilty of misconduct in the discharge of his duties, the State Government, after giving the Adhyaksha as the case may be, a reasonable opportunity for explanation may by order remove him from office and such order shall be final and not open to be questioned in a Court of Law:

Provided that where in an enquiry held by such person and in such manner as may be prescribed, an Adhyaksha is prima facie found to have committed financial and other irregularities such Adhyaksha 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 elected members of the Zila Panchayat appointed in this behalf by the State Government.

13. It is also not disputed that the petitioner was put to notice and he submitted his explanation on 19.10.2011. Proceedings by the State Government were initiated on the complaints of respondent Nos. 5 and 6 who are the members of Zila Panchayat. The complaint initially filed on 17.9.2011 was not submitted with the affidavit. However, the complainants filed their personal affidavits duly verified before a notary on 25.10.2011. The affidavits dated 25.10.2011 have been annexed alongwith the counter-affidavit filed by respondent No. 5. A perusal of the said affidavits shows that various documents are annexed alongwith the said affidavits in support of the charges levelled against the petitioner. The counter-affidavit was filed by the respondent No. 5 after serving a copy of the same upon the learned counsel for the petitioner. However, no rejoinder affidavit in reply thereof has been filed by the petitioner. As such the averments made in the counter-affidavit filed by the respondent No. 5 and the contention of the respondent No. 5 that duly sworn affidavits verified by the notary dated 25.10.2011 were filed in support of the application, has to be accepted.

14. Learned counsel for the petitioner placed heavy reliance upon the Division Bench judgment of this Court in Smt. Kesari Devi Vs. State of U.P., Commissioner, Allahabad Division, Collector/Distt. Magistrate and Chief Development Officer/Mukhya Adhikari, , in support of his argument that the complaints submitted by the respondent Nos. 5 and 6 could not have been taken cognizance of by the State Government in view of the fact that the same was not filed strictly in accordance with proviso to Rule 3 of Rules, 1997.

15. Learned counsel for the petitioner while placing reliance upon the said judgment of Smt. Kesari Devi (supra) in support of the Rule 3 of the Rules, 1997 submitted that the Rule is mandatory in nature and any violation thereof would render the entire proceedings invalid- The State Government acted illegally in proceeding upon the complaints made by the respondent Nos. 5 and 6 who are member of the then ruling party. The same is clear case of malice in law as the powers have been exercised by the State Government wrongfully and willfully

without reasonable and probable cause. It is a deliberate act in disregard to the right of the petitioner and as such all the consequential action became invalid. Much reliance has been placed upon paragraph 167 of the Smt. Kesari Devi (supra) wherein it has been recorded that the affidavit filed in support of the complaint was in ten pages and only the first page was typed on the stamp paper and the remaining 9 pages were typed on plain paper. The complainant had put her signature only on the first and the last page and remaining 8 pages of the affidavit had not been signed. There was no enclosure annexed to the complaint and as such the complaint itself was not in accordance with the Rules. In view of Clause 5 of the Rule 3 of the Rules 1997 the Government could not have proceeded with the preliminary enquiry.

16. The facts of Smt. Kesari Devi (supra) as recorded in the judgment itself are different from the present case. In the present case before us, the complaint dated 17.9.2011 though initially was not supported by an affidavit but the mistake was corrected and duly signed and verified affidavits of the notary dated 25.10.2011 were filed by the respondent Nos. 5 and 6 in support of the complaints. The affidavits also contain enclosures in support of the allegations made against the petitioner. The said fact has not been denied by the petitioner. We may refer to Rule 3 of the Rules, 1997 :

3. Procedure relating to complaints.-(1) Any person making a complaint against a Pramukh, Up-Pramukh, Adhyaksha or Upadhyaksha may send his complaint to the Secretary to the State Government in the Panchayati Raj Department, Vidhan Bhawan, Lucknow.

(2) Every complaint referred to in sub-rule (1) shall be accompanied by the complainant's own affidavit in support thereof and also affidavits of all persons from whom he claims to have received information of fact 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 affidavit respectively.

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

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

17. A perusal of Rule 3 shows that the procedural requirement is that every complaint should be forwarded by an affidavit of the complainant verified before a notary together with all the documents in his/her possession or power pertaining to the accusation. The complaint and the affidavit shall be verified in the manner provided for pleadings and affidavits laid down in the C.P.C.

18. The procedural requirement as laid down in Rule 3 of the Rules, 1997 having

been resorted to by the complainants and the mistake having been rectified by filing affidavits on 25.10.2011, we find no reason to interfere in the order passed by the State Government in exercise of its power u/s 29 of the Act on this ground. The complaint having been rightly treated to be in accordance with the procedure provided under the Rules, 1997. The malice pleaded by the petitioner in order to assail the order impugned cannot be sustained.

19. Learned counsel for the petitioner further placed reliance upon the judgment of Apex Court in *Prabha Shankar Dubey Vs. State of Madhya Pradesh*, ; *Ram Phal Kundu Vs. Kamal Sharma*, and *Dr. Ram Deen Maurya Vs. State of U.P. and Others*, , in support of his argument that where a power is given to do a certain thing in a certain way, it must be done in that way or not at all and that other methods of performance are necessarily forbidden. It is the basic principle of law well settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all.

20. There is no quarrel about the said proposition of law as laid down by various judgments of Apex Court from time and again. However, the facts of the cases relied by the counsel for the petitioner in which the principle has been applied are different. In the case of *Prabha Shankar Dubey* (supra) two appeals were filed challenging the judgment of High Court holding conviction of the appellant for commission of offence punishable u/s 18 of the NDPS Act, 1985. The accused appellant pleaded that there was non-compliance with the requirement of Section 50 of the Act by the officer who conducted the search.

21. In the case of *Ram Phal Kundu* (supra) the dispute was with regard to nomination papers filed by two candidates of Indian National Congress Party. The returning officer accepted the nomination paper of one of the candidates and rejected that of another, namely, Kamal Sharma. The election was held and the appellant secured the highest number of valid votes and was declared to have been elected. The election petition was filed by candidate namely Kamal Sharma, whose nomination paper was rejected by the returning officer for declaring the election as void and further prayer was made for direction to the Election Commissioner to hold fresh election of the said constituency. The High Court allowed the election petition on the ground that nomination paper of Kamal Sharma was wrongly rejected. Accordingly, the election of appellant Ram Phal Kundu was set aside and direction was given to the Election Commissioner to hold fresh election. The issue for consideration before this Court was as to which of the two persons, namely, Kamal Sharma or Bachan Singh has been set up by the Congress party. It was found that candidate namely, Bachan Singh has submitted required forms alongwith his nomination paper to the returning officer under the signature of the general secretary of the Congress party. The view taken by the returning officer was that Bachan Singh had submitted required form on the relevant date and only objection was raised that the same did not contain the seal of Congress party is not a defect of substantial character. The revised forms submitted by Bachan Singh will have to be accepted and he was

considered as candidate of the Congress party. The Court held that view taken by the returning officer that forms submitted by the Bachan Singh was perfectly valid and treating him as official candidate of the Congress party was perfectly correct.

22. In the last case of Ram Deen Maurya (supra) the dispute raised by the appellant was that one of the respondents has not submitted her application for her transfer from her parent college to another college but has directly submitted the same to the Director of Higher Education and therefore, there is breach of statutory rules and the Director of Higher Education ought not to have entertained the same and recommended transfer of the said respondent to the State Government. The principle as relied upon by the counsel of the petitioner has been applied taking consideration of the provisions of the Rules in the said case and it was held that Director of Higher Education is to consider the application to find out, whether the applicant is eligible for such transfer or not. The applicant having obtained no objection from both the managements, there was no infirmity at all.

23. From the analysis of judgment relied upon by the petitioner it is clear that principle relied upon has been applied in the facts and circumstances of those cases and are of no help to the petitioner.

24. We have observed above that complaints filed by the respondent-complainant were in accordance with the provision of Rule 3 of 1997 Rule as the defect was removed by the complainants by filing affidavits and documents in support of the complaints, the same cannot be thrown away as contended by the counsel for the petitioner. We find no illegality in the action of the State Government in proceeding with the preliminary enquiry on the basis of said complaints.

25. The requirement of Rules 3 and 4 of the Rule 1997 has been duly complied with by the State Government and the inquiry officer, namely, Commissioner, Jhansi Division, Jhansi has been appointed as inquiry officer to conduct regular inquiry into the charges levelled against the petitioner. We find no infirmity in the action of the State Government initiating proceedings against the petitioner u/s 29 of the Act.

26. However so far as three members committee appointed by the State Government to perform financial and administrative powers and function of the President of Zila Panchayat is concerned, it consists of two members who were complainants i.e. respondent Nos. 5 and 6. In so far as third member Shri Raja Ram i.e. respondent No. 10 is concerned, petitioner has also levelled allegation against him that he is the man of the complainants and is having personal enmity with the petitioner and with that view he joined respondent Nos. 5 and 6 Smt. Sudama Bai and Smt. Munni in order to settle his scores.

27. Three members of the aforementioned committee who are respondents in the present writ petition as respondent Nos. 5, 6, and 10 contested the present

petition and filed their personal affidavits refuting the allegations made by the petitioner against them.

28. Be that as it may, in view of the fact that two of the members of the committee appointed to discharge functions of Adhyaksha Zila Panchayat, Lalitpur are complainants themselves and personal allegations are against third member also. In the interest of justice, we are of the view that complainants ought not to have been allowed to be members of the committee to discharge function of Adhyaksha Zila Panchayat. Hence, it is directed that three members committee appointed by the State Government vide order dated 13.12.2011 be replaced by other three elected members of the Zila Panchayat, Lalitpur and appropriate order in this regard be passed by the State Government at the earliest. With the aforesaid observation, the writ petition is disposed of.