
(2008) 05 AHC CK 0034
In the Allahabad High Court

Rajendra Singh

APPELLANT

Vs

The State of U.P., The District Magistrate, Soil Conservation
Officer and Yashveer Singh

RESPONDENT

Date of Decision : 02-05-2008

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2008) 05 AHC CK 0034

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Shri D.K.S. Rathore, learned Counsel for the petitioner and learned Standing Counsel. Shri Ashok Nath Tripathi has filed an impleadment application on behalf of Shri Yashveer Singh, the complainant.

2. With the consent of the parties the matter was finally heard and is being decided at the admission stage.

3. The petitioner is the elected Pradhan of Gram Panchayat Dharupur, Development Block-Noorpur, Distt. Bijnor. Shri Yashveer Singh, Shri Mahesh Kumar and Shri Nripendra Kumar, the residents of Gram Panchayat Dharupur made a complaint to the District Magistrate alleging misuse of office and irregularities in carrying out development works. The District Magistrate appointed the Soil Conservation Officer-respondent No. 3 as enquiry officer to conduct preliminary enquiry u/s 95(1)(g) of the U.P. Panchayat Raj Act, 1947 on the allegations made against the petitioner. The enquiry officer submitted a preliminary enquiry report on 2.11.2007 on which a show cause notice was issued to the petitioner on 1.1.2008 alleging. (1) the construction work in pond was made without making the inlet and slope; (2) one of the four rooms constructed in the school campus was incomplete. This room was required to be constructed in a manner that it should be earthquake proof. It has been constructed with one wall on the support of the neighbouring room, which does

not make it earthquake proof. The building material used in the construction is not of high quality; (3) Only 209 out of 226 students have received the scholarships. There was no proof of distribution of scholarship to remaining 17 students. The disbursement for which documents were not made available raised doubts over its disbursement; (4) in the mid-day meal scheme Smt. Rajeshwari Devi wife of Shri Mahendra Singh was paid from October 2005 to March 2006, whereas the vouchers were issued for seven months causing misappropriation of Rs. 1392/-; (5) in muster roll No. 15 the payments to the labourers at Sl. No. 1 to 16 for the period 14th to 29th August, 2007 were shown fraudulently, thereby causing misappropriation of Rs. 13,760/-; and (7) the technical evaluation shows that there was misappropriation/ misuse of Rs. 15869/-.

4. The petitioner gave his reply to the show cause notice on January 1st, 2008 alleging that the construction of pond could not be completed due to rainy season. The works were carried out under the supervision of Junior Engineer and that the inlet, outlet and slope are under construction. The fourth room in the school campus is separate, and is in different direction from the other three rooms and that the constructions were completed under the supervision of Junior Engineer, Vikas Khand, Noorpur. The earthquake proof room is in open towards east and is separate from other rooms. The scholarship for 17 students could not be distributed as the caste wise details were not provided by the Head Master. The amount of Rs. 5100/- at the rate of Rs. 300/- per students was deposited in the account on 23.8.2007 and the receipt was made available to the enquiry officer. The pay for the 7th month was paid to Smt, Rajeshwari Devi and the receipt and voucher are enclosed. The labourers at Sl. Nos. 10, 11, 12 and 13 were paid ten days' wages on muster roll No. 15 and the labourers at Sl. No. 14, 15 and 16 were actually paid for eight days. By mistake they were shown to be present for 10 days With regard to Sl. No. 16 the receipt of payment was enclosed. With regard to technical evaluation it was stated in reply that 111 mtrs. road from the house of Naththu to Balram was repaired and that the other works of the road from Sachin Book Depot to "Pacca" road and others were carried out. The measurements were interchanged. The completion certificate was enclosed.

5. The District Magistrate considered the reply. He was not satisfied with the explanation. He has ceased the financial and administrative powers of the petitioner under the proviso to Section 95(1)(g) of the U.P. Panchayat Raj Act, 1947, pending formal enquiry and has directed appointment of three member committee by his order dated 1.3.2008, giving rise to this writ petition.

6. Shri D.K.S. Rathroe, learned Counsel for the petitioner states that the complainant-caveator has no locus standi to oppose the writ petition. He may not be impleaded in the writ petition. He has relied upon Division Bench judgment in Guru Prasad Yadav v. The State of U.P. and Ors. Special Appeal No. 382 of 2008 decided on 13.3.2008 in which it was held that the complainant has no right to be heard in the proceedings before the Court. He would further submit that once

the District Magistrate has issued show cause notice and has received the reply, it was incumbent upon him to consider that reply before suspending financial and administrative powers of the Pradhan. Shri D.K.S. Rathore further submits that in similar circumstances this Court has passed interim orders on 28.1.2008 in Naresh Kumar v. State of U.P. and Ors. Writ Petition No. 4897 of 2008.

7. In *Guru Prasad Yadav (Supra)* the Division Bench while setting aside the order in writ petition held that the complainant would not have the standing to file writ petition challenging the orders by which the enquiry was dropped. Shri Guru Prasad Yadav, the petitioner was member of three member committee. It was held that a beneficiary of the order cannot be ordinarily heard as he did not have any lis with the delinquent Pradhan. The Division Bench has relied upon judgment in *Smt. Kesari Devi Vs. State of U.P., Commissioner, Allahabad Division, Collector/Distt. Magistrate and Chief Development Officer/Mukhya Adhikari, Adi Pherozshah Gandhi Vs. H.M. Seervai, Advocate General of Maharashtra, Bombay, and Suresh Singh v. Commissioner, Moradabad Division, Moradabad (1993) 1 UPLBEC 414* and then held as follows:

We may further clarify that the right of the petitioner-appellant 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. Since he was the complainant, he ought not to have been allowed to be a member of the committee to look after the work of Pradhan.

Thus in view of the above, Sri Parashu Ram, complainant and the alleged member of the Three Member Committee can neither be heard in these proceedings before the Court nor he can be a member of any committee.

8. Shri Yashveer Singh seeking impleadment was a complainant along with Shri Somesh Kumar and Shri Nripendra Kumar. They are residents of the same Gram Panchayat. They are not beneficiaries of the order. A resident of the village has been given rights under Rule 3 of the U.P. Panchayat Raj (Removal of Pradhan, Up-Pradhan and Members) Enquiry Rules. 1997 to make a complaint against the sitting Pradhan. The complaint should be accompanied by an affidavit. There should be sufficient material disclosed by the complainant, in his affidavit to satisfy the District Magistrate to initiate a preliminary enquiry against the sitting Pradhan. The complainant does not have a right to participate in the enquiry as prosecutor. He, however, may be heard by the enquiry officer in the formal enquiry under Rule of the U.P. Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997 (in short the Rules of 1997). In *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, a Constitution Bench of Supreme Court held in para 10 that there may be parties who may be described as proper parties, that is parties whose presence is not necessary for making an effective order, but whose presence may facilitate the settling of all the questions that may be involved in the controversy. It was then held:

The question of making such a person as a party to a writ proceeding depends

upon the judicial discretion of the High Court in the circumstances of each case. Either one of the parties to the proceeding may apply for the impleading of such a party or such a party may sua motu approach the court for being impleaded therein.

9. In *Smt. Kesari Devi Vs. State of U.P., Commissioner, Allahabad Division, Collector/Distt. Magistrate and Chief Development Officer/Mukhya Adhikari*, a Division Bench of the Court hearing a writ petition filed on behalf of "Adhyaksh" (Chairperson) of Zila Panchayat, Allahabad, did not prefer to hear the "Upadhyaksh" in opposition to the prayers made in the writ petition on the ground that he was not a person aggrieved and cannot claim to have any vested right in the office. In para 40 it was observed that he has merely a chance to officiate in case the "Adhyaksh" is removed. However, the Court while rejecting the impleadment application observed in para 42 that since the issues raised in the writ petition have wide repercussions and since the questions are of serious nature the Bench had heard Shri Shashi Nandan solely for the assistance of the Court in view of the provisions of Chapter XXII, Rule 5A of the Allahabad High Court Rules, 1952 in order to secure the ends of justice and in order to prevent any miscarriage of justice.

10. Shri Ashok Nam Tripathi appears for the complainant. He had filed a caveat and has filed a impleadment application. As a complainant he may not be a necessary party in the proceedings, but has sufficient interest in the matter as the proceedings were initiated on his complaint. A member of Gaon Sabha has a right to make a complaint, if the sitting Pradhan misuses his authority and commits acts of misappropriation or embezzlement. In such a case though an enquiry is to be made by the District Magistrate, the complainant being resident of the same village can provide sufficient material and the particulars of the irregularities. A complainant may not necessary party to such proceedings but where the proceedings have been initiated on his complaint, he would be a proper party to be impleaded at the discretion of the Court. In a given case the Court may find that the impleadment may unnecessarily complicate the issues or there is any vested interest or malafides to be served by the persons seeking impleadment. In such case the Court may refuse impleadment. In the present case, however, I do not find that any malafides have been alleged nor there is anything to show that the persons seeking impleadment has any vested interest in the office of the Pradhan. The objections of Shri D.K.S. Rathore to the impleadment are as such rejected. The impleadment application is allowed. Shri Ashok Nath Tripathi appearing for the newly impleaded respondent was heard in the matter.

11. Section 95(1)(g) of the U.P. Panchayat Raj Act, 1947 provides for removal of Pradhan. The State Government or the delegated authorities may remove a Pradhan on the ground given in Section 95(1)(g) of the Act, which includes absenteeism without sufficient cause for more than three consecutive meeting or sitting: refusal to act or incapable of acting or if he is charged with offences

involving moral turpitude; abuse of his position or persistent failure to perform the duties imposed by the acts and the rules making him undesirable to continue in public interest: or has taken the benefit of reservation under Sub-section (2) of Section 11A or Sub-section (5) of Section 12 on false declaration: or bong Sahayak Sarpanch or Sarpanch of the Nyay Panchavat takes active part in politics or suffers from any disqualification mentioned in Clauses (a) to (m) of Section 5A. The first proviso to Section 95(1)(g) of the Act reads:

Provided that where in an enquiry held by such person and in such manner as may be prescribed, a Pradhan, Up-Pradhan is prima facie found to have committed financial and other irregularities, such Pradhan or Up-Pradhan shall cease to exercise and perform the financial and administrative powers and functions, which shall, until he is excluded 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.

12. In *Smt. Sandhya Gupta v. District Magistrate. Auraiva and Ors.* (1999) 1 UPLBEC 718 this Court held that the procedure prescribed in Rule 3 to 7 of the Rules of 1997 must be followed before removing a Pradhan. This judgment essentially related to the removal and not ceasure or suspension of the powers of the Pradhan as an interim measure. The Court had observed in this case that before striping of the administrative and financial powers of Pradhan or Up-Pradhan, a show cause notice must be served on the Pradhan or Up-Pradhan as the case may be and he should be afforded a reasonable opportunity of showing cause against action proposed. Any order passed by the District Magistrate without calling for the explanation and without giving reasonable opportunity of showing cause against the action proposed would vitiate and would invite judicial intervention. In this case initially the Chief Development Officer, Deoria passed an order suspending the financial powers of Smt. Sandhya Gupta. The order was, thereafter, recalled and her financial powers were restored and an enquiry proceeded into complaints made against her. After holding the enquiry the District Magistrate passed an order removing her from the office of the Pradhan. The question of circumstances and the conditions in which the powers of interim suspension may be exercised and whether an opportunity should have been given to Pradhan or Up-Pradhan before striping of administrative and financial powers was neither involved nor discussed in the judgment. While discussing the findings of corrupt practices in para 11 and referring to the judgment of *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, , the learned Judge (Hon''ble Justice O.P. Garg) agreed that the principles of natural justice do not all speak in the same voice and sometimes it is difficult to reconcile. Nevertheless, a duty has been cast on the administrative authorities exercising quasi-judicial functions, to record reasons. In view of the expanding horizon of the concept of natural justice the requirement of recording of reasons as a part fair procedure cannot be dispensed with. Even though the rules do not specifically require the recording of the reasons, the requirement of the principle of natural justice is that the decision should be based on the well informed reasons which should be disclosed

in the order itself. The Court then observed in para 11 that it is not expected that the District Magistrate should write the order like a judgment of the Court, but certainly some reasons, however, precise they may be have to be there. The Court then found that in that case the District Magistrate has passed an order which was based on no material and the conclusion arrived at were not supported with any reason. While summing up the case, in para 15, however, the Court formulated guidelines for observance of the District Magistrate so that in future they may be cautioned enough to deal with the affairs of Pradhan, Up-Pradhan and members. The guideline No. 8 of these 14 guidelines provides as follows:

The provisions of the aforesaid proviso relating to stripping of the administrative and financial power of the Pradhan, Up Pradhan can be invoked only after a show cause notice is served on the Pradhan or Up Pradhan, as the case may be, and he is afforded a reasonable opportunity of showing cause against the action proposed, as is contemplated in second proviso to Clause (g). Any order passed by the District Magistrate without calling for the explanation and without giving reasonable opportunity of showing cause against the action proposed would be vitiated and would invite judicial intervention.

13. In *Chandrajit Raj Bhar v. District Magistrate, Pilibhit and Ors.* (2002) 1 UPLBEC 582 it was held that a conjoint reading of proviso to Section 95(1)(g) of the Act read with Rule 2(c), 4 and 5 of the Rules of 1997 leads towards an inescapable conclusion that the District Magistrate considering the preliminary enquiry report submitted by the District Panchayat Raj Officer and explanation if any submitted by a Pradhan or Up-Pradhan is to pass a speaking order either depriving a Pradhan or Up-Pradhan from performing his financial and administrative powers and functions or refused to pass such order on merits of each case. Such powers cannot be exercised in perfunctory manner as it was shown in the case decided by the Court.

14. In *Moti Lal v. District Magistrate, Lalitpur and Anr.* (2003) 1 UPLBEC 736 a Division Bench of this Court had an occasion to consider the powers of the District Magistrate ceasing financial and administrative powers of the sitting Pradhan and constitution of three member committee. After examining the provisions of the Act and the Rules of 1997 the Division Bench observed that these powers can be exercised on a complaint or report referred to in Rule 3 of Rules 1997 "or otherwise". The words "or otherwise" occurring in Sub-rule 1 of Rule 4 are of wide import, liven if no complaint is filed, the State Government does not lack the power to direct holding of preliminary enquiry. Such a report made by the Sub Divisional Magistrate or may come to the knowledge of the District Magistrate personally on coming to note on some serious lapse on the part of Pradhan and in such case also preliminary enquiry may be ordered. The Court then observed that the Land Conservation Officer and the Project Officer, who had conducted the enquiries were both District Level Officer and thus it cannot be said that they were not authorised to hold the enquiry. The Court then

upheld the prima facie satisfaction of the District Magistrate about the misuse of the amount in various development works. The order of the learned single Judge was upheld and the special appeal was dismissed.

15. In *Rajeshwari Kushwaha (Smt.) Vs. District Magistrate and Others*, this Court held that the report of Deputy Director (P) appointed by the Divisional Commissioner was not a district level officer to hold an enquiry.

16. Where the Act and the Rules provide for sufficient guidelines, it is not necessary for the Court to summarise them or to put them in different language, either point wise or in any other manner, substituting its opinion in place of the clear statutory provisions. While interpreting the provision of statute the Court may take into account the object and reasons of the enactment to provide answer to the silences, if any, without faulting the text of the statute or to iron out the creases so that the procedure prescribed becomes meaningful and purposive to the object of exercise of powers. The Courts are not required to make an adventure to summarise the provisions of the statute, where they are clearly and explicitly laid down, with an anxiety for the executive to follow the law, on the purported ground that such summarisation will not leave any scope for unnecessary litigation. The Courts under our Constitution interpret the laws and dispense justice in accordance with law. The Courts do not legislate, where there is already a legislation providing for both substantive and procedural aspects and with no ambiguities. Many a times, as in the present case the superfluous exercise of providing guidelines by summarising the legal requirement of a valid order, in the judgment and the anxiety to curb litigation becomes a fresh ground for litigation. In *Smt. Sandhya Gupta (Supra)* the Court not only exceeded its powers in deciding the matter, which were not before it, but also laid down guidelines providing for affording a reasonable opportunity of showing cause against the action proposed in the first proviso of Section 95(1) (g) of the Court, wrongly comparing it with the second proviso to Clause (g), and thereby provided an opportunity of showing cause to a delinquent Pradhan, which is not provided under the Act. By way of laying down guidelines the Court legislated and thereby provided fresh rights, which are not provided in the statute, creating new avenue for litigation.

17. The guidelines provided in *Smt. Sandhya Gupta's* case overstepping the legislative provisions are not only "obiter", but are also in ignorance of statutory provisions and are thus "per incuriam", vide *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another*,

"Incuria" literally means "carelessness". In practice per incuriam appears to mean per ignoratum. English courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law" is avoided and ignored if it is rendered, "in ignoratum of a statute or other binding authority". (*Young v. Bristol Aeroplane Co. Ltd.*). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution, which embodies the doctrine of precedents as a matter of law 2. In *Jaisri Sahu v. Rajdewan Dubey*

this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.* the Court did not feel bound by earlier decision as it was rendered "without any argument, without reference to the crucial words of the rule and without any citation of the authority". It was approved by this Court in *Municipal Corporation of Delhi v. Gumam Kaur*. The bench held that, "precedents sub-silentio and without argument are of no moment". The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *B. Shama Rao v. Union Territory of Pondicherry* it was observed, "it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein". Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

18. The first proviso to Section 95(1)(g) of the Act quoted as above, authorises the State Government to cease financial and administrative powers and functions of Pradhan or Up-Pradhan, if it is prima facie found to have committed financial and other irregularities, until he is exonerated of the charges in the formal enquiry, to be exercised and performed by committee consisting of three members of Gram Panchayat. This power is by way of emergency measure and may be exercised, where the Pradhan or Up-Pradhan is prima facie found to have committed financial and other irregularities. In such case the District Magistrate exercising powers of the State Government, is not required to wait by giving show cause notice, and to record reasons after receiving the reply of the Pradhan or Up-Pradhan, to the charges based on the preliminary enquiry report. Such opportunity by way show cause notice and explanation is neither provided in the Act nor in the Rules of 1997. The formal enquiry in which the Pradhan or Up-Pradhan is to be given an opportunity to defend himself is to follow, if the State

Government is of the opinion on the basis of the report under Sub-rule (2) of Rule 4, "or otherwise", that an enquiry should be held against Pradhan or Up-Pradhan. He is required to constitute a committee and by an order ask the enquiry officer other than the enquiry officer nominated under Sub-rule (2) of Rule 4 of the Rules of 1997, to hold the enquiry. The opportunity of hearing is to be given in this formal enquiry initiated on the basis of the preliminary enquiry report. It is not necessary for the District Magistrate, exercising delegated powers of the State Government to provide an opportunity to the Pradhan or Up-Pradhan before recording prima facie findings that he has committed financial or other irregularities. This satisfaction is based on the preliminary enquiry report and not after considering the reply given by the Pradhan on such report as no such reply is contemplated by the Act or the Rules.

19. The powers to cease the administrative and financial powers is vested in the competent authority with an object of restraining the persons from committing or continue to commit misuse of the office or financial and other irregularities until the enquiry is concluded. The necessity to give the show cause notice and considering the reply and need to give reasons at this stage would virtually amount to preempting the formal enquiry, which is to be made on the opinion of the State Government based on the report referred to in Sub-rule (2) of Rule 4 or otherwise, in Rule 5 of the Rules of 1997. The insertion of the need to give show cause notice by formulating the charges based on preliminary enquiry report, and considering the reply will split the enquiry u/s 95(1)(g) of the Act, into two parts in which the first part would be rendered superfluous. All that the Court is required in case action is taken under the first proviso to Section 95(1) (g) of the Act is challenged, is to find out if there was sufficient material collected in the preliminary enquiry by the DPRO or any District Level Officer, to form a prima facie opinion to cease the financial and administrative powers and functions of the Pradhan or Up-Pradhan, till the conclusion of the enquiry. The reply of the Pradhan or material to be produced by him is not necessary to be considered at this stage of forming a prima facie opinion on the material collected in the fact finding (preliminary) enquiry. Each case will depend upon the facts and circumstances brought out before the State Government or the delegated authority in the preliminary enquiry. If the charges are not serious and there is no threat of continuation of such misuse of powers or financial or other irregularities, or that the District Magistrate has acted arbitrarily, unreasonably and capriciously or if the action is tainted with malafides, pleaded and established on record, the Court may interfere and require the District Magistrate to justify his satisfaction. In this regard the order must be speaking order. But to say that the order can only be issued after issuing show cause notice and considering the reply and the material given by the Pradhan, would be reading something more than what the object and reasons of the Act and the Rules provide.

20. The suspension of government servant and the ceasure of the powers by an statutory or elected functionary are not unknown to the law. The suspension of

such powers, however, should be based on sufficient material on which the power can be justified in law and may be judicially reviewed. The exercise of power may also suffer from arbitrariness or malafides in a given case. The Court, however, should not lay down any guidelines in this regard.

21. The Pradhan of the village holds an elected office. Apart from his constitutional duties in Schedule XI of the Constitution of India, and to carry them out, he or she is provided with large amount of funds under various development schemes to carry out development works including digging up ponds, laying down roads, constructing culverts, housing schemes for upliftment of the poor, public distribution scheme, construction of toilets, the national employment guarantee scheme, the old age pension scheme, the rural health mission, the mid day meal scheme and scholarship scheme in the schools, construction and upgradation of primary schools and junior high schools, etc. A Pradhan and Up-Pradhan, together with the members of the Gram Panchayat are required to utilise these funds for the social and economic upliftment of the village. A Pradhan or Up-Pradhan may in a given case misuse their powers and the funds. The State Government through the District Magistrate or the Chief Development Officer and its various agencies are required to supervise these schemes. If they find that a Pradhan or Up-Pradhan is misusing his powers or is committing financial irregularities, they are required to step in and stop the misuse of authority and funds. In such case the U.P. Panchayat Raj Act, 1947 gives them sufficient authority under the proviso to Section 95(1)(g) to intervene and to suspend any further misuse of funds. In such a case the Act does not provide for taking over the powers but to vest the powers in a three member committee appointed from amongst the members of the Gram Panchayat, until the conclusion of the formal enquiry. In case of exercise of such powers, the object of local self-government is not destroyed as the power of development and use of the funds will still continue to vest in three member committee of the Gram Panchayat. The elected members of the Gram Panchayat will continue to utilise the powers temporarily until the Pradhan or Up-Pradhan is exonerated of the charges found prima facie established against him or is removed and a new incumbent is elected in the bye-elections.

22. Coming to the present case I find that in the preliminary enquiry sufficient material was collected against the petitioner-Pradhan for failing to construct the pond in accordance with norms; the deficiency in the construction of an earthquake proof room of the school; failure to explain the distribution of scholarship to 17 students and irregularities in maintaining the muster rolls under the Employment Guarantee Scheme. Prima facie satisfaction of the District Magistrate to suspend the powers of the Pradhan is based on the material collected and summarised in the report. A perusal of the report, does not show that the District Magistrate acted arbitrary or unreasonably in exercising his powers to cease the financial and administrative powers of the Pradhan and in vesting them in a three member committee. There was no need to call for reply of the petitioner-Pradhan to these charges, at this stage. In any case, such reply

was called and was considered by the District Magistrate. There is nothing to show that the satisfaction of the District Magistrate was vitiated by lack of material or malafides. The challenge to the impugned order on the ground that it does not give reasons has no substance as elaborate reasons are not required to be given by the District Magistrate at this stage. He is required to consider the preliminary enquiry report, and not a final enquiry report with the reply given by the petitioner or the material collected and produced by both the enquiry officer and supplied by the petitioner. Such an enquiry or recording of reasons at this stage is wholly superfluous.

23. The reliance placed by Shri D.K.S. Rathore on the interim order passed by me in Naresh Kumar's case is misconceived. While recording reasons forgiving interim order I had found that as against the expenditure of Rs. 3,50,000/- on development works, the District Agricultural Officer, Bijnor has found the misuse of only Rs. 12,264/-, which is less than 3% of the amount spent. The suspension of the financial and administrative powers of the Pradhan on misuse of such small fraction of the total amount, which may be a mistake either way was not found to be sufficient to suspend the powers of the Pradhan during the pendency of the enquiry. The facts of the present case are entirely different.

The writ petition is dismissed.