

(2002) 09 AHC CK 0098
In the Allahabad High Court
Case No : Special Appeal No. 948 of 2002

Ramawati Devi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 95(1)

Citation : (2002) 5 AWC 3473

Hon'ble Judges : S.K. Sen, C.J; Ashok Bhushan, J

Bench : Division Bench

Advocate : R.C. Singh and S.P. Yadav, for the Appellant; Ranvijay Singh and S.C., for the Respondent

Judgement

S.K. Sen, C.J.—Heard Shri R. C. Singh, learned Counsel for the Appellant and Shri Ranvijay Singh learned Counsel for the State Respondent.

2. This special appeal is directed against the order passed by the learned single Judge in Writ No. 35676 of 2000 dated 29.8.2002, where the impugned order dated 21/22.6.2002, passed by District Panchayat Raj Officer, Kushinagar at Padrauna has been challenged.

3. The learned single Judge held that stoppage of Bank Accounts does not amount to seizure or taking away of financial power. We are unable to agree with such view taken by the learned single Judge. In effect when an order has been passed stopping the operation of the Bank Account, the same takes away the financial power of the Pradhan, such order can only be passed by the District Magistrate.

4. Section 95 (1) (g) proviso of the U.P. Panchayat Raj Act, 1947 gives power to cease financial and administrative power of Pradhan:

Section 95. Inspection.-(1) The State Government may:

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(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 Nyaya Panchayat if he:

(i) absents himself without sufficient cause from 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 there-under or his continuance as such is not desirable in public interest ; or (iv) being a Sahayak Sarpanch or a Sarpanch of the Nyaya Panchayat takes active part in politics, or (v) suffers from any of the disqualification mentioned in Clauses (a) to (m) of Section 5A:

(Provided that where, in an enquiry held by such persons and in such manner as may be prescribed, a Pradhan or 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 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).

5. Rules have been framed, namely the U.P. Panchayat Raj (Removal of Pradhan, Up-Pradhan and Members) Enquiry Rules, 1997. The enquiry which is referred to in Section 95 (1) (g) proviso is enquiry which is held in accordance with 1997 Rules, Rule 4 of the aforesaid Rules refers to preliminary enquiry. Rule 4 is quoted as below:

4. Preliminary Enquiry.-

(1) The State Government may on the receipt of complaint or report referred to in Rule 3, or otherwise order to the District Panchayat Raj Officer to conduct a preliminary enquiry with a view to find out if there is a prima facie case for a formal inquiry in the matter.

(2) The District Panchayat Raj Officer shall conduct the preliminary inquiry as expeditiously as possible and submit his report to the State Government within a fortnight of his having been so ordered.

6. It has been stated before us that power u/s 95 (1) (g) of U.P. Panchayat Raj Act has been delegated to the District Magistrate and the order u/s 95 (1) (g) can only be passed by the Collector.

7. On proper interpretation of the said section and the rule, it appears that it is only District Magistrate who can exercise such power and the District Panchayat Raj Officer has no such power to stop operation of Bank Account which in effect amounts to taking away the financial power. Accordingly, the District Panchayat Raj Officer has no jurisdiction or authority under law to exercise such power and the exercise of such power is absolutely arbitrary, accordingly the order dated 22.6.2002, passed by Respondent No. 4 is quashed.

8. The view which we have taken above practically disposes of the writ petition. The order passed by the learned single Judge is set aside and the special appeal is allowed. Both the writ petition and the special appeal including application for interim relief before us stands disposed of.

9. It is, however, made clear that this order shall not prevent the competent authority under the aforesaid Act to take appropriate step in accordance with law if the situation so permits.