
(2008) 04 AHC CK 0123
In the Allahabad High Court

Smt. Chinta Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Constitution of India, 1950 — Article 243C

Citation : (2009) 1 UPLBEC 367

Hon'ble Judges : Pradeep Kant, J; Narayan Shukla, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Pradeep Kant and Narayan Shukla, JJ.—This writ petition has been filed by Smt. Chinta Yadav, the elected Adhyaksha of Zila Panchayat, Gorakhpur, challenging the order passed by the State Government in purported exercise of powers under proviso to Section 29 of the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 (hereinafter referred to as the Act), ceasing her administrative and financial powers.

2. Assailing the aforesaid order, Sri S.K. Kalia, learned Senior Advocate, assisted by Sri Manish Kumar and Sri Upendra Misra, Advocates, submitted that the impugned order suffers from manifest error and lack of jurisdiction and authority, besides having been passed in violation of principles of natural justice and also on non-existent facts, which even on plain reading, do not make any case for either continuing the formal enquiry or for ceasing the administrative and financial powers.

3. Elaborating the aforesaid argument the following points have been greatly stressed:

1. The order dated 14.2.08 has been passed without affording any opportunity to the petitioner, as such, it suffers from vice of violation of natural justice;

2. The order cannot be said to have been passed within the prescription of

proviso to Section 29 of the Act;

3. The charges, 5 in number, though have been levelled but on the face of it, they do not constitute any charges, much less any serious charges, so as to deprive the petitioner of her statutory duties and performance of functions, being an elected Adhyaksha;

4. The charges, as they are, have not at all been found to be proved and in the absence of any finding being recorded with respect to the charges being, prima facie, proved, there could not have been any material before the State Government to have its satisfaction for passing the order under the aforesaid proviso; and

5. The manner in which the enquiry has been conducted by the District Magistrate, is not only violative of principles of natural justice in holding enquiry but the findings are based on surmises and conjectures and merely on suspicion.

4. Submission, therefore, is that right of the petitioner to exercise administrative and financial powers as elected Adhyaksh could not be snatched away by the State Government, otherwise than in accordance with law and as such, the order is per se bad and illegal, which deserves to be set aside.

5. In response, Sri Mukund Tiwari, learned Additional Chief Standing Counsel for the State, has vehemently urged that none of the grounds asserted by the counsel for the petitioner is tenable, the order having been passed by the State Government, on its satisfaction that on the basis of the report of the preliminary enquiry conducted by the District Magistrate, there is a case for holding formal enquiry and during the course of enquiry, the petitioner may not be allowed to exercise her powers, both, administrative and financial.

6. Further submission is that in a matter where the State Government is satisfied in the preliminary enquiry held by the District Magistrate on the directive of the State Government that the formal enquiry is to be conducted on the charges levelled against the Adhyaksha, the proviso to Section 29 does not require that any opportunity or prior opportunity should be given to such an elected Adhyaksha, neither in preliminary enquiry or by the State Government before passing the order of cessation of administrative and financial powers.

7. He further submitted that so far the charges are concerned, they make out a case of gross misconduct and misuse of the powers by the Adhyaksha, acting against the rules, on which, preliminary enquiry has been conducted, where the District Magistrate in his report found the charges, prima facie, proved and, therefore, this Court would not sit in appeal over the satisfaction arrived at by the District Magistrate or the State Government. He also submitted that the Court would also not reappreciate the evidence, which has been looked into by the District Magistrate nor would substitute its own findings, so as to defeat the order or to take a different view.

8. Sri Ramesh Kumar Srivastava, appearing for one of the members of the

Committee, which has been appointed under the order impugned by the State Government, for looking after the affairs of the Zila Panchayat, also refuted the arguments of the petitioner's counsel and submitted that this Court would not sit in appeal over the interlocutory orders passed by the State Government on the basis of the preliminary enquiry conducted by the District Magistrate and that principles of natural justice do not stand attracted while passing of such an order of cessation of administrative and financial powers.

9. A Division Bench of this Court, in which one of us (Pradeep Kant, J.) was a member, in the case of *Smt. Surya Kala v. State of U.P. and Ors.* reported in 2005 (II) LDR 142, has taken a view that in a case where u/s 16 of the U.P. Kshettra Panchayat and Zila Parishad Adhiniyam, 1961, the powers of Pramukh of the Kshettra Panchayat are ceased, namely, administrative and financial, under proviso to Section 16(1) of the Act, the same would become bad, if such an order has been passed without affording any opportunity to the elected Pradhan in preliminary enquiry conducted by the authorised/nominated officer by the State Government.

10. Relying upon the aforesaid judgement, the petitioner has urged that provisions of Section 29 and its proviso are analogous and, in fact, para materia to Section 16(1) and its proviso and, therefore, the same principle would apply in the instant case, where the order of cessation of administrative and financial powers have been ceased, which could not have been ceased, without giving opportunity to participate in the preliminary enquiry.

11. Further it has been submitted by the petitioner, that the Committee appointed by the State Government, or its members, individually, have no locus standi to oppose the claim of the petitioner, as they do not get any vested right to continue or be appointed as members.

12. Sri Mukund Tiwari, learned Additional Chief Standing Counsel, submitted that the aforesaid judgement does not lay down any law that in such a case, where cessation of administrative and financial powers is ordered, the association of the elected Pramukh or Adhyaksha in the preliminary enquiry is a must, as it was a case where, in fact, no preliminary enquiry was conducted and merely on the basis of some report of the Economic Offence Wing of the State Government and the F.I.R. lodged against the person concerned, the order of cessation of powers was passed and it is thus, not a proposition of law, which has any binding effect nor a binding precedent.

13. He further submitted that principles of natural justice would not be attracted in a case where only preliminary enquiry has been conducted for the purpose of finding out as to whether formal enquiry is to be instituted or not against the Pramukh or Adhyaksha as the guilt or innocence of the person concerned shall be proved and established in the formal enquiry. Since no right of such an elected person has been effected, therefore, also no opportunity of either hearing or participating in preliminary enquiry is required.

14. In support of this submission, he relies upon the provisions of Section 29 and its proviso.

15. Section 29 of the Act, alongwith its proviso is being quoted below:

29. (1) If in the opinion of the State Government the Adhyaksha or the Up-Adhyaksha while acting in place of Adhyaksha wilfully omits or refuses to perform his duties or functions under this Act or abuses the powers vested in him or is found to be guilty of misconduct in the discharge of this duties, or because physically or mentally incapacitated for performing his duties the State Government, after giving the Adhyaksha or UP-Adhyaksha, as the case may be, a reasonable opportunity for explanation may be order remove him from office and such order shall be final and not open to be questioned in a Court of law.

Provided that where in an enquiry held by such person and in such manner as may be prescribed, an Adhyaksha or Upadhyaksha is prima facie found to have committed financial and other irregularities such Adhyaksha or Upadhyaksha 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 elected members of the Zila Panchayat appointed in this behalf by the State Government.

(2) ...

(3) An Adhyaksha or UP-Adhyaksha, removed from his office under this section, shall not be eligible for election as Adhyaksha or Up-Adhyaksha for a period of three years from the date of his removal.

16. Relying upon the aforesaid proviso, he submitted that nowhere it prescribes that the elected Adhyaksha would also be associated in the preliminary enquiry and, rather, it says that where in an enquiry held by such person and in such manner as may be prescribed, an Adhyaksha or Upadhyaksha is prima facie found to have committed financial and other irregularities, such Adhyaksha or Upadhyaksha 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 elected members of the Zila Panchayat appointed in this behalf by the State Government.

17. Sri Tiwari relies upon the case of Mukesh Rajput v. State of U.P. and Ors. (2003) 3 UPLBEC 2587 and the case of State of U.P. and Others Vs. Smt. Meera Sankhwar and Others, decided by a Division Bench of this Court (M. Katju, J, as His Lordship then was, and R.S. Tripathi, J).

18. In the case of Mukesh Rajput, the Division Bench, in the facts and circumstances of the case, where the petitioner was given opportunity to participate in the enquiry, and looking to charges, refused to interfere and while dismissing the writ petition, the observations made in one paragraph, namely, para 6, which reads as under, would not constitute the ratio decidendi of that

case.

6. A perusal of the impugned order shows that a preliminary enquiry was held against the petitioner. Although in the preliminary enquiry it is not necessary to give opportunity of hearing to the accused since it is only a fact finding enquiry to determine whether a regular charge-sheet should be given or not yet the authorities acted very fairly and gave a show cause notice to the petitioner but the petitioner did not reply to the same.

19. In the aforesaid judgement, their Lordships did not address themselves on the question, as to why opportunity need not be given to the Adhyaksha or Upadhyaksha, during the preliminary enquiry, even if it is a fact finding enquiry, which is not only for determining, as to whether regular charge sheet should be given or not but would result into adverse consequence, namely, cessation of administrative and financial powers of such an Adhyaksha.

20. The observations in para 6 of the judgement appears to proceed on the assumption that preliminary enquiry is conducted only for finding out as to whether regular charge sheet should be given or not but it does not give its opinion upon the effect of such preliminary enquiry, which obviously has serious consequence upon the rights of the elected Adhyaksha, viz. cessation of administrative and financial powers.

21. Besides, Para 8 of the report itself takes into account that opportunity was, in fact, afforded to the person concerned, who had come to the Court and, therefore, the Court dismissed the writ petition.

22. With all respect to their Lordships, the observations made by the Bench that no opportunity is required to be given in preliminary enquiry cannot be said to be a law laid down in the said judgement nor such a law has been laid down.

23. The other case, namely, State of U.P. and Ors. v. Smt. Meera Sankhwar and Ors. (supra) is a case where the Division Bench has observed that the Court would not sit in appeal over the action taken. Paras 34, 36 and 37 have been specifically read before us.

24. In Para 34, the Court has taken into account the gravity of the charges on which the order was passed, which is fortified by reading the first two lines, which read as under:

In our opinion in the present case, it cannot be said that there is a fool proof case in favour of the writ petitioner.

25. This observation itself means that there has to be a case against the person elected as Adhyaksha or Chairman for holding an enquiry or formal enquiry and in case no such case is made out, the Court may interfere. The Court further said that there were serious allegations against the writ petitioner, for which an enquiry was set up u/s 29 of the Act and the District Magistrate was appointed as the enquiry officer. The plea of bias of the District Magistrate was not accepted. It

was also found that out of 15 charges, 8 charges were, prima facie, found proved.

26. In Para 36, the Court again took notice of the fact that 8 of the 15 charges were proved and that the charges were serious. In Para 37 of the judgement, the Court took note of the observation made in the case of Mukesh Rajput (supra) that the Court cannot sit in appeal over, prima facie, findings of the State Government.

27. We, with utmost regard, do not find anything in the aforesaid cases, which lays down any proposition of law to the contrary, that no opportunity is required to be given to the elected Adhyaksha either in the preliminary enquiry or before passing of the order by the State Government. The non-interference by the Court to an order passed by the State Government, for very many reasons, would not amount to laying down a law or interpreting a law to have a binding precedent, unless, of course, the provisions of the Act or the Rules, are considered and discussed and the orders are passed, defining their scope.

28. We are also informed by the counsel for the parties that against the aforesaid judgement and order in the case of Smt. Meera Sankhwar and Ors. (supra), SLP was filed, in which earlier an order of stay was passed against the said judgement, and subsequently SLP has been dismissed as infructuous on 30.1.08.

29. It is true that the case of Smt. Suryakala (supra) was a case u/s 16(1) of the Act and its proviso but the Rules of removal of Adhyaksha, namely, Uttar Pradesh Kshettra Panchayats and Zila Panchayats (Removal of Pramukhs, Up-Pramukhs, Adhyakshas and Up-Adhyakshas) Inquiry Rules, 1997 are one and the same, which are applicable in both the cases.

30. The language of Section 29 and its proviso is also the same, rather, para materia and, therefore, the ratio decidendi of the judgement in Smt. Suryakala case would be applicable in the present case also.

31. Paras 32 to 46 of the judgement in the case of Smt. Suryakala are relevant, wherein the Court has discussed the aforesaid Rules of 1997. In Para 46, the Court observed as under:

46. With the aforesaid scheme of the Act and the Rules, it can be safely interpreted that affording of an opportunity at the stage of preliminary enquiry under Rule 4 flows from the principles of natural justice and is thereby inherent. After the preliminary enquiry has been conducted, in which the Pramukh or Up-Pramukh has been found prima facie guilty of the charges levelled, an enquiry officer has to be appointed by the State Government, if the State Government is of the opinion that on the basis of the report referred to in Sub-rule (2) of Rule 4, a formal enquiry should be held against the Pramukh or Up-Pramukh u/s 16 or against the Adhyaksha or Up-Adhyaksha u/s 29. The enquiry officer is to be appointed under Rule 5 for Pramukh or Up-Pramukh, who would not be below the rank of the District Magistrate in case of an enquiry u/s 16, and not below the rank of a Commissioner in the case of an enquiry u/s 29.

Reiterating the view taken by the Division Bench, we emphasize that passing an order of cessation of administrative and financial powers of the Adhyaksha of the Zila Panchayat, without associating him in the preliminary enquiry, would be in gross violation of the specific provisions of the Act as well as the Rules, besides being in violation of principles of natural justice.

Reading of the proviso to Section 29 reveals that it obligates the State Government to get a preliminary enquiry held, which enquiry shall be held by such person and in such manner as may be prescribed; the prescription has been made by Rules, 1997 and if in that enquiry Adhyaksha or Upadhyaksha is prima facie found to have committed financial and other irregularities, such Adhyaksha or Upadhyaksha shall cease to exercise and perform the financial and administrative powers and functions. This means that not only a preliminary enquiry is to be held under the orders of the State Government but it has to be held by a person duly nominated for the purpose, in accordance with rules and if in that enquiry, it is prima facie found that the Adhyaksha or Upadhyaksha has committed financial and other irregularities, he shall cease to exercise and perform the financial and administrative charges in the final enquiry. This again means that liability has to be established and misconduct has to stand proved, may be prima facie, only then formal enquiry would be conducted and his administrative and financial powers can be ceased and the State Government will have the jurisdiction to appoint a three members Committee for the purpose.

Rules 3 and 4 of the Rules of 1997 are relevant for the purpose.

Rule 3 of the Rules of 1997 gives the procedure relating to complaints, whereas Rule 4 deals with preliminary enquiry.

Rule 4 reads as under:

4. Preliminary enquiry - (1) The State Government may, on the receipt of a complaint referred to in Rule 3 or otherwise appoint an officer not below the rank of an Additional District Magistrate in the case of a Pramukh or Up-Pramukh and District Magistrate in the case of an Adhyaksha or Upadhyaksha 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 Officer appointed under Sub-rule (1) shall conduct the preliminary enquiry as expeditiously as possible and submit his report to the State Government within a fortnight of his having been so appointed.

32. A bare perusal of the aforesaid Rule again reveals that the State Government has to appoint an officer not below the rank prescribed therein, in the case of Pramukh or Up-Pramukh and Adhyaksha or Upadhyaksha and "to conduct a preliminary enquiry with a view to finding out if there is a prima facie case for formal enquiry in the matter.

33. The italicised phrase requires that the District Magistrate in the case of Adhyaksha shall hold an enquiry and the purpose of holding an enquiry would be

to find out whether any prima facie case is made out for formal enquiry or not.

34. The moment the Rule requires alongwith substantive provisions of the Act, to find out the guilt of the elected Adhyaksha, though prima facie, for deciding as to whether a formal enquiry should be conducted for his removal or not, which leads to the consequence of cessation of his administrative and financial powers, the principle of natural justice intervenes, as such a finding holding the elected Adhyaksha guilty of some misconduct or irregularity, without affording him any opportunity to put his defence in the preliminary enquiry, would be against the intention of the Act as well as the Rules.

35. If the framers of the law were of the view that no such opportunity need be afforded to the Adhyaksha or Upadhyaksha, as the case may, there was probably no occasion for providing a provision for holding a preliminary enquiry before undertaking a formal enquiry. In such a situation, on a complaint being made, if the State Government was satisfied about the genuineness thereof, it could have taken formal proceedings/enquiry straightaway, and could have passed appropriate orders and such a provision, unless otherwise hit by some constitutional provision or any other law, would have been sufficient to dislodge the elected Adhyaksha or Upadhyaksha, as the case may be, and that too by following the principles of natural justice, as full opportunity would have been given to such a person during the course of formal enquiry.

36. The mandatory requirement of holding a preliminary enquiry before a formal enquiry is ordered by the State Government, is, in fact, a provision, which safeguards the interest of the elected Adhyaksha or Upadhyaksha, giving due sanctity to the elected office and not only for protecting the office bearer from being ousted from office but also the institution of self government, being protected by designed and concerted actions and for avoiding casual complaints, which may be politically motivated or which may suffer from any ulterior motive and may be in some cases, based on non-existing facts.

37. The provision for preliminary enquiry has thus, been consciously placed in the Statute, which is to be conducted in the manner prescribed under the rules. The obvious purpose of holding such a preliminary enquiry is that the elected office should not be allowed to be interfered with by any person including the State Government in a casual and laconic manner nor for satisfying the political agenda.

38. An elected Adhyaksha or Upadhyaksha, Pramukh or Up-Pramukh, as the case may be, has a statutory right to exercise his functions and discharge his duties, for which he is elected and he can neither be removed nor his powers can be curtailed, otherwise than in accordance with law. The elected office bearers aforesaid, can be removed by passing a vote of no-confidence or by an order of removal passed by the State Government, if they are found guilty of gross misconduct or abuse of powers under the rules. There cannot be any other procedure for ousting an elected office bearer.

39. To protect the elected office bearer holding the office of the Adhyaksha or Upadhyaksha and to minimize the interference by the political parties and influential people, and to avoid group rivalry so as to pull down such an office bearer and consequently to give stability and due sanctity to the institution of self-government, duly recognised by the Constitution under Article 243C, it appears that safeguard for holding preliminary enquiry has been provided before taking any drastic action against the Adhyaksha, may be of removal.

40. While considering the complaint against the Adhyaksha, it necessarily has to be enquired into by the State Government through appropriate officer that whether at all there is a case for formal enquiry or not while the purpose of holding preliminary enquiry is not to punish the elected Adhyaksha or Upadhyaksha, without holding a formal enquiry by denuding all his powers. The cessation of administrative and financial powers is ordered in appropriate cases, where the misconduct is found prima facie proved, to protect the institution from any misuse by the Adhyaksha in the office and for that purpose he is precluded from discharging those functions.

41. We need not burden the judgement with case laws that whenever any order is passed, which has any civil consequences or adverse consequences, it cannot be sustained unless it is passed after affording opportunity to the person concerned. The cessation of administrative and financial powers, in fact, means that the elected Adhyaksha or Upadhyaksha would not be entitled to discharge any function except that of enjoying the office by feeling satisfied that he is still the Adhyaksha or Upadhyaksha. This is not the purpose of the Act or the Rules.

42. Opportunity is also needed to be given in the enquiry to a person, who is charged of some complaint, so that he may also bring to the notice of the officer holding enquiry by putting some evidence or giving some material, that the charges, which are levelled, are no charges at all or that he is not at all responsible for the alleged irregularities, for which he can be charged, because a person against whom no charge is made out or who cannot be held responsible for any irregularity or illegality, said to have been committed, cannot be punished, nor his powers can be curtailed, unless the liability is fixed upon the person and it is found that he is the person guilty of misconduct. In case the Adhyaksha is not associated in the preliminary enquiry, there may be a case, where a frivolous complaint though does not make out any case against the Adhyaksha and even though the charges are not proved by the District Magistrate, prima facie, it can result not only in cessation of administrative and financial powers but also shall allow for proceeding with formal enquiry so as to entail removal of the Adhyaksha.

43. This would be a misuse and abuse of powers and process of removal and holding of enquiry under the Act or the Rules. In case in the preliminary enquiry, the District Magistrate feels satisfied on account of defence which is put by the charged Adhyaksha that no charge is made out, he can submit his report that even prima facie, charge is not made out but in the absence of such an

opportunity being given, it may not be possible for the District Magistrate to take a different view.

44. The question as to whether enquiry should be conducted after affording opportunity or not was also considered in the case of Kesari Devi (Smt.) v. State of U.P. and Ors. 2005(3) UPLBEC 2727 and also in the case of State of U.P. and Ors. v. Janki Devi Pal (Smt.) (2003) 1 UPLBEC 908 where the Supreme Court has held that preliminary enquiry in a matter of removal of elected Adhyaksha under the Rules of 1977, cannot be made by an officer below the rank of District Magistrate while enquiry against a Pramukh or Up-Pramukh can be held by an officer not below the rank of Additional District Magistrate.

45. Thus, it establishes beyond doubt that even on the basis of some illegality in the preliminary enquiry, may be because of the fact that preliminary enquiry was not conducted by the officer prescribed or otherwise, the final order of removal passed by the State Government can be quashed. If the final order of removal can be quashed on the ground that preliminary enquiry was not conducted by the officer authorised, there cannot be any doubt that if the preliminary enquiry is not conducted in accordance with rules, the order of cessation of administrative and financial powers can also be quashed.

46. Learned Counsel for the petitioner has also relied upon an interim order passed by a Division Bench of this Court, in which one of us (Pradeep Kant, J.) was a member, in Writ Petition No. 7329 (MB) of 2007: Jugendra Singh Yadav v. State of U.P. and Ors., wherein the same question of association in preliminary enquiry was considered and interim order was passed on 2.11.07. The matter was taken up to the Supreme Court and the SLP has been dismissed on 28.1.08.

47. We thus, are of the considered opinion that solely on the ground that the petitioner was not afforded any opportunity in the enquiry and he was not associated in the preliminary enquiry at all, the order of cessation of administrative and financial powers cannot be sustained.

48. For considering the plea that the charges do not stand proved or they do not make out any case and are based on non-existent facts, we have been taken through the charges and the documents in support thereof.

49. The charge No. 1 which relates to 88 tenders says that out of those 88 tenders, 54 tenders and then again 29 tenders were accepted without preparing any statement of estimated cost etc. and that one tender which was of more than Rs. 10 lacs was approved without taking technical sanction of the State Government.

50. The counsel for the petitioner has brought on record certain notings and orders passed by the State Government in support of the plea that in fact, all the tenders were approved after getting the estimated costs etc. and the technical sanction by the State Government was also granted with respect to tender of more than Rs. 10 lacs, whereas Sri Mukund Tiwari though could not seriously

dispute the plea of the petitioner with respect to other tenders but with respect to the tenders of more than Rs. 10 lacs, he says that technical sanction was not taken by the State Government and the document filed by the petitioner is not the proof of technical sanction. However, he admits that technical sanction was granted later on.

51. Be that as it may, the District Magistrate does not say in his finding with respect to charge No. 1 that the said charge stands proved, prima facie, on the basis of material supplied to him, but only says that since at the time of enquiry, the original file of the tenders was deliberately not made available and the file which was made available, contain only the complaint alongwith 86 photocopies of the tenders, whereas the original documents are not available, therefore, he says that in view of the aforesaid facts/situation, the first charge/complaint stands fully established.

52. A reading of the aforesaid finding leaves no ambiguity that the District Magistrate has not recorded any finding about the charges, as to whether they stand proved prima facie or not but because the original record was not deliberately made available, therefore, he has presumed that the charge stands proved.

53. At this juncture it would be appropriate to mention that original documents were never asked for, from the petitioner, which fact is admitted to the learned Counsel for the State as well as the private respondent also, nor was there any occasion for the petitioner to make the original file available, since he was not associated in the preliminary enquiry at all.

54. The documents were asked for by the Chief Development Officer, from Upper Mukhya Adhikari, Sri K.N. Kharwar who in turn submitted incomplete documents and, therefore, if original file was not sent or required documents were not sent by another officer, the charge could not be said to have been proved against the petitioner even prima facie, because of not sending the original file.

55. It may also be pertinent to mention that there is a specific allegation that Sri K.N. Kharwar, who was the Upper Mukhya Adhikari was staying at Gorakhpur for the last 14-15 years and when he was transferred, he filed a writ petition, in which the petitioner, as Adhyaksha, filed counter affidavit and thereafter the petition was dismissed and, therefore, it is pleaded that Sri Kharwar deliberately did not send full documents so that the charge could stand proved, particularly when the complaint with respect to charge No. 1 was made by Sri Kharwar himself and it is obvious that charge No. 1, as recorded, is verbatim the same as in the complaint made by him.

56. So far the charge No. 2 is concerned, it appears that when the writ petition of Sri Kharwar was dismissed, there was no Upper Mukhya Adhikari and Smt. Sandhya Tiwari, Chief Development Officer/Chief Officer, Zila Panchayat, Gorakhpur was supposed to be given the charge. Writ petition of Sri Kharwar was dismissed on 6.2.07 and it appears that he was relieved on 20.2.07 i.e. 14 days

after the dismissal of the writ petition and in the meantime, since no officer was looking after the work, therefore, charge was given to one Sri Vinod Kumar Singh, Vittiya Paramarshdata, to look after the work. There is no allegation that Sri Vinod Kumar Singh has incurred any financial liability and discharged any such function. This charge was given to Sri Vinod Kumar Singh without powers of drawing and disbursing.

57. Charge No. 3 also does not reflect any financial irregularity but only a suspicion has been raised as to why specimen signatures of Sri Jagdish Tripathi, Upper Mukhya Adhikari, were sent late i.e. on 24.2.07, though he had taken charge on 21.2.07 and it further says that the date of taking over charge was ante dated. If it was a case of ante dating the charge certificate, then apparently the reason for sending his signatures on 24.2.07 is obvious, namely, when according to the District Magistrate, the charge was actually taken by him on 24.2.07 and if ante dating was done, there could have been no occasion for the Adhyaksha to send his signatures on 21st February, 2007. However, this charge has not been, prima facie, proved nor any financial irregularity is said to have been committed, because of the alleged discrepancy.

58. Charge No. 4 is a very peculiar charge, where highest bidders in tender auction have refused to accept the tender and recommendations were made to award the contract to third or fourth tenderer. The Adhyaksha refused to accept such recommendations. It is nowhere mentioned in the charge that what is the impropriety in not accepting the third and fourth bid, if top tenderers refused to accept the contract nor it is said that any financial irregularity has been committed by the Adhyaksha.

59. Charge No. 5 is a very vague allegation regarding holding of auction by the Committee constituted by the petitioner but no charge of financial irregularity is against the petitioner.

60. The District Magistrate found the charge No. 1 proved because original documents were not supplied. In respect of charge No. 3, he found the situation suspicious and rest of the charges have been dealt with in like manner, showing no financial irregularity committed by the petitioner.

61. On the facts aforesaid, we are satisfied that preliminary enquiry has not been conducted in accordance with rules nor the charges can be said to have been, prima facie, proved and, therefore, there was no admissible material before the State Government to be satisfied that a case is made out for holding a formal enquiry and consequently, no formal enquiry can be conducted on the basis of such a preliminary enquiry report nor the order passed by the State Government can be sustained.

62. We, therefore, quash the order dated 14.2.08 passed by the State Government ceasing administrative and financial powers of the petitioner alongwith the preliminary enquiry report, but give liberty to the State to hold preliminary enquiry afresh, after affording opportunity to the petitioner and

associating him in the preliminary enquiry and to proceed thereafter in accordance with law.

63. We may clarify that the observations in respect of the charges have been made only to ascertain as to whether the order can be sustained in the presence of the findings so recorded by the District Magistrate but in case any preliminary enquiry is ordered to be held afresh, none of these observations would be taken into account by the District Magistrate, the person holding preliminary enquiry, nor they will have any binding effect nor would influence the enquiry at all.

64. In view of the quashing of the aforesaid order, the petitioner shall be allowed to discharge the administrative and financial powers forthwith.

65. The petition is allowed. No orders as to costs.

66. The parties are at liberty to communicate the text of this order and the order would be complied with, without waiting for a certified copy of the same, pending its availability.