

(2005) 03 AHC CK 0237

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 31601 of 2004

Ramvyas Vishwakarma

APPELLANT

Vs

District Magistrate, District Panchayat Raj Adhikari and Shiv
Devi

RESPONDENT

Date of Decision : 02-03-2005

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 11A(2), 12(3A), 12(5), 5A, 95(1)

Citation : (2005) 3 AWC 2197 : (2005) 99 RD 72 : (2005) 2 RD 72

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : A.K. Srivastava, for the Appellant; K.P. Srivastava and M.P. Srivastava and S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri A.K. Srivastava on behalf of the petitioner, Sri K.P. Srivastava on behalf of respondent Nos. 1 and 2.

2. Respondent No. 3, Shiv Devi, is admittedly the elected Pradhan of Gaon Sabha Jhamsheela, Block Myorpur, district Sonbhadra. The financial and administrative powers of respondent No. 3 were ceased under the order passed by the District Magistrate Sonbhadra dated 30.11.2002. Against the said order dated 30.11.2002 the Pradhan filed Writ Petition No. 54444 of 2002 (Smt. Shiv Devi v. District Magistrate, Sonbhadra and Ors.)

3. The Hon'ble High Court did not grant any interim order in the said writ petition. Subsequently the District Panchayat Raj Officer passed an order dated 31.03.2002 and dated 05.04.2003 whereby the Pradhan was required to deposit a sum of Rs. 39,708,00 said to be the loss caused to the Gram Panchayat due to the illegal acts of administrative powers of the Pradhan were restored. The order dated 23.12.2003 was challenged by the present petitioner by means of Writ Petition No. 162 of 2004. In the said writ petition an interim order was granted

by the Hon''ble High Court dated 07.01.2004 whereby operation of the order dated 23.12.2003 was stayed. Writ Petition No. 162 of 2004 was decided by this Court by means of order dated 05.03.2004 with a direction upon the District Magistrate to take a final decision in the matter strictly in accordance with law. The District Magistrate has now passed the order dated 02.08.2004 whereby he has directed the Pradhan to deposit a sum of Rs. 19,854.00 and has further directed that from the date the money is so deposited her financial and administrative powers shall be restored. It is against this order of the District Magistrate that the petitioner, who claims to be the Up-Pradhan and one of the members of the three member committee constituted u/s 95(1)(g) of the U.P. Panchayat Raj Act, during the period the power of Pradhan were ceased, has filed the present writ petition.

4. It is contended on behalf of the petitioner that the order dated 02.08.2004 has not recorded any finding to the effect that the Pradhan has been absolved of the charges leveled against her on the basis of the enquiry report. In respect of practically a similar order the Hon''ble High Court vide judgment and order dated 08.12.2004 passed in Writ Petition No. 50580 of 2004 has recorded that such an order is not sustainable inasmuch as the District Magistrate has not recorded any specific reason for exonerating the Pradhan of the charges. The High Court required the District Magistrate to reconsider the matter on merits and to pass reasoned speaking order.

5. On behalf of the respondents it is contended that no final enquiry report has been submitted till date and, therefore, there is no basis for any order being passed against the Pradhan u/s 95 (1) (g) of the U.P. Panchayat Raj Act in view of the provisions of Rule 5 of the U.P. Panchayat Raj (Pradhan, Up-Pradhan and Members) Enquiry Rules, 1997. It is further submitted that the enquiry proceedings against the Pradhan are pending since 2002 and no final report has been submitted in respect of the charges leveled against her. Therefore, the order restoring the financial and administrative powers may not be interfered within the present writ petition.

6. I have heard learned counsel for the parties and gone through the record of the writ petition.

7. For the purpose of adjudicating the controversy raised in the present writ petition it would be relevant to refer to the provisions of Rule 4 and 5 of the U.P. Panchayat Raj (Pradhan, Up-Pradhan and Members) Enquiry Rules, 1997 as well as Section 95 (1) (g) of the U.P. Panchayat Raj Act, which are quoted hereinbelow:-

8. 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 Prabandhak Samiti or a Panch, Sahayak Sarpanch or Sarpanch of a 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 had persistently failed to person 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 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 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."

Rule 4. Preliminary enquiry.-(1) The State Government may, 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.

(2) The Enquiry Officer shall conduct the preliminary enquiry as expeditiously as possible and submit his report to the State Government within 30 days of his having been so ordered.

Rule 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 Sub-section (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.

8. From the language of proviso to Section 95 (1) (g) it is apparently clear that once financial and administrative powers of the Pradhan are ceased in accordance with the aforesaid provisions, an order to restore the said powers can only be passed by the District Magistrate after a final enquiry report is obtained on the basis whereof the District Magistrate is satisfied that the Charges leveled against the Pradhan are not made out and he specifically exonerates the Pradhan of the charges. The legal position in that regard has been settled by this Court in the case reported in Smt. Sandhya Gupta Vs. District Magistrate and others, .

9. From the order impugned in the present writ petition it is apparently clear that the District Magistrate has not recorded any finding with regard to the issue as to whether the charges leveled against the Pradhan have been proved or nor or whether the Pradhan has been exonerated of the charges. In such circumstances the judgment of this Court passed in Writ Petition No. 50580 of 2004 is squarely applicable to the present case. In the said judgment this Court has held as under:--

"The District Magistrate has passed the impugned order directing recall of the three members committee and deposit of the amount. The District Magistrate in the impugned order has not specifically stated that the respondent No. 5, Pradhan, is being exonerated of the charges on the basis of the enquiry report. There is no specific observation of the District Magistrate exonerated the Pradhan from the charges. In the facts of the present case ends of justice will be served in directing the District Magistrate to consider the matter afresh and pass fresh order expeditiously. It is made clear that this Court is not expressing any opinion on the merits of the case and it is for the District Magistrate to take decision in accordance with law. The orders dated 5.11.04 is set aside. The District Magistrate may pass afresh order after considering the final enquiry report within a period of four weeks from the date production of a certified copy of this order. During the period the District Magistrate passes the final order the operations of the account of the Gaon Sabha shall be permitted only with the prior approval of the District Panchayat Raj Officer.

With the aforesaid observations the writ petition is disposed of."

10. In view of the aforesaid the order passed by the District Magistrate impugned in the present writ petition cannot be legally sustained.

11. At this stage counsel for the respondents contended that in view of Section 12 (3-A) as amended in the State of Uttar Pradesh vide U.P. Act No. 22 of 2000 a three member committee constituted to exercise the financial power cannot

continue beyond a period of six months. It is, therefore, contended that the three member committee has no right to exercise financial and administrative powers in respect of the Gram Panchayat after six months from the date of the order dated 30.11.2002. Counsel for the respondents submits that the provisions with regard to the three member committee u/s 95(1)(g) of the U.P. Panchayat Raj Act. It is worthwhile to reproduce Section 12(3-A) as under:-

12(3-A) However, anything contained in the other provisions of this Act, where, due to unavailable circumstances or in the public interest, it is not possible to conduct the elections for constitution any village Panchayat before expiry of its term. State Government or any authority authorized for this purpose by it, by order, may appoint an administrative committee including such number of persons, which may be considered sufficient, having eligibility to be elected as member of village Panchayat or an administrator and the members of administrative committee or administrator shall hold the office for the period, which may be specified in the aforesaid order not more than six months and all the powers functions and duties of the village Panchayat, its Pradhan and committees, as may be, shall be vested in such administrative committee or administrator and shall be used, exercised and done by him."

12. A bare reading of the said provision would establish that the power of three member committee under the said Section is to be exercised only in cases where election of the Gaon Sabha could not be held within the time specified. Section 12 (3-A) has no application to the 3 member committee constituted u/s 95 (1) (g). The power to be exercised u/s 95 (1) (g) is an independent power which has no relevance with the power to be exercised u/s 12 (3-A). Therefore the maximum period prescribed for the three member committee u/s 12 (3-A) is not referable to Section 95 (1) (g) of the U.P. Panchayat Raj Act.

13. Lastly it is contended that since the District Magistrate has already passed an order against the Pradhan to make good the loss it would necessarily follow that the Pradhan has been exonerated of the charges and his financial and administrative powers would be restored. This contention made on behalf of the Pradhan is misconceived. The power to realize the surcharge against the Pradhan for the loss caused due to the illegal and irregular acts of the Pradhan is an independent power and further more or less establishes that the functioning of the Pradhan was not in accordance with law.

14. In the result the writ petition is allowed. The order dated 02.08.2004 passed by the District Magistrate, Sonbhadra is quashed.