
(2008) 10 AHC CK 0139
In the Allahabad High Court

Smt. Neelima Srivastava

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-10-2008

Acts Referred:

Constitution of India, 1950 — Article 243G

Citation : (2009) 1 AWC 119 : (2008) 105 RD 604

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—In spite of a stop order, no counter affidavit has been filed. The petitioner alleges that his financial power was ceased by the impugned order by 25.7.07. Nearly 15 months have elapsed and no inquiry has been initiated or completed u/s 95(1)(g) of the U.P. Panchayat Raj Act read with the Rules of 1997.

2. A Pradhan is an elected functionary and has been given a constitutional status by virtue of Part IX of the Constitution of India, as inserted by the 73rd Amendment Act, 1992. Article 243G of the Constitution endows the Panchayat with such power and authority as may be necessary to function as institution of self government. Various provisions of the U.P. Panchayat Raj Act would reveal that the Gram Pradhan is an integral constituent of the Gram Panchayat and has a pivotal role to play and exercises certain powers to discharge his constitutional functions. Such exercise of powers cannot be whittled by an executive order by an authority who functions on the whims and fancies of the State Government.

3. In Smt. Sandhya Gupta v. District Magistrate, Auriya 1990 (90) RD 246, the Court held:

Exercise of any power, which may have the effect of destroying the constitutional institution besides being outrageous, is dangerous one. An elected Pradhan cannot be permitted to be dismissed, removed or rendered functionless by the bureaucrats by adopting a casual approach and resorting to certain machinations

and manipulations. No attempt to thwart the institution can be tolerated.

4. This Court by an order dated 17.7.2008 had directed the District Magistrate to indicate, as to whether, a formal inquiry had been initiated pursuant to the order dated 25.7.2007.

5. The learned Counsel for the petitioner submitted that no formal inquiry has been initiated after suspending the petitioner financial and administrative power.

6. Learned standing counsel for the respondents prayed that in the interest of justice, further time may be granted. Three weeks further time is allowed to the Standing Counsel appearing for the respondents to file counter affidavit subject to payment of cost of Rupees two lacs which will be deposited by the District Magistrate before the Registrar General of this Court on or before the next date of listing. The amount so deposited shall be credited by the Registrar General in the Mediation & Conciliation account. This heavy cost is being imposed deliberately as this Court finds that the authorities are taking the matter lightly and are not responding to the orders of the Court, When a Court grants time to the authorities to file a counter affidavit, the respondent must ensure that the counter affidavit is filed within the stipulated period. In the present case, repeated time has been granted to file a counter affidavit. Further, no formal enquiry as per the Rules of 1997 has either being initiated nor concluded. This indicates the mind set of the respondents, namely, that they were only interested in the suspension of the financial and administrative power of the Pradhan.

List on 10.11.08

7. In view of the fact that the inquiry has not been completed in spite of the lapse of almost 15 months, it is directed that till further orders of the Court, the effect and operation of the impugned order dated 25.7.2007 shall remain stayed. The petitioner will function as a Pradhan and continue to exercise his financial and administrative powers.