
(1997) 04 AHC CK 0136
In the Allahabad High Court
Case No : C.M.W.P. No. 37062 of 1996

Rakesh Kumar and Others	Vs	APPELLANT
Special Secretary, State of U.P. and Others		RESPONDENT

Date of Decision : 22-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Panchayat Raj Act, 1947 — Section 1, 11B, 12, 95(1), 96A

Citation : (1997) AWC 127 Supp

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : Vinod Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Singh, J.—Heard Sri Vinod Sinha appearing for the Petitioner, Sri S. K. Vidyarthi for 6th Respondent and also the standing counsel appearing for the State Authorities.

2. Factual matrix of the case is that Chandra Prakash arrayed as 6th Respondent, was elected Pradhan of the concerned Grain Panchayat, Lal Garhi, Block Panhasu, District Bulandshahr in the last Panchayat election. It transpires from the facts on record that certain complaints were made against him with the allegation that he had indulged in financial irregularities in Jawahar Rozgar Yojna and abused his other duties appertaining to the office of Pradhan. On receipt of the complaint, the Mukhya Vikas Adhikari, it seems, held an enquiry to go into the truth of the imputation but the same could not be taken to a finality owing to indifferent and patchy cooperation of the Petitioner and also by reason of certain order of the High Court holding that Chief Development Officer had no jurisdiction to interfere with the functions of the Pradhan. Thereafter, Asstt. District Panchayat Raj Officer, Bulandshahr was entrusted with the enquiry. In his report dated 12.8.96, the enquiry Officer found the 6th Respondent guilty of financial and administrative irregularities. On receipt of the enquiry report, the Sub-Divisional

Officer by his order dated 20.8.96, reached the conclusion that the Pradhan had prima facie indulged in malversation and as such, by means of the said order, the Dy. Collector, Khurja appointed a Three-Member Committee comprising Rakesh Kumar Singh, Khijhpi and Smt. Maya Devi to exercise and perform the powers and functions of the Pradhan in purported exercise of power u/s 95(1)(g) of the U.P. Panchayat Raj Act, 1947. By means of a subsequent order dated 8.11.96, the Sub-Divisional Officer held that in the backdrop of the Government order dated 30.8.96, the order dated 20.8.96 automatically became inoperative. Restraint on exercise of the powers of the 6th Respondent was accordingly lifted vide order dated 8.11.96. The Government Order dated 30.8.96 and the Sub-Divisional Officer's Order dated 8.11.96 are sought to be quashed by means of this petition under Article 226 of the Constitution. It brooks no dispute that the first proviso to Section 95 (1)(g) which was inserted by U.P. Act 9 of 1994 provides that wherein an enquiry held by such person and in such manner as may be prescribed, the Pradhan or Up Pradhan is prima facie found to have been involved in financial and other irregularities, such Pradhan or Up-Pradhan shall cease to exercise and perform the administrative powers and functions which shall until he is exonerated of the charges in the final enquiry, be exercised and performed by a Committee of Three-Members of the Gram Panchayat appointed by the State Government. It bears no emphasis that the power to appoint the Committee under the first proviso to Section 95 (1)(g) of the U.P. Panchayat Raj Act is vested in the State Government. The power under the first proviso is no doubt a power ancillary to the power of removal of a Pradhan vested in the State Government, but it can be exercised by the repository of the power and by none else and that too in the manner prescribed. According to Section 1 (p) of the Act, the word "prescribed" means prescribed by the Act and the Rules made thereunder. Attention of the Court could not be invited to any provision in the Act and/or Rules providing the manner and procedure for holding enquiry which is a condition precedent to exercise of power under the first proviso to Section 95 (1) (g) of the Act.

3. Sri Vinod Sinha appearing for the Petitioner urged that earlier delegation of power u/s 95 (1)(g) to the Sub-Divisional Officer as made in exercise of power u/s 96A of the Act before insertion of the first proviso to Section 95 (1)(g) could be pressed in aid of the order dated 20.8.96 appointing the three-member Committee for exercise and performance of the powers and functions of Pradhan until he is exonerated of the charges. The submission is wide off the mark and cannot be countenanced. The Pradhan or Up-Pradhan, as the case may be, would cease to exercise and perform the financial and administrative powers and functions only if he is prima facie found, in an enquiry held by such person and in such manner as may be prescribed by the Act or Rules made thereunder, to have committed financial and other irregularities, and in the absence of any specific provision in the Act or Rules prescribing the manner of enquiry, it may not be feasible to hold any enquiry and return a prima facie finding on the alleged irregularities-financial or other-wise. That apart, the delegation of power of

removal to Sub-Divisional Officer stands withdrawn by the Government Order dated 30.8.96 (Annexure 4). The State Government by means of the Government Order dated 20th August, 1996, has expressly provided that in the event of complaint being received regarding administrative or financial irregularities against Pradhan, the matter should be referred to the State Government in that the District Level Authorities have no jurisdiction in the matter. Acting upon the said Government Order dated 30th August 1996, the Sub-Divisional Officer issued the impugned order dated 8.11.96, stating therein that his earlier order dated 20th August 1996, appointing Committee for discharging the function of Pradhan, has been rendered ineffective or inoperative. The Government Order dated 30.8.96 and the Order dated 8.11.96 passed by the Sub-Divisional Officer do not suffer from any infirmity and are rather in consonance with the mandate of law encapsulated in the first proviso to Section 95 (1)(g). The orders, in my opinion, do not wear the taint of any infirmity nor do they warrant any interference under Article 226 of the Constitution of India. The Government Order dated 30.8.96 is in tune with the spirit of the Constitution (Seventy-third Amendment) Act, 1992 and consequential amendments made in the Act by U.P. Act 9 of 1994. A Gram Panchayat, visualised under the Constitution and the Act so amended as mini-Parliament at the village level, consists of a Pradhan and specified number of members depending on the population of the Panchayat Area as provided by Section 12 of the Act and the Pradhan of the Gram Panchayat, according to Section 11B, is elected directly by the persons registered in the electoral rolls for the territorial constituencies of the Panchayat Area from amongst themselves. He has to exercise and perform various financial and administrative powers and functions and on times he may come in confrontation with the District Administration particularly the Dy. Collector of the concerned Sub-Division and, therefore, the Government have rightly retained to itself the power of removal of a Pradhan. Therefore, no exception can be taken to the Government Order dated 30.8.96.

4. Accordingly, the petition fails and is dismissed. Interim order stands discharged.