

(1992) 01 AHC CK 0107

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 23078 of 1991

Shafiq Ahmad

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 08-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Panchayat Raj Act, 1947 — Section 102, 102(1), 5A, 95, 95(1)

Citation : (1992) 1 AWC 402 : (1992) RD 240

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : R.H. Zaidi, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—By means of present writ petition, under Article 226 of the Constitution of India, the Petitioner has challenged an order passed by the Sub-Divisional Officer, Kashipur dated 31-7-1991. Whereby the Petitioner, who is Pradhan of the Gaon Sabha, was suspended with immediate effect and Tehsildar, Kashipur was appointed for conducting enquiry against the Petitioner for the charges levelled against the Petitioner. While passing the aforesaid suspension order, the Sub-Divisional Officer recorded "I am in agreement with the enquiry report of the Enquiry Officer and the complaints, which have been found to be correct in the preliminary enquiry, are so serious that it has become necessary to suspend the Pradhan.

2. The Petitioner, in the present writ petition, has obtained an exparte interim order in his favour, whereby the operation of the impugned order dated 31-7-91 was initially stayed till 24-10-91.

3. On behalf of one Sri Bhagesh Singh, who is a member of the Gaon Sabha, an application was moved for impleading him as Respondent. The aforesaid application was allowed by the Court, vide its order dated 18-11-91.

4. Sri S.S. Rathore, counsel, appearing for Sri Bhagesh Singh, raised a preliminary objection, regarding maintainability of the writ petition and contended that the Petitioner has an alternative remedy of filing a revision before the Commissioner. As such, the writ petition deserves to be dismissed on the ground of availability of alternative remedy, which is equally efficacious and speedy.

5. u/s 95(1)(gg) of U.P. Panchayat Raj Act (hereinafter referred to as the Act"), the State Government has been conferred powers to suspend Pradhan or Up-Pradhan or a member of Committee of Gaon Panchayat etc. Section 95(3) of the Act provides that the order passed by the State Government under the section shall not be called in question in any court. Section 96(A) of the Act confers power of the State Government to delegate all or any of its powers under this Act to any officer or authority, subordinate to it, subject to such conditions and restrictions, as it may deem fit to impose. The aforesaid relevant provisions are reproduced below:

95. Inspection--(1) The State Government may--(g) remove a member of a Gaon Panchayat or a Joint Committee of Bhumi Prabandhak Samiti, an office-bearer of a Gaon Sabha or a Panch, Sahayak Sarpanch or Sarpanch of a Naya 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 thereunder or his continuance as such is not desirable in public interest the court in revision to interfere with the same; or

(iv) being a Sahayak Sarpanch or a Sarpanch of the Nayay Panchayat takes active part in politics; or

(v) suffers from any of the disqualification mentioned in Clauses (a) to (m) of Section 5-A;

(gg) suspend a Pradhan or Up-Pradhan or a member of a Gaon Panchayat or Joint Committee or Bhumi Prabandhak Samiti or a Panch, Sahayak Sarpanch or Sarpanch of a Nayay Panchayat against whom proceedings under Clause (g) are pending or contemplated or against whom prosecution for an offence, which in the opinion of the State Government involves moral turpitude, is pending;

95(3) No order made by the State Government under this section shall be called in question in any court.

96-A. Delegation of powers by State Government--The State Government may delegate all or any of its powers under this Act to any officer or authority subordinate to it subject to such conditions and restrictions as it may deem fit to

impose.

Exercising powers, u/s 96(A) of the Act, the State Government by a notification No. 4193-K-XXXII-64 dated 27-7-66 delegated its power u/s 95(1)(g) of the Act to the Sub-Divisional Officer, subject to an order for removal passed by him being appealable to the District Magistrate. The State Government issued another notification No. 1171-B/XXXII-2-117-D-66 dated 30-10-67, modifying the earlier notification dated 27-7-66 and further imposed condition on exercise of powers of removal by the Sub-Divisional Officer. The State Government by notification No. 5681-B/XXX-111-2-237-72 dated 14-8-76 in exercise of its powers u/s 96-A of the Act was pleased to delegate the powers of the State Government under Clause (gg) of Sub-section (1) of Section 95 of the Act to the Sub-Divisional Officer having jurisdiction, subject to the condition that any order passed by the Sub-Divisional Officer in exercise of the said powers either before or after the date of this notification shall be revisable by the Commissioner of the Division and also by the State Government.

6. In *Matloob Ahmad v. Sub-Divisional Officer Najibabad Bijnor* 1986 AWC 1175 a Division Bench of this Court held that since in the matter of Pradhan of the Gaon Sabha, who has been suspended u/s 95(1)(gg) of the Act, has got an alternative statutory remedy available and can file a revision before the Commissioner/State Government is not a fit case for interference in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India and dismissed the writ petition on the aforesaid ground. In this case the Division Bench repelled the argument raised on behalf of the Petitioner "that revisional forum could not be created by means of a notification and that the order passed by the Sub-Divisional Officer is the order passed by the State Government and that the order of the Sub-Divisional Officer should be treated to be final are, therefore, without substance. Section 96-A of the Act in our opinion gave power to the State Government to place conditions and restrictions on the exercise of the powers of the Sub-Divisional Officer and for that purpose the State Government could provide that the exercise of the powers by the Sub-Divisional Officer shall be subject to the revisional control by the Commissioner and the State Government.

7. In *Gopi Singh v. State* 1991 ALJ 85 a learned Single Judge of this Court followed the Division Bench's decision in *Matloob Ahmad's* case (supra) and dismissed the Petitioner's writ petition on the ground that the Petitioner has an alternative remedy of filing revision.

8. In *Deo Sharan Misra v. Commissioner Lucknow Division* 1986 AWC 279 considering validity of the notifications issued u/s 95(gg) of the Act, held that the aforesaid notification does not suffer from the vice of excessive delegation. The relevant portion of the aforesaid decision is being reproduced here:

I find no substance in the submission of the learned Counsel for the Petitioner that provision in the notification that the order passed by the Sub-Divisional Officer in exercise of the power under Sub-section (gg) of Section 95 shall be

revisable by the Commissioner of the Division and also by the State Government suffers from the vice of excessive delegation. The Pradhan is an elected officer and, therefore, abundant caution has been taken by the State Government while delegating its power to the Sub-Divisional Officer. It is in order to check the reasonability of the order that it is provided that the order of suspension passed by the Sub-Division Officer shall be revisable by the Commissioner of the Division. This is covered within the phraseology "subject to such conditions" not only this it has also kept with it the power to revise the order passed by the Sub-Divisional Officer and confirmed by the Commissioner, therefore, in the notification as a matter of fact an excessive precaution has been taken by the State Government to see that the Pradhan who is elected officer is not arbitrarily suspended. The State Government has to look to the entire functioning of the State, and, therefore, it cannot be said that the work to be discharged by the Government is light in any manner. The Legislature in its wisdom had provided for delegation of powers by the State Government and, therefore, the State Government could by notification delegate its powers within the ambit of the exercise of powers for purposes of passing the order for breach of any of the conditions provided in Section 95 of the Act. The notification in my opinion does not suffer from the vice of excessive delegation as urged by the learned Counsel for the Petitioner.

9. Sri R.H. Zaidi, learned Counsel for the Petitioner contended that the aforesaid decisions call for reconsideration for the following reasons:

Firstly, appeal and revision are creature of statute. They are substantive rights. They cannot be created or conferred, except by the statute itself. A notification, creating revisional authority, is not a statute. As such the creation of appellate authority or revisional authority by notifications is ultra vires of the provisions of the Act and is hit by Section 95(3) of the Act.

Secondly, the Sub-Divisional Officer exercises delegated powers of the State Government itself. The State itself cannot be the original authority as well as the revisional authority. The conferring of the revisional power on the same authority, which exercises original jurisdiction, is not permissible in law.

Thirdly, u/s 95 of the Act, the State Government, has got power to remove the Pradhan u/s 95(1)(g) of the Act and suspend the Pradhan u/s 95(1)(gg) of the Act. Only these powers i.e. removal and suspension can be delegated u/s 96-A of the Act and restrictions and conditions can be imposed on exercise of these powers but under the garb of imposition of conditions and restrictions revisional or appellate authority cannot be created, as it suffers from vice of excessive delegation.

Lastly, he submitted that u/s 95(3) of the Act, a finality has been attached to the orders passed u/s 95(1)(g) and 95(1)(gg) of the Act. The said finality cannot be set at naught by creating a revisional authority or an appellate authority. Creation of these authorities was contrary to the provisions of Section 95(3) of the Act. As

such, was ultra vires of the Act.

10. Sri Zaidi, in support of his first contention that appeal or revision is a creature of statute cited a catena of decisions and submitted that these decisions were not considered in the Divisional bench decision of Matloob Ahmad (supra). The decisions, relied by Sri Zaidi, are as under:

In *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, , the Court held as under:

The right of appeal is the creature of statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to understand as to why the Legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions.

In *Smt. Ganga Bai Vs. Vijay Kumar and Others*, , the Court held as under:

A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute.

11. Similar view has been taken in the cases relied upon by Sri Zaidi. As such, all such decisions need not be mentioned in the judgment.

12. The substance of Sri Zaidi's submissions, which is in regard to point 1 is that the appellate or revisional authority could have been created by statute itself and in U.P. Panchayat Raj Act, wherever the Legislature thought fit, the Legislature provided for the appeal. For convenient reference Section 102 of the Panchayat Raj Act can be referred to:

102. Appeals (1) Any person aggrieved by an order or direction made by a Gaon Panchayat under the Act or under any rule or bye-law may, unless otherwise prescribed, within 30 days from the date of such direction or order, exclusive of the time requisite for obtaining a copy thereof appeal to the prescribed authority which may vary, set aside or confirm the said order or direction and may also award costs to or against the person filing the appeal.

(2) The prescribed authority may, if it thinks fit, extend the period allowed by Sub-section (1) for appeal.

(3) The decision of the prescribed authority under Sub-section (1) shall be final and shall not be questioned in any court of law.

13. The submission is that the statute did not create any appellate or revisional authority in the matter of suspension or removal of Pradhan. On the other hand contemplated that the order passed u/s 95(1)(g) or (gg) of the Act shall be final.

As such, by means of a notification an appellate authority could not have been created, as notification is not statute for the purpose of Panchayat Raj Act, particularly in its context of Section 95(1)(g) and (gg).

14. The statute has been defined in the Law Lexicon Reprint Edition 1987 by P. Ramanatha Aiyar at page 1215 as under:

Statute

Signifies an act of the legislature (Temlins Law Dic) a law established by the act of the legislative power. The written will of the legislature solemnly expressed according to the forms necessary to constitute it the law of the state.

This word is used to designate the written law in contradiction to the unwritten law.

The meaning of the term "statute" varies according to the connection in which it is used. For certain purposes an enactment to which a state gives the force of law, is a statute, although not originating in the legislature. Under certain circumstances a municipal ordinance may be deemed to be a statute, although usually not included within the meaning of such term. Under the civil law "statute" is a term applied to all sorts of laws and regulations, to whatever provision of law which permits ordains or prohibits anything. (Ame. Cyc).

15. A question arose as to whether a notification, issued under the provisions of a section of the Act, has the power of the statute itself. A constitution bench of the Hon'ble Supreme Court in State of Bombay v. F.N. Balsara AIR 1951 SC 318 at page 329 held:

An order made by the provincial Government in exercise of the power conferred by this section owes its legal efficacy to this section and therefore in the eye of the law the notification has the force of law as if made by the legislature itself.

16. From the aforesaid authorities, it is apparent that the notifications issued under the Act, are referable to the Legislature itself. This being the position, the submission of Sri Zaidi that the appellate authority or the revisional authority in the present matter has not been created by any statute, is misconceived in law. The notification is statute and can be referable to the Legislature itself. In appropriate cases, even if the Act does not contemplate the appellate authority, the same can be created under the Act by means of a notification and in such a situation, the appellate, or revisional authority, so created, will be referable to the statute itself and will be creature of statute.

17. All other submissions, made by Sri Zaidi already stand concluded by earlier Division Bench and Single Judge decisions, referred to in the judgment. In this view of the matter, there is no substance in Sri Zaidi's submissions that the matter need be re-examined by a larger Bench.

18. In view of the fact that the Petitioner has an alternative remedy of filing revision under the Act itself, there is no exceptional or extraordinary

circumstance of the case, calling for interference in the matter without relegating the Petitioner to the alternative remedy of filing revision.

19. The writ petition is accordingly dismissed on the ground that the Petitioner has a statutory alternative efficacious remedy of filing revision available under the Act itself.

20. However, it is being made clear that if the Petitioner files any such revision within a month from the date of the judgment, the Commissioner of the Division shall decide the Petitioner's revision on merits within three months from the date of filing revision along with certified copy of this judgment and will not raise any objection regarding limitation.

21. The parties will bear their own costs.