
(1999) 02 AHC CK 0057
In the Allahabad High Court
Case No : C.M.W.P. No. 2517 of 1998

Smt. Sandhya Gupta

APPELLANT

Vs

District Magistrate and others

RESPONDENT

Date of Decision : 19-02-1999

Acts Referred:

Constitution (Seventy-Third Amendment) Act, 1992 — Article 243(G)

Constitution of India, 1950 — Article 40

Uttar Pradesh Panchayat Raj Act, 1947 — Section 110, 12(1), 91(1), 95(1), 95(2)

Citation : (1999) 2 AWC 913 : (1999) 1 UPLBEC 718

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : N.S. Chaudhary, for the Appellant;

Judgement

O.P. Garg, J.—The petitioner-Smt. Sandhya Gupta admittedly is the duly elected Pradhan of Gaon Panchayat. Jagatpur, Post Muradganj. Block Ajitmal, district Auraiya, which was earlier a part of district Etawah. Certain complaints were received against her with regard to financial irregularities including squandering of public money as well as extracting illegal gratification. The Chief Development Officer, Etawah passed an order on 19-7-1997 stripping the petitioner of her financial powers by invoking the provisions of Section 95 (1) (g) of the U. P. Panchayat Raj Act, 1947 (hereinafter referred to as "the Act of 1947"). This order was challenged by the petitioner by filing Civil Misc. Writ Petition No. 26863 of 1997 in which the order passed by the Chief Development Officer (for short "C.D.O.") was directed to remain in abeyance. Consequently, the C.D.O. rescinded his earlier order dated 19.7.1997 and restored the financial power of the petitioner by passing fresh order dated 28.8.1997.

2. An enquiry into the complaints made against the petitioner was initiated under the provisions of U. P. Panchayat Raj (Removal of Pradhan. Up-Pradhans and Members) Enquiry Rules. 1997 (hereinafter referred to as the Rules of 1997). Naib Tahsildar as well as Junior Engineer of the area were entrusted with the task

of inquiring into the complaints and the Sub-Divisional Officer (for short "S.D.O.") by his letter dated 12.8.1997 addressed to the C.D.O. Etawah forwarded the joint report dated 5.8.1997 submitted by the Naib Tahsildar and Junior Engineer specifying that three concrete charges have been found to be correct against the petitioner—firstly, that Sri Hart Om Gupta who is younger brother of the husband of the petitioner (Dewar) had extracted a sum of Rs. 2,100 as illegal gratification from each of the eight allottees of the houses constructed under the Indira Awas Scheme ; secondly, one Naresh Chand. a member of the Block Development Committee had obtained a sum of Rs. 1.800 as illegal gratification from Smt. Sonwati. wife of Ram Sewak in the bank premises in connection with the allotment of house in the said scheme ; and, thirdly, excess amount of Rs. 8,127 has been shown to have been incurred in executing the various projects under the Jawahar Rozgar Yojna during 1996-97. According to report of the Junior Engineer, the estimated cost of the various works comes to Rs. 1.00,230 while a sum of Rs. 1,08.357 is shown to have been spent. On receipt of the report of the S.D.O.. the District Magistrate, Etawah issued notice u/s 95 (1) (g) of the Act of 1947 on 20.9.1997 to the petitioner to show cause within three days as to why she should not be removed from the office of Pradhan as she has no moral right to continue on the post on account of misappropriation or squandering of public funds and misuse of office, a copy of which is Annexure-2 to the writ petition. Denying the charges against her. the petitioner submitted a reply on 9.10.1997. a copy of which is Annexure-1 to the writ petition and maintained that the complaints have been engineered against her at the behest of certain persons who are out to tarnish her image as well as her family members. Ultimately, the impugned order dated 14.11.1998, Annexure-3 to the writ petition was passed by the District Magistrate, Auraiya removing the petitioner from the office of Pradhan by observing that the explanation submitted by the petitioner to the show-cause notice was not satisfactory and that she has not been able to bring on record the facts which may fortify her stand. It is this order which has been challenged by means of this writ petition under Article 226 of the Constitution of India. It is prayed that the impugned order 14.1.1998 be quashed and the respondents be commanded not to interfere with the functioning of the petitioner as a duly elected Pradhan of the village.

3. Counter and rejoinder-affidavits have been exchanged and with the consent of the learned counsel for the parties, this writ petition is being finally disposed of as contemplated under the Rules of the Court.

4. Heard Sri R. N. Singh, learned Senior Advocate assisted by Sri N. S. Chaudhary, on behalf of the petitioner and learned standing counsel, who has reiterated that on account of serious allegations of misappropriation of funds, illegal gratification and misuse of office of Pradhan, the order of removal has been passed by the competent authority after holding the enquiry as envisaged under the law and, therefore, the petitioner has not made out a case of interference. Sri R. N. Singh. learned counsel for the petitioner has repelled the

above submission with all vehemence at his command and pointed out that the order of removal has been passed for extraneous considerations and under political pressure and in any case, the impugned order has been passed in flagrant violation of the statutory rules and principles of natural justice.

5. To begin with, it may be mentioned that a duly elected Pradhan is not only an integral constituent of Gram Panchayat as provided u/s 12 (1) (c) of the Act of 1947, but is the lynchpin and central figure in the new system of Panchayats introduced by incorporating Part IX consisting of Articles 243, 243O by the Constitution (73rd Amendment) Act, 1992 which came into force on 24.4.1993. Even prior to the commencement and amendment to the Constitution, a system of village Panchayat was in vogue. It was a unit of local administration since the early British days but they had to work under Government control. Time and again, voices were raised for local autonomy and with a view to quell the surging demand, British Government offered certain concessions at the lowest levels at the initial stage by giving power of self Government to Panchayats in rural areas. Under the Government of India Act, 1935. the power to enact legislation was specifically given to the provincial legislature. Notwithstanding such existing legislation, the makers of Constitution of India were not much satisfied with the working of the local bodies as institutions of self-Government and. therefore, a directive principle was included in the Constitution in Article 40 providing that the States shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-Government. This Article was not given the importance as it deserved and in course of time, it was felt that the State Governments have adopted an attitude of apathy, inasmuch as, not much attention was given to hold elections in these local units as a unit of represented democracy in the country, as a whole. Concrete suggestions came to be made during the time of late Mr. Rajiv Gandhi. Prime Minister, and after lengthy debate, it was considered necessary to further the organisations of these local units by inserting specific provisions in the Constitution itself on the basis of which Legislature of the various States might enact detailed laws according to guidelines provided by the Constitutional provisions. The idea so evolved culminated in the passing of Constitutional provisions. The idea so evolved culminated in the passing of Constitution (73rd Amendment) Act, 1992 which inserted Part IX in the Constitution, in keeping with the mandate of the Constitution, large scale amendments came to be made in the Act of 1947 in Uttar Pradesh. In the ultimate analysis, therefore, now the Pradhan of the Gaon Panchayat derives his power and status under the Constitution and the statutes enacted under its mandate. The whole idea is that complete autonomy should be conferred on the basic democratic unit unshackled from official control. The original concept prevailing during the British regime that the village Panchayat as a unit of local administration had to work and function under Government control, has been given a complete go by.

6. There, however, may be certain situations in which an elected Pradhan may deliberately, or otherwise, violate the laws or fail to abide by them thereby

destroying the autonomy of the institution, which he heads. With a view to strike a balance between the two, competitive and oppositng concepts, firstly, the maintenance of autonomy of the local unit of administration in order to achieve the goal of self-governance, and, secondly to check, control or to get rid of the unbridled and frenzied and beguiled Pradhan, a provision has been made u/s 95 (1) (g) of the Act of 1947. This provision may be invoked to remove a recalcitrant, incorrigible and dishonest person who by sheer chance came to be elected as Pradhan.

7. Under sub-clause (iii) of clause (g) of sub-section (1) of Section 95 of the Act of 1947. the State Government may remove a Pradhan. Up-Pradhan or a member if he has abused his position as such or has persistently failed to perform his duties imposed by the Act or the rules made thereunder his continuance as such is not desirable in public interest. There are other grounds, such as absenting without sufficient cause in more than three consecutive meetings or sittings or refuses to act or becomes incapable of acting for any reason, whatsoever, or if he is accused of or is charged for an offence involving moral turpitude, etc. which may entail removal from office. The power u/s 95 (1) (g) is exercisable by the State Government subject to delegation as contemplated u/s 96A of the Act of 1947. The power vested in the State Government under said section has since been delegated to all the District Magistrates by Notification No- 1648/33-1-1997-123/97 dated 30.4.1997. A proviso has been added to clause (g) of Section 91 (1) by Act No. 9 of the 1994. which reads as follows :

"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 final enquiry, be exercised and performed by a Committee consisting of three members of Gram Panchayat appointed by the State Government."

The second proviso inserted by the same Amendment Act, provides that no action shall be taken under clause (g). except after giving to the body or person concerned a reasonable opportunity of showing cause against the action proposed. The exercise of power under sub-clause (iii) of clause (g) of Section 95 (1) of the Act of 1947 is fraught with evil consequences besides being outrageous to the scheme visualised by Part IX of the Constitution and, therefore, the power conferred under the aforesaid provision has, of necessity, to be exercised sparingly with due care, caution and circumspection, strictly adhering to the mode and manner prescribed and on fulfillment of prerequisite condition incorporated in the section.

8. In exercise of the powers conferred by Section 110 read with clause (g) of sub-section (1) of Section 95 of the Act of 1947, U. P. Panchayat Raj (Removal of Pradhans. Up Pradhans and Members) Enquiries Rules, 1997 have been framed.

notified and published in the U. P. Gazetted Extraordinary, Part 4. Section (kha) dated 29th May, 1997 (hereinafter referred to as "the Rules of 1997"). Prior to the framing of the Rules of 1997, no procedure was prescribed to be followed for removing a Pradhan u/s 95 (1) (g) of the Act of 1947. Orders were, therefore, being passed by invoking the principles of natural justice. Now under the first proviso appended to clause (g) to Section 95 (1), an enquiry has to be held by such person and in such manner as may be prescribed. The term "prescribed" used in the first proviso means as prescribed by Rules of 1997. The procedure for enquiry into the complaints made against the Pradhan, is provided specifically in Rules 3, 4, 5, 6 and 7. Rule 3 makes a provision with regard to the manner in which complaints are to be entertained. An enquiry cannot be made for a mere asking on a complaint which does not comply with the formalities as contemplated in the various sub-rules of Rule 3. After a proper complaint is received and entertained, a preliminary enquiry has to be ordered by the State Government and, for that matter the District Magistrate as enjoined in Rule 4, it provides that the State Government, on receipt of the complaint or report referred to in Rule 3 or otherwise, direct the District Panchayat Raj Officer (for short "D.P.R.O.") 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. The D.P.R.O. has to conduct the preliminary enquiry as expeditiously as possible with a view to submit his report to the State Government/ District Magistrate, within a fortnight of his having been so ordered. After the receipt of the report of preliminary enquiry, the State Government/District Magistrate shall form an opinion, as envisaged in Rule 5, to initiate a formal enquiry against the Pradhan. Rule 6 deals with the procedure for the final enquiry. The enquiry officer is required to draw up the substance of Imputations into definite and distinct articles of charge and statement of the imputation in support of each article of charge which shall contain a statement of all relevant facts and a list of documents by which, and list of witnesses by whom, the articles of charge are proposed to be sustained. By sub-rule (3) of Rule 6. It is enjoined that the enquiry officer shall deliver copy of the articles of charge the statement of imputations and a list of documents and witnesses by which each article of charge is proposed to be sustained and that he shall inform the charged Pradhan to submit a written statement of his defence and to state whether he desires to be heard in person or to appear in person before him on such date or such time as may be specified. A detailed procedure for holding enquiry after the service of the articles of charge and statement of imputations has been provided in Rule 6 which includes the inspection of the documents, submission of the list of witnesses to be examined, discovery or production of any document relevant to the enquiry and to lead oral and documentary evidence etc. There are as many as 18 clauses in Rule 6. compliance whereof has to be made by the enquiry officer before preparing the enquiry report, as mentioned in Rule 7. A bare perusal of the Rules of 1997, in general, and, Rule 6, in particular, indicates that stringent provisions have been made to conduct and finalise a formal enquiry in respect of the various charges against the Pradhan. No Pradhan can be removed unless procedure prescribed in

the rules, aforesaid, is strictly complied with for one simple reason that the extreme step of removal of an elected Pradhan from his office is visited with serious and harsh civil consequences. Not only that, a Pradhan is removed from the office but he is further debarred from seeking election for a period of five years or such lesser period as the State Government may order as has been provided in subsection (2) of Section 95 of the Act of 1947. A person who has been removed from the office of Pradhan Incurs disability to seek re-election. Therefore, the validity of the order of removal which has serious repercussions on the career of the duly elected Pradhan has to be adjudged and determined strictly with reference to the legislative mandate and no officer or authority can be permitted to exercise the power to oust on tenuous or flimsy grounds an inconvenient elected Pradhan for oblique and political motives.

9. In the instant case, one cannot escape from the finding that the enquiry against the petitioner has not been made in accordance with the provisions of Rules of 1997. The District Magistrate concerned has exhibited a sense of ignorance of the Rules, which prescribe and elaborate procedure of the enquiry. The complaints were not supported with affidavits and were not made in accordance with the provisions contained in Rule 3 of the Rules of 1997. There is no report of D.P.R.O. who under the Rules was expected to conduct a preliminary enquiry. The enquiry was as a matter of fact, made by the Naib Tahsildar and the Junior Engineer of the area. This joint enquiry report being clearly in violation of Rules of 1997 could not be taken into consideration, as has been held by this Court in the decision in Chunmun Vs. District, Magistrate and another, . Not only this, no formal enquiry as contemplated under Rule 6 appears to have been made. It is not known who was the enquiry officer who had conducted the formal enquiry against the petitioner whether it was the S.D.O., Auraiya or the Naib Tahsildar or the Junior Engineer. Even if it be taken that the S.D.O. was appointed as enquiry officer, though there is nothing on record to indicate that the District Magistrate had appointed him as such, the former has chosen an easy and non-committal path by merely forwarding the joint report dated 5-8.1997 submitted to him by the Naib Tahsildar and the Junior Engineer. The S.D.O. himself had not taken the pains to enquire into the matter himself. Even if for a moment, the letter of the Sub-Divisional Officer, Annexure-C.A. 10 to the counter-affidavit is treated as a preliminary enquiry report for purpose of Rule 3 of Rules of 1997. the fact remains that no formal enquiry was initiated or conducted against the petitioner by adopting the procedure prescribed under the Rules. No articles of charge or the statement of imputation along with list of documents and witnesses were delivered/served on the petitioner. What the District Magistrate did was that he straightaway Issued a show cause notice on the basis of the letter sent by the Sub-Divisional Officer to the Chief Development Officer giving summary of the Joint report of the Naib Tahsildar and the Junior Engineer. The petitioner was required to submit her explanation to the show cause notice within 3 days. The fact that the explanation was required within 3 days Indicates the mental state and pressure in which the District

Magistrate was acting. He perhaps wanted to get rid of the petitioner as soon as it was possible for the reasons which are hidden in the penumbral zone far away from the judicial scrutiny. The petitioner submitted the reply to the show cause notice but no objective view of the matter appears to have been taken by the District Magistrate as he has passed the order in a most mechanical, cursory and perfunctory manner by observing that the reply furnished by the petitioner was not satisfactory.

10. This fact cannot be lost sight of that the proceeding that leads to the removal of Pradhan from office is clearly quasi-judicial in nature. The order affects adversely the civil rights of the holder of the office of Pradhan. The authority empowered to remove Pradhan has to reach his satisfaction on objective consideration of relevant grounds. There is statutory provision to afford reasonable opportunity of showing cause implying thereby the necessity to record reasons. The observance of the basic norms of natural justice is inescapable. Sri R. N. Singh, learned counsel for the petitioner urged that the Impugned order dated 14.1.1998, Annexure-3 to the writ petition does not disclose the material on the basis of which the District Magistrate has jumped upon the conclusion that the petitioner has committed financial irregularities entailing her removal from office of Pradhan. It is also stated that there is no link between material on which the District Magistrate has based his conclusion. A reference was made to the charges found proved against the petitioner in the joint enquiry report of the Naib Tahsildar and the Junior Engineer. At least two of the charges are not against the petitioner. The allegations that Hari Om Gupta, brother of the husband of the petitioner has illegally charged a sum of Rs. 2,100 from each of the allottees of the houses and that one Naresh Chand, a B.D.C. had taken illegal gratification of Rs. 1,800 have nothing to do with the petitioner. It has not come on evidence that it was with the active connivance of the petitioner that these two persons have been successful in extracting money from innocent villagers. On account of feebleness of the aforesaid two charges, the District Magistrate has rightly Ignored them and has passed his order on the ground that the petitioner has squandered as sum of Rs. 8.127 in connection with execution of certain works in Jawahar Rozgar Yojna. This conclusion is based on the report of the Junior Engineer who had assessed that though the work executed on the spot actually valued Rs. 1,00,320, a sum of Rs. 1,08,357 has been withdrawn. On the strength of this report of the Junior Engineer, it has been concluded that the petitioner has misappropriated a sum of Rs. 8.127 being the difference amount of the value of the work executed on the spot and the amount withdrawn. The difference in the value to the extent of Rs. 8,127 has been arrived at on the estimate given by the Junior Engineer. The report of the Junior Engineer came in the wake of the complaints made against the petitioner. He had measured the various works executed on the spot after a considerable long time adopting his own technical standards. The difference is so small that it cannot withstand the test of various imponderables which may occur in course of time. The work and its payment was approved by the Gram Panchayat. The petitioner

herself had not taken the decision in the matter. If certain constructions are made at a particular time and their valuation is arrived at after a considerable long time, variations in the expenses incurred at the time of construction and the value estimated thereafter are bound to occur. The difference of the amount of expenditure incurred by the Gram Panchayat is not substantial and could be. Ignored, particularly in view of the fact that the report of the Junior Engineer has not been corroborated by some senior officer of the department. In this manner, even the third ground, on the basis of which the petitioner was proceeded against and was ultimately removed does not withstand the test of scrutiny. The District Magistrate has not taken into consideration the explanation submitted by the petitioner in reply to the show cause notice. He has dismissed the reply of the petitioner by merely observing that it is not satisfactory. This approach of the District Magistrate does not commend to itself.

11. In nutshell, the petitioner has been removed from her office on the finding that she resorted to corrupt practice in getting various works executed under the Jawahar Rozgar Yojna. The finding regarding corrupt practice should be made on the basis of clear, cogent and reliable evidence because such finding entails serious consequences-both civil and criminal-against person concerned. The District Magistrate has not recorded any finding on the point and has made a sweeping remark that certain allegations of financial irregularities stand proved against the petitioner and, therefore, she is liable to be removed from office. One cannot escape from the conclusion that it is Imperative on the District Magistrate to inform its order by recording reasons to reach a particular conclusion. The submission of the learned counsel for the petitioner that the impugned order dated 14.1.1998 passed by the District Magistrate stands vitiated on account of the absence of reasons which impelled him to conclude that the petitioner has committed financial irregularities, is quite weighty and has to be taken into consideration with all seriousness. Reasons are links between materials, on which certain conclusions are based to the actual conclusions. They disclose how mind is applied to the subject- matter for a decision-whether it is purely administrative or quasi- judicial. They would reveal nexus between the facts considered and the conclusion reached. In this connection, a reference was made to the celebrated decision of the Apex Court in *Union of India v. Mohan Lal Kapoor*. (1073) 2 SCC 836, The said decision was considered by the Apex Court in the case of *Gurdial Singh Fijji v. State of Punjab* (1979) 2 SCC 363 . In another case of *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, , the Apex Court in para 21 of the report observed as follows :

"21. Thus, it is settled law that the reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. It also excludes the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. The order whether it affects the right of a citizen or a person irrespective of the fact. whether it is quasi-Judicial or administrative fair play requires recording of germane and relevant precise reasons. The recording

of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record....."

The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. In *M. J. Sivani and others v. State of Karnataka and others* AIR 19 SC 1770, it has been observed in para 32 of the report, as under :

"32. It is also settled law that the order need not contain detailed reasons like Court order. Administrative order itself may contain reasons or the file may disclose reasons to arrive at the decision showing application of mind to the facts in issue. It would be discernible from the reasons stated in the order or the contemporaneous record contained. Reasons are the link between the order and the mind of its maker. When rules direct to record reasons, it is a *sine qua non* and condition precedent for valid order. Appropriate brief reasons, though not like a judgment, are necessary concomitant for a valid order in support of the action or decision taken by the authority or its instrumentality or the State."

It is true that the decisions with regard to the question of applicability of principles of natural Justice do not all speak in the same voice and sometimes it is difficult to reconcile them. Nevertheless, a duty has been cast on the administrative authorities exercising quasi-judicial functions, to record reasons. In view of the expanding horizon of the concept of natural Justice, the requirement of recording of reasons as a part of fair procedure cannot be dispensed with. Even though the rules do not specifically require the recording of the reasons, the requirement of the principle of natural justice is that the decision should be based on the well informed reasons which should be disclosed in the order itself. In *S.N. Mukherjee Vs. Union of India*, a Constitution Bench of the Apex Court virtually surveyed the entire case laws on the point and summarizing them has held that an administrative authority exercising judicial or quasi-judicial function is required to record reasons for its decision. It is not expected that the District Magistrate should write the order like a judgment of the Court. But certainly some reasons, however precise they may be, have to be there. In the instant case, the District Magistrate has passed an order which is based on no material and the conclusions arrived at by him are supported with no reasons.

12. In the second proviso to Section 95 (1) (g) of the Act as said above, a specific provision has been made that no order of removal against Pradhan shall be passed unless the person concerned has been given a reasonable opportunity of showing cause against the action proposed. The theory of reasonable opportunity, which is interwoven in the principles of natural justice has been evolved to uphold the rule of law and to the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all dry occasions. Whether, in fact prejudice has been caused to individual or not on account of the denial to him of the reasonable opportunity is to be considered on

the facts and circumstances of each case. This view was taken by the Apex Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., In the instant case, the petitioner was required to submit her explanation within only three days. Though the District Magistrate has performed the ritual of giving an opportunity but it was not a "reasonable" opportunity. A show-cause notice about the action proposed was required to be given by District Magistrate. A Division Bench of this Court in Special Appeal No. 90 of 1976, decided on 7.7.1977, Jungli Singh v. Sub-Divisional Officer Bhogaon, Mainpuri and others 1997 (3) ALR (Summary of Cases) 74, has held that the concept of reasonable opportunity of showing cause against the action proposed implies that the Pradhan must be given second opportunity to show cause against the action proposed to be taken against him. The expression "reasonable opportunity", it was held, requires that the Pradhan be given an opportunity to deny the charges, to lead evidence in support of his case and also to cross-examine the witnesses, if any, examined in support of the charges. After the charges are found to be established, the Pradhan is entitled to contend that the charges are not proved and that the charges, even if proved, do not require the punishment proposed to be meted out to him. It was further observed that the concept of reasonable opportunity of showing cause against the action proposed as required by Section 95 (1) (g) clearly envisages that a Pradhan must be given two opportunities--one at the stage when the charges are enquired into and the other at the stage when the authority concerned comes to the conclusion as to whether the charges are proved or not and provisionally proposes the action against the Pradhan. If any of the two opportunities are not given to the Pradhan, the statutory requirement of reasonable opportunity of showing cause against the action proposed will not be fulfilled.

13. Now that the Rules of 1997 have been framed, the District Magistrate who is delegatee of the State Government has, of necessity, to follow the procedure, as prescribed. Any deviation made by the District Magistrate in the matter is bound to invite the adverse criticism on judicial intervention. It is well-settled rule of administrative law that an executive authority must be rigorously held to the standards which nodulate actions. Its actions are to be judged scrupulously and if the standards prescribed have not been followed, the authority has to suffer pain of invalidation of the act for violating the norms. There is nothing like total immunity. A survey of the provisions contained in the Rules of 1997 on various facets of the rights of a Pradhan indicates that the Legislature has not spared the concerned authority who has to take a final decision in the matter from being subjected to laws and the rules. A District Magistrate has to obey the rules. The Courts have repeatedly rejected the concept of an absolute and unfettered statutory discretion. Application of mind in administrative actions is coupled with the exercise of power by any administrative authority. Even if the power is not circumscribed by statute, it is not unlimited. The exercise of power by the District Magistrate under the provisions of Section 95 (1) (g) of the Act has been cushioned with the Rules of 1997. The proviso to Section 95 (1) (g) read with

Rules of 1997, clearly visualises of an enquiry being held in such a manner as has been prescribed.

14. Unfortunately, present is the case where there is no evidence and of conclusions not reasonably borne from available material. The Infirmary in the impugned order is apparent which is impaired by the vice of arbitrariness. The order, therefore, is liable to be struck down. As said above, a Pradhan is functionary who is elected to head a democratic institution, the roots of which may directly be traced in the provisions of the Constitution of India. It is not required to be repeated that the Gram Panchayats have since been given constitutional status as Institution of self Government at village level by virtue of Part IX of the Constitution of India inserted by Constitution (Seventy third Amendment) Act, 1972. Article 243G provides that subject to the provision of the Constitution, the Legislature of the State, may by law endow the Panchayats with such power and authority, as may be necessary to enable them to function as institution of self-Government and such law may contain the provision for the devolution of power and responsibilities upon Panchayats at the appropriate level, subject to such conditions, as may be specified therein with respect to preparation of plans for economic development and social justice and the implementation of scheme for economic development and social Justice as may" be entrusted to them, including those, in relation to the matters listed in the 11th Schedule. A conspectus of various provisions of the U. P. Panchayat Raj Act. 1947, and those of U. P. Panchayat Raj Rules. 1947, as amended from time to time, would reveal that Pradhan is not only an integral constituent of the Gram Panchayat u/s 12 [1] (c) of the Act. but he has been given the central role to play in exercise of power and discharge of functions of the Gram Pradhan. 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.

15. The instances of the order as has been passed in the present case may be multiplied. More often than not, the order passed by the District Magistrate u/s 95 (1) (g) of the Act are assailed, not in vain, before this Court primarily on the ground that the District Magistrate has not followed the proper procedure prescribed by law. Before parting, it may, therefore, be mentioned that because of the litigation cropping up from time to time, due to the drastic steps taken by the authorities concerned in flagrant violation of the rules, an endeavour is being made through this judgment to formulate the guidelines for observance by the District Magistrate so that in future they are cautious enough to deal with the affairs of Pradhan, Up-Pradhan and members. In accordance with law leaving no scope for necessary litigation.

(1) it may be clearly understood that Pradhan. Up-Pradhan or member of the Gram Panchayat is virtually a constitutionally elected functionary and he cannot

be removed or stripped off his statutory powers and obligations in a casual manner without there being solid foundation for initiating action against him.

(2) The power of the removal of the above functionaries is conferred on the State Government in view of the provisions of Section 95 (1) (g) of the Act which power ultimately has been delegated to all the District Magistrates in the State.

(3) A Pradhan, Up-Pradhan or a member of the Gram Panchayat etc.. may be removed from office on a number of grounds. Generally in most of the cases, the ground mentioned in sub-clause (iii) of clause (g) of Section 95 of the Act, which relates to that person who 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, is invoked. This omnibus clause embraces within its ambit the financial and administrative Irregularities committed by Pradhan. Up-Pradhan and others.

(4) The action for removal may be initiated on receiving the complaints and after observing the provisions made in the U. P. [Pradhan and Members) Enquiry Rules. 1997.

(5) The complaint can be entertained only when the procedure prescribed in Rule 3 of the Rules of 1997 is specified though the procedure laid down in Rule 3 to entertain the complaints is not necessary to be followed, if the complaint is made by a public servant. Any complaint which does not specify the procedure prescribed under Rule 3 has to be thrown out as not entertainable.

(6) After the complaint is validly entertained, a preliminary enquiry under Rule 4 is to be conducted by the District Panchayat Raj Officer with all expedition.

(7) After the receipt of the preliminary enquiry report submitted by District Panchayat Raj Officer, the District Magistrate may pass an appropriate order as contemplated by first proviso to clause (g), which was inserted by U. P. Act No. 9 of 1994. which provides that if 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 financial and administrative power 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 the Gram Panchayat.

(8) The provisions of the aforesaid proviso relating to stripping off the administrative and financial power of the Pradhan, Up- Pradhan can be invoked only after a show-cause notice is served on the Pradhan or Up Pradhan, as the case may be, and he is afforded a reasonable opportunity of showing cause against the action proposed, as is contemplated in second proviso to clause (g). Any order passed by the District Magistrate without calling for the explanation and without giving reasonable opportunity of showing cause against the action proposed would be vitiated and would invite judicial Intervention.

(9) Once financial and administrative powers of the Pradhan or Up-Pradhan are

ceased, taking into consideration the preliminary enquiry report submitted by the District Panchayat Raj Officer and after consideration of the reply to the show cause notice, if any, submitted by him. they shall not be restored until the Pradhan or Up-Pradhan is exonerated of the charge in the final enquiry. It is seen that after passing of the order stripping off the Pradhan and Up-Pradhan of their financial and administrative powers and functions, the District Magistrates restore these powers even though the final enquiry has not been concluded. It is made clear the once the aforesaid powers have been ceased, they cannot be restored unless the formal enquiry is concluded and the Pradhan or Up Pradhan is exonerated of the charges. The District Magistrate cannot resort to any midway course.

(10) After the receipt of the preliminary enquiry report, a final enquiry is to be ordered by the District Magistrate by appointing an enquiry officer, as contemplated in Rule 5.

(11) The enquiry officer shall conduct the enquiry strictly in accordance with the provisions of Rule 6. which are to be followed rigorously and meticulously.

(12) After conclusion of the enquiry and preparation of the report, the enquiry officer shall submit the report to the District Magistrate. as required in Rules 7 and 8.

(13) After the receipt of the report of final enquiry, the District Magistrate shall not remove the Pradhan or Up-Pradhan on one or more of the grounds. mentioned in clauses (g) (i) to (v) unless he has given a show-cause notice of the proposed action along with a report of enquiry to the Pradhan or Up-Pradhan and has afforded him an opportunity of showing cause. The reasonable period to show cause against the proposed action shall not be less than 20 days from the date of receipt of. or service on the Pradhan or Up-Pradhan.

(14) if an opportunity of personal hearing is sought by the Pradhan or Up-Pradhan. It shall not be denied by the District Magistrate and he shall pass final orders one way or the other after affording a personal hearing to the Pradhan or Up Pradhan. The District Magistrate shall bear in mind that any order passed u/s 95 (1) (g) of the Act in contravention of the above guidelines, which are based on salutary principles of natural Justice flowing from the statutory provisions shall stand vitiated.

16. In the result, for the reasons stated above, the writ petition succeeds and is allowed. The impugned order dated 14.1.1998 (Annexure-3 to the writ petition) being in contravention of the provisions of Section 95 (1) (g) of the Act and Rules framed thereunder, is hereby quashed, the effect of which would be that the petitioner shall continue to perform the duties, and discharge the functions of Pradhan, Gram Panchayat Jagatpur post Muradganj, Block Ajitmal. district Auraiya. The respondents shall not. In any manner, interfere with her functioning as Pradhan, The parties shall bear their own costs.

17. The Registrar of this Court is directed to ensure that a copy of the judgment and order is sent to each and every District Magistrate of the State including the Chief Secretary, Government of Uttar Pradesh, Vidhan Bhavan, Lucknow. The State Government is directed to issue appropriate instructions to all concerned (particularly, the District Magistrates) in the light of the guidelines contained in the body of this judgment.