

(1998) 09 AHC CK 0070

In the Allahabad High Court

Case No : Writ Petition No's. 384 (M/B) , 708 (M/B) , 1896 (M/B) and 2304 (M/B) of 1998

Smt. Saroj Kumari Yadav

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 11-09-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 20, 23

Uttar Pradesh Gram Panchayat and Zila Panchayat Act, 1961 — Section 16

Citation : (1999) 1 AWC 514 : (1999) 1 UPLBEC 630

Hon'ble Judges : I.P. Vasishth, J;A.N. Gupta, J

Bench : Division Bench

Advocate : S.C. Misra and Rakesh Kumar, for the Appellant; C.S.C., for the Respondent

Judgement

I.P. Vasishth, J.—We are seized of 4 separate but almost similar, abovenoted, writ petitions revolving around the scope and implications of Rules 3 and 4 of the Uttar Pradesh Kshelra Panchayats and Zila Panchayats (Removal of Pramukhs. Up-Pramukhs. Adhyaksha and Upadhyaksha) Enquiry Rules. 1997 (hereinafter referred to as the Enquiry Rules], framed under the U. P. Gram Panchayat and Zila Panchayat Adhinium. 1961 (U. P. Act No. XXXIII of 1961 (hereinafter referred to as the Act). Since they were argued together in a lot, therefore, we propose to dispose them off by the common instant judgment.

2. To have a brief glance in the factual matrix of these cases, in the context of Writ Petition No. 1896 of 1998 ; per her propagation the petitioner was elected as Adhyaksh of Sultanpur Zila Panchayat in May, 1995 : she belongs to a particular political party which was opposed to the programme and philosophy of the ruling party of the day, therefore, they started creating unwarranted hindrances in the discharge of her duties, so much so that on having failed in their bid to decimate her by way of an election petitioner they arranged a motion of no-confidence on 31.5.1997 which, too, failed for want of requisite quorum on 18.6.1997. During the "meanwhile, inspired and joined by respondent No. 6,

Shiv Kumar Singh they moved a frivolous complaint to the Chief Minister alleging administrative and financial irregularities on her part with regard to the management of the affairs of the Zila Panchayat. The complaint was neither properly verified nor supported by any valid affidavit as required under the Enquiry Rules. Another complaint was purported to have been sent to the Chief Minister of U. P. by one Parasnath which was never made available to the petitioner but she understood that it, too, lacked proper verification and material support by way of an affidavit. Both these complaints were pursued on political considerations in view of a D. O. dated 29th January. 1998 sent by the 5 M.L.As. belonging to the ruling group in the State Government.

3. It was pleaded that thus exploiting the political and administrative leverage, the respondents procured a cryptic, unsubstantiated and unauthorised inquiry report from the Additional District Magistrate, Sultanpur on whose basis the impugned orders dated 24.6.1998 contained in Annexure-2. Annexure-3 and Annexure-3A were passed divesting her of the administrative and financial control of the affairs of the Zila Panchayat which she was legitimately exercising by virtue of being its Adhyaksh.

4. Besides impugning the said orders on the ground of political mala fides, the petitioner also pleaded that they were invalid otherwise too because of being in gross violation of the legislative arrangement manifested by Rules 3 and 4 of the Enquiry Rules.

5. The respondents filed their counter and resisted the proceedings with the contention that the relevant orders were validly passed by a competent authority in the light of sufficient prima facie material collected during the course of inquiry into the complaints with regard to mismanagement of the Panchayat affairs and grave financial irregularities : that the petitioner has been divested of some of the functions to facilitate a full-fledged inquiry by the Commissioner with which she would be duly associated and provided proper opportunity to rebut the charges. For the obvious reasons the allegations of mala fide or any other extraneous considerations were rebutted.

6. The facts of the Writ Petition Nos. 384 and 708/98 (M/B) brought by Smt. Saroj Kumar) Yadav are of overlapping nature. The gist thereof was that she was elected as Adhyaksh of Zila Panchayat. Bareilly in May. 1995 ; that she belongs to a particular family which was involved in public life and her husband was an M.L.A. from Aonla constituency but lost the last assembly election against one Dharmpal Singh who won on B.J.P. ticket and was now holding office of the State Minister for Panchayati Raj in the Government ; that because of the political vendetta and on misusing the administrative machinery the respondents created a situation of the type which created lot of hurdles in her day-to-day administration of the Panchayat affairs, so much so that the Panchayat was not left even in a position to disburse the salary of its staff and clear off the retiral dues of the employees who had superannuated during the meanwhile. Forced by the circumstances the Panchayat arranged the disbursement of salary and

settlement of claims of the retired personnel by making payments from the accumulated Provident Fund to the tune of Rs. 12,60,000.

7. It was further averred that despite being a well intentioned administrative measure it became handy tool for the respondents to make it an issue of complaint, procured through one Hari Prakash Gupta ; that on going through some mockery of an unauthorised preliminary inquiry ; they obtained a cryptic report leading to the passing of the impugned orders dated 17.1.1998 contained in Annexure-1 on the records of Writ Petition No. 384 (M/B) of 1998 and dated 2.3.1998 contained in Annexure-14 on the records of Writ Petition No. 708 (M/B) of 1998 proposing to hold a full-Hedged inquiry on issuance of the charge-sheet contained in Annexure-2 (Writ Petition No. 384) and meanwhile divested her of administrative and financial powers (Annexure-14 Writ Petition No. 708). Both these orders were impugned separately primarily on the ground that the preliminary inquiry, if any, arranged by the respondents was in gross violation of the Rules 3 and 4 of the Enquiry Rules.

8. Both these petitions were also contested on almost similar pleas as projected in the matter of Smt. Janki Devi. To be precise, allegations of any political vendetta or extraneous considerations were categorically denied and it was averred that because of the grave financial irregularities and mismanagement of administrative affairs, duly established in the preliminary inquiry conducted by the District Magistrate with the assistance of his associate officers, it was found necessary to go in for a full dress inquiry on issuing the relevant charge-sheet. It was contended that the petitioner would get sufficient opportunity to rebut the insinuation and vindicate her stand but during the meanwhile to ensure that there was no further trifling with the public funds it was deemed necessary to divest her of certain administrative and financial powers.

9. Petitioner Bhupendra Singh Sachan of Writ Petition No. 2304 (M/B) of 1998 had also a similar grouse with the averments that on having failed to dislodge him from the office of the Zila Panchayat, Kanpur Dehal by way of a no-confidence motion in May. 1997, the respondents procured some cooked up and frivolous complaints, whose copies were not supplied to him despite his representation to this effect, and then on going through the farce of a preliminary inquiry by an unauthorised and incompetent person passed the impugned order dated 14.7.1998 contained in Annexure-I divesting him of financial and administrative control with regard to the management of the affairs of Zila Panchayat, Kanpur Dehat.

10. For the obvious reasons, the respondents denied the allegations of mala fides and propounded the validity of the impugned order which according to them, was passed by a competent authority. The petitioner's propagation that there was violation of Rule 3 or 4 of the Enquiry Rules was also denied and it was contended that the formal inquiry is now being proposed to be held by Commissioner Kanpur Division under Rule 5 of the Enquiry Rules.

11. Before dealing with the intricacies of the controversy, it may be in the fitness of things to have a glance into Rules 3 and 4 of the Enquiry Rules which read as below :

"3. (1) Any person making a complaint against a Pramukh, Up-Pramukh, Adhyaksha or Upadhyaksha may send his complaint to the Secretary to the State Government in the Panchayati Raj Department. Vidhan Bhawan, Lucknow.

(2) Every complaint referred to in sub-rule (1) shall be accompanied by the complainant's own affidavit in support thereof and also affidavits of all persons from whom he claims to have received information of fact relating to the accusation, verified before a notary, together with all documents in his possession or power pertaining to the accusation.

(3) Every complaint and affidavit under this rule as well as any schedule or annexure thereto shall be verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings and affidavit respectively.

(4) Not less than three copies of the complaint as well as of each of its annexures shall be submitted by the complainant.

(5) A complaint which does not comply with any of the foregoing provisions shall not be entertained.

4. (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 Adhyaksh or Upadhyaksh 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."

12. There is no gainsaying that these rules have been framed by a competent authority under the statutory scheme of Act No. 33 of 1961 and their vires and validity is not in dispute. Rule 3 regulates the formal, manner and procedure relating to the filing of complaints against the office-holders of a Zila Panchayat whereas Rule 4 prescribes the authority who can examine those complaints in the preliminary inquiry. It is only on the basis of such inquiry that by virtue of Rule 5 of the Enquiry Rules, the State Government can go in for a full-dress inquiry by an officer not below the rank of Commissioner if the subject of the inquiry is a person holding the rank of an Adhyaksh or Upadhyaksh. In our case, all the petitioners hold the position of an Adhyaksh and that is how that the State Government, in all fairness to it, now proposes to hold the inquiry through officers belonging to that rank.

13. So far so good but the pertinent point is as to whether the preliminary

inquiry has been conducted by a proper person as envisaged by Rule 4 and secondly as to whether that preliminary inquiry was conducted on the basis of a complaint sanctified by Rule 3. On behalf of the State, an explanation was sought to be built up around the definition clause 2 (14) of a District Magistrate given in the Act ; which in its turn falls back upon the definition of the District Magistrate given in the Code of Criminal Procedure. Sections 20 and 23 thereof have a tendency to show that an Additional District Magistrate exercises the same powers with which a District Magistrate is usually clothed.

14. The second limb of the argument was that opening part of Rule 4 (1) permits of alternative contingencies for the State Government to go for a preliminary inquiry ; on the receipt of a complaint referred to in Rule 3 "or otherwise" when it finds it necessary. It was thus argued that if for the some or the other reason the Court were to find fault with the format, manner or contents of the various complaints received against the petitioners falling short of the standard prescribed in Rule 3, the State action was still protected under the alternative contingency of Rule 4 (1), i.e., "or otherwise".

15. Despite seeming attraction, the submissions of the learned counsel failed to carry conviction. We could be inclined to sustain his argument that under the scheme of Criminal Procedure Code, a District Magistrate and an Additional District Magistrate may be treated at par under certain conditions but that could not hold universally true particularly when a statute envisages a different kind of situation and makes a specific arrangement.

16. The very concept and philosophy of the Enquiry Rules, 1997 creates two categories of the subject who could be brought under the purview of a preliminary enquiry leading to a formal full-dress inquiry. The first category consists of Pramukhs and Up-Pramukhs whereas the second relates to Adhyaksha and Upadhyaksha. Under clause (b) of Rule 2 it is specified that reference to Adhyaksha and Upadhyaksha denotes the affairs of Zila Panchayat whereas the reference to Pramukh and Up-Pramukh pertains to the Kshetra Panchayat. There is no gainsaying that under the scheme of the Act No. 33 of 1961, a Kshetra Panchayat is junior in hierarchy as compared to a Zila Panchayat and that is how that in its wisdom, the rule making authority devised an arrangement" that if a preliminary inquiry were to be conducted with regard to the affairs of the junior hierarchy of Panchayats, i.e., a Kshetra Panchayat, an officer holding the rank of Additional District Magistrate would suffice whereas when it relates to the senior hierarchy of Zila Panchayat, it should be the District Magistrate who would hold the enquiry. Similarly when a full-dress inquiry is to be conducted by virtue of Rule 5 with regard to the affairs of the Kshetra Panchayat office-holders u/s 16 of the Act No. 33 of 1961, a District Magistrate could do it but when the affairs of Zila Panchayat are under scrutiny the enquiry would be conducted by the Commissioner.

17. To put it in plain words, under the statutory scheme itself, there is a clear rationale and classification for a precise and categorical distinction between a

District Magistrate and an Additional District Magistrate.

18. There is yet another angle, inasmuch as when the statute itself specifies a designated authority to discharge a function in a particular manner, can the exercise of that power by another authority, may be of coordinate competence, be permissible? The issue attracted the attention of the Apex Court in the matter of *S. Kannan and Others Vs. Secretary, Karnataka State Road Transport Authority*, wherein a Regional Transport Authority had been conferred with certain powers which in some categorised situation could be exercised by the State Transport Authority also but there was no express clause in the statute which enabled the State Transport Authority to always and without any fetter enjoy the powers of the Regional Transport Authority. In the absence of any such provision, their Lordships were pleased to hold that "it is difficult to read merely on the basis of vertical hierarchy, wherever the lower authority is mentioned in the statute, the higher authority be included therein." Needless to say that in the case in hand, even if the Additional District Magistrate were accepted to be an authority of co-ordinate rank and position, he could not possibly arrogate himself the precise status of a District Magistrate as specifically distinguished from him within the scheme of Rules 3 and 4 of the Enquiry Rules, 1997.

19. A similar proposition was examined by their Lordships in the matter of *A.K. Roy and Another Vs. State of Punjab and Others*, also wherein it was held that if a particular power has been delegated by the Government in favour of some of its officer, without any reference to it the said officer could not further delegate those powers to any of his own subordinates, and it could not possibly be denied that atleast for the administrative purposes an Additional District Magistrate ranks junior to the District Magistrate and has to work under his overall supervision. It is something different that while exercising the powers under the Criminal Procedure Code he may have co-ordinate competence and jurisdiction.

20. On behalf of the respondents, a last ditch effort was made to retrieve the lost ground with reference to the summit court's observation in the matter of *Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra and others*, for the proposition that when a full-dress disciplinary inquiry is proposed, no amount of defect in the preliminary inquiry could vitiate the action. We are afraid, the endeavour is misconceived because the case of *Narayan Dattatraya Ramteerthakhar*, related to the service law jurisdiction which has no relevance to the elected offices held by the subject, particularly when the issue of letter's powers and responsibilities is tailored in a self-contained code. They, after all, are not the employees of the State rather hold office in their own right as elected representative of the people.

21. This apart, in the context of service law in quite a few situations, there need not even be a preliminary enquiry before proposing a full-dress disciplinary enquiry whereas in a case of the instant nature, there is a legislative scheme obliging the State to go through the process of the preliminary enquiry and, that too, in a particularly defined mode and manner under the statutory mandate

manifested by the Enquiry Rules, 1997. Even otherwise, the facts in the case of Narayan Dattatraya Ramteerthakhar (supra) are distinguishable because in that case, the validity of the preliminary inquiry was disputed only after its merger in the final inquiry resulting in the penal order. No action adverse to the employee was reported to have been taken on the basis of the preliminary inquiry whereas in all the cases before us the preliminary inquiry itself has resulted in the erosion, nay deprivation of certain significant powers with regard to the controls in administrative and financial matters which legitimately vested in the petitioners by virtue of their elected position as Adhyaksh of the Zila Panchayats.

22. There is no gainsaying that in none of these cases, the preliminary inquiry was conducted by an officer holding the rank of a District Magistrate. So on this ground alone, all the impugned orders have to collapse.

23. That takes us to the second aspect of the controversy regarding the validity and propriety of the complaints. On petitioners' behalf, much emphasis was placed on the complaint relating to Smt. Janki Devi of Writ Petition No. 1896 (M/B) of 1998. Our attention was drawn towards the complaint and letter written by 5 M.L.As. of ruling party as contained in Annexure-CA-1, eleven affidavits filed by various complainants also formed a part of this document. It was argued that leaving aside the want of verification of the contents of the complaint and the accompanying affidavits, one stark fact could not be ignored inasmuch as all the affidavits were sworn in on 28.1.1998 whereas the complaint was moved on 29.1.1998, and the letter was also written by the M.L.As. on this later date ; meaning thereby that there was no complaint on the date when the affidavits were sworn in and, therefore, the contents of these affidavits could not be taken into consideration to meet the requirements of Rule 3 of the Enquiry Rules.

24. We are not used with this submission, As a matter of fact, it has been mentioned only for the purpose of records otherwise does not warrant any serious attention because of the simple reason that the requirement of the rule is that a complaint has to be accompanied with an affidavit. People from the countryside are obsessed with the idea of having an affidavit prior to the draft of the complaints and in this case even the time-gap was not very significant. Similarly, there was nothing wrong on the part of the M.L.As. to forward these complaints along with the affidavits : after all these were not their own affidavits and being public figures, they could certainly ventilate and project the grievance of their constituents. In the absence of anything cogent on record that they exploited their political clout or that the concerned administrative authorities were influenced by their personalities or statute, we cannot read anything fishy in between the lines.

25. The petitioners' endeavour to draw analogical support from Sections 81, 82 and 86 of the Representation of the People Act, 1950 with regard to the defects in the format of the complaints failed to impress us because the aforesaid provisions deal with an election petition and not a complaint regarding the working of an elected office-bearer under the scheme of U. P. Act No. 33 of 1961.

26. Be that as it may, clause (5) of Rule 3 of the Enquiry Rules places an unqualified embargo on the concerned authority to entertain any complaint which is not in conformity with sub-rules (2), (3) or (4) thereof and, on facts, non-compliance of these sub-rules had not been much in dispute before us. As mentioned hereinbefore, the State tried to take refuge under the contingency clause "or otherwise" as permitted by Rule 4 (1) of the Enquiry Rules. In our considered opinion, the effort is futile because here the State Government has not ordered an enquiry under this alternative contingency. It has rather taken cognizance of the preliminary report prepared by the authorities on the basis of complaints which as discussed hereinbefore should have conformed with the specifications and parameters laid down in sub-rules (2), (3) and (4) of Rule 3 of the Enquiry Rules and factually did not.

27. At this stage, it may be in the fitness of things to revert for a while to the facts of all the individual cases inasmuch as in the matter of Smt. Janki Devi, the complaint was referred by the State Government to the Commissioner, Faizabad for getting enquired into the complaints received against her per their letter dated 22.9.1997 forming part to Annexure-1. In his turn, the Commissioner referred the matter to the District Magistrate vide his letter dated 7.10.1997 asking him to get it enquired from any Additional District Magistrate and that is how that the preliminary enquiry was conducted by the Additional District Magistrate. So that rules out the explanation that the District Magistrate had just obtained certain assistance from the Additional District Magistrate or that actually it was his own preliminary enquiry. In the light of our aforesaid discussion, a preliminary enquiry into the affairs of an Adhyaksh was beyond the statutory competence of the Additional District Magistrate ; so obviously being void ab-initio, it could not possibly form the foundation of any of the impugned orders contained in Annexures-2, 3 or 3A. All these orders are, therefore, liable to be quashed.

28. In the context of Smt. Saroj Kumari Yadav, the preliminary enquiry was conducted by Joint Registrar. Panchayati Raj who is admittedly below the rank of District Magistrate whereas in the case of Bhupendra Singh Sachan, the Enquiry was conducted by Chief Development Officer who, too, admittedly enjoys a status lower than that of a District Magistrate. So the orders contained in Annexure-1 followed by the charge-sheet contained in Annexure-2 both dated 17.1.1998 in Writ Petition No. 384/98 as well as the subsequent order dated 2.3.1998 contained in Annexure-14 on the records of Writ Petition No. 708 (M/B) of 1998 also deserve to be quashed in their entirety. Similarly the impugned order dated 14.7.1998 contained in Annexure-1 of Writ Petition No. 2304 (M/B) of 1998 with regard to Bhupendra Singh Sachan also requires to be set aside in its entirety.

29. Accordingly, we allow all these 4 writ petitions and quash the aforesaid orders, as mentioned in the preceding paras, they shall be deemed to be inoperative and non-est right from their inception. As a necessary corollary, we

restore the withdrawn administrative and financial powers to all the respective petitioners and restrain the respondents from taking any action on the basis of the impugned preliminary enquiry reports ; that would not, however, forbid them to look into the alleged lapses or irregularities, if any, in the working of these Zila Panchayats and take appropriate action in accordance with law and the rules framed thereunder.

30. There would, however, be no orders as to costs.