
(2013) 08 AHC CK 0166

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 38978 of 2013

Veenu Gangawar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 16

Citation : (2013) 08 AHC CK 0166

Hon'ble Judges : Vineet Saran, J and B.Amit Sthalekar, J

Final Decision : Disposed Of

Judgement

B. Amit Sthalekar, J.

For any democracy to be successful, it has to be strengthened at the grass root level. An elected representative, whether it be at the lowest or highest level, should not be denuded of his powers, except for very valid and good reasons and in accordance with law. This writ petition requires us to examine such question.

On 18.3.2011 the petitioner was elected Pramukh of Kshetra Panchayat Nawabganj, District Bareilly. The respondent no.5, whose wife contested the election against the petitioner and had lost, lodged a complaint with the State Government on 1.11.2012 with regard to certain irregularities having been committed by the petitioner. On 21.12.2012, the petitioner was served with a notice intimating that a complaint had been filed by respondent no.5 against her on which the District Magistrate, Bareilly, vide his order dated 7.12.2012, appointed a 3Member Enquiry Committee headed by the Additional District Magistrate. It was further intimated that on 24.12.2012 the Committee would inspect the office of the petitioner to make enquiry. In the writ petition it is stated that the petitioner remained in office for the entire day but no one came on the spot nor any information was given to the petitioner regarding any next date of enquiry. Then by a communication dated 4.1.2013, received by the petitioner on 8.1.2013, a show cause notice was given to the petitioner intimating that an enquiry was conducted on 27.12.2012 in which the charges

against the petitioner have been found to be proved and the petitioner was required to give her reply by 10.1.2013 along with evidence, failing which the proceedings under the provisions of the U.P.Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 (hereinafter referred to as the "Act of 1961") shall be initiated against her.

On receipt of the said notice, the petitioner filed an application on 10.1.2013 praying for time to submit her reply but instead the Enquiry Officer submitted an exparte report on 12.1.2013 and recommended for seizure of financial and administrative powers of the petitioner under the proviso to section 16 of the Act of 1961. The said exparte report was forwarded by the District Magistrate to the State Government on 15.1.2013. The State Government vide its order dated 6.3.2013 held that there was no proper enquiry held in the matter, as the same was without taking the version or explanation of the petitioner and directed that fresh report be submitted after getting the version/explanation of the petitioner.

In the meantime on 16.1.2013, the petitioner had already submitted her reply along with all documentary evidence. Pursuant to the order dated 6.3.2013, the Additional District Magistrate issued a notice to the petitioner on 21.3.2013 requiring her to submit her reply within one week. Immediately thereafter on 25.3.2013 the petitioner submitted her reply, enclosing therewith her earlier reply dated 16.1.2013 also along with all the annexures and enclosures. Then by order dated 29.5.2013 passed by the State Government, pending final enquiry, the financial and administrative powers of the petitioner had been ceased. By the same order, a 3Member Committee had been constituted to exercise and perform the functions of the Pramukh. The 3Member Committee included the respondent no.5, who was the complainant (and husband of the lady who had lost against the petitioner in the election of Pramukh), and also included the witness to the complaint of the respondent no.5 who had filed an affidavit in support of the complaint. Challenging the said order dated 29.5.2013 as well as the order dated 12.6.2013 by which final enquiry has been directed, this writ petition has been filed. A further prayer has been made for a direction to the respondents not to interfere in the peaceful functioning of the petitioner as Pramukh, Kshetra Panchayat Nawabganj, District Bareilly.

We have heard Sri Ashish Kumar Singh along with Sri Vinod Shanker Tripathi, learned counsel appearing for the petitioner as well as learned Standing Counsel appearing for the Staterespondents no. 1 to 4 and Sri Zafar Naiyer, learned senior counsel along with Sri Shailendra Kumar Upadhyay, learned counsel appearing for the respondent no.5 and have perused the record. Pleadings between the parties have been exchanged and with consent of the learned counsel for the parties, this writ petition is being disposed of at the admission stage itself.

Assailing the impugned orders, the submission of the learned counsel for the petitioner is two fold. Firstly, that while holding the enquiry the petitioner was not given any notice to show cause nor was associated with the enquiry and as

such the enquiry was held *ex parte*, which fact finds strength from the order dated 6.3.2013 passed by the Special Secretary (Respondent no.2) wherein it was specifically mentioned that while holding the enquiry, the version of the petitioner had not been obtained and the preliminary enquiry report was submitted without giving any opportunity to the petitioner, which was not proper and therefore, a direction was issued to the District Magistrate, Bareilly to give opportunity to the petitioner and obtain her version on the allegations made against her and thereafter submit a report to the Government within seven days. The second submission of the learned counsel for the petitioner is that after withdrawal of financial and administrative powers of the petitioner, a committee of 3 Members had been constituted by the Special Secretary, Panchayati Raj, Lucknow and among its members one was the respondent no.5 whose wife had earlier contested the election against the petitioner and had lost, and another member was one who was a witness to the complaint made by respondent no.5 and who had filed an affidavit in support of the complaint and, therefore, the action of the respondent no. 3 was, on the face of it, motivated by malafides and was thus liable to be set aside on this ground alone.

The learned Standing Counsel appearing for the State respondents as well as Sri Zafar Naiyer, learned Senior counsel appearing for the complainant (respondent no.5) have strenuously argued that there was no requirement under Rule 4 of U.P.Kshetra Panchayat and Zila Panchayat (Removal of Pramukh, Uppramukh, Adhyaksha and Upadhyaksha) Enquiry Rules, 1997 for associating the Pramukh in the preliminary enquiry as the same was only a factfinding enquiry. They have also submitted that there was no malafides in the action of the Special Secretary or the District Magistrate, Bareilly in appointing the respondent no.5 (complainant) as a member of the Committee after ceasing the financial and administrative powers of the petitioner as the respondent no.5, and also the witness to the complaint, were both members of the Kshetra Panchayat concerned and have been picked by the respondents and appointed as members within the provisions of Act of 1961 and the Rules framed thereunder, and no motive should be attached to the District Magistrate for appointing them as members of the committee.

As regards the first question regarding the preliminary enquiry being *ex parte*, it has been submitted by the learned counsel for the petitioner that the charges against the petitioner are wholly vague and none of them relate to any particular financial irregularity, and had the petitioner been given opportunity or had her explanation been considered by the committee before giving its report, the same would have met the requirement of complying with the principles of natural justice and the report would otherwise have been in accordance with law. It is contended that though requirement of opportunity may not have been specifically provided under the rules, but initially by communication dated 4.1.2013 the petitioner was given a show cause notice, but since sufficient time was not given and before the reply of the petitioner could come, the report dated 12.1.2013 had been submitted and for that reason the Special Secretary,

Government of U.P., respondent no.2, had set aside the recommendation and remanded the matter back, and thereafter again the petitioner was given notice on 21.3.2013 to submit her reply, which was submitted on 25.3.2013 which all would got to show that the respondents themselves admit that prior to passing of any order, the explanation of the petitioner was required to be taken. Once the explanation of the petitioner had been given, it was not to be treated as an empty formality but the same ought to have been considered. It is submitted by the learned counsel for the petitioner that in the detailed reply submitted on 25.3.2013, enclosing therewith the earlier reply dated 6.1.2013 along with all the relevant annexures/enclosures, all the charges against the petitioner had been refuted along with documentary evidence, yet while passing the impugned order the respondent no.2 has not considered the reply and proceeded to give its finding, as would be clear from a plain reading of the impugned order dated 29.5.2013 itself. Once an opportunity to show cause has been given, the least that is expected from an authority is that what is mentioned in the reply to the show cause notice should be considered. The submission of the learned counsel for the petitioner that the impugned order has not considered the reply, and does not mention of any financial irregularity, has strength.

The other question to be considered by this Court is with regard to the malafide as alleged by the petitioner. The specific case of the petitioner is that the wife of respondent no.5 had lost the election against the petitioner and what the respondent no.5 could not achieve directly, was sought to be achieved indirectly by lodging a complaint and getting himself nominated as a member of the committee to perform the duties of the Pramukh of the Kshetra Panchayat. In paragraphs 6, 7 and 8 of the writ petition it is categorically mentioned that there is rivalry between the petitioner's family and the family of respondent no.5, whose father is a Minister of the State Government. It is also stated that the father of the respondent no.5 had contested the Legislative Assembly election against the aunt of the petitioner in which he had won. Further certain allegations are made in paragraph 8 of the writ petition which are quoted below:

"8. That after the change of Government in the year 2012 and on becoming Sri Bhagwat Saran Gangwar a Minister of State of U.P., the respondentcomplainant whose wife was defeated in the year 2010 election from the petitioner started tracing issues so as to remove the petitioner and tried to convince the Members of the block to remove a No Confidence motion but when he could not succeed in getting requisite majority, he lodged a complaint to the Secretary, Government of U.P. making therein several allegations in the year 2012."

Reply to the said paragraph has been given in paragraph 7 of the counter affidavit filed on behalf of the District Magistrate in which it is merely stated "that the allegations in paragraphs 6, 7 and 8 of the writ petition are not admitted". There is, however, no specific denial. During the course of arguments also, learned counsel for the respondents did not deny the said averments and merely stated that they are not relevant for the purposes of the case.

In paragraph 9 of the writ petition it has been stated that "the complaint was accompanied by the affidavit of Atul Kumar Gangwar and Smt. Sunitra Devi dated 1.11.2012 making therein false and frivolous allegations against the petitioner which is evident from copy of the complaint and the affidavit appended thereto". In reply, in the counter affidavit all that has been mentioned is that "it is stated that the petitioner had not been performing his duties in accordance with law. In the preliminary enquiry the petitioner was prima facie found guilty of irregularities including the final irregularities. The action taken against the petitioner is in accordance with law."

The respondent no.5 has not given a parawise reply to the averments made in the writ petition and in paragraph 3(H) it has been mentioned that "the respondent relies upon the counter affidavit filed by the State Government to support his case".

From the aforesaid it is clear that there was rivalry between the families of the petitioner and the respondent no.5.

A Division Bench of this Court in the case of Smt. Kesari Devi vs. State of U.P. 2005 (4) A.W.C. 3563 while dealing with the case of challenge to the order of removal of Adhyaksha, Zila Panchayat has, while setting aside the order, in the conclusion noticed that the complainant therein had herself lost election against the petitioner for the post in question. In the said case, after the preliminary enquiry and during the pendency of the regular enquiry, the complainant had also been made member of the 3Member committee which was deprecated. In the present case, not only the wife of the complainant had lost the election but out of approximately 105 members of the Kshetra Panchayat the District Magistrate had chosen the complainant as well as Smt. Sumitra Devi (wrongly mentioned as Smt. Sunitra Devi in the writ petition) and appointed them as members of the 3Member Committee to perform the duties of the Pramukh of the Kshetra Panchayat. As such this Court finds that in the facts of the present case, the malafide on the part of the respondent authorities are writ large as the respondent no.5, who was the complainant, and whose wife had lost election to the petitioner, was also son of the Minister of the State Government, had been appointed as a Member along with Smt. Sumitra Devi who had filed an affidavit in support of the complaint from amongst about 105 members of the Kshetra Panchayat. Thus, in our view, the order passed by the State Government deserves to be set aside on the ground of malafides alone.

We have also examined the original record which has been produced before us by the learned Standing Counsel and what we notice is that the note sheet of the enquiry proceedings has only two dates, the first one being 21.12.2012 which mentions that enquiry is to be conducted and the other date is 4.1.2013 mentioning that enquiry was held on 27.12.2012 and the report submitted. There are no other dates or notings in the notesheet relating to any notice having been sent to the petitioner with regard to the enquiry to be held on 27.12.2012 and what happened before or after the said date. After having gone

through the original record also, we are prima facie of the view that the enquiry against the petitioner was not held in a proper manner, and on the contrary it was concluded in a hasty manner without there being proper notings in the notesheet or otherwise.

It may be mentioned that towards the conclusion of the arguments, Shri Naiyer placed before the Court a Fax paper purported to be the resignation letter of the respondent no. 5 as member of the Committee constituted by the Special Secretary. Be that as it may, even if the respondent no. 5 may have subsequently, during the hearing of the writ petition, submitted his resignation and faxed the said message to his counsel, that would not take away the rigour of the taint of malafides in the order dated 29.5.2013 passed by the Special Secretary and order dated 12.6.2013 passed by the District Magistrate, which are impugned in the present writ petition.

For the reasons given hereinabove, this writ petition stands allowed. The order dated 29.5.2013 passed by Special Secretary, Panchayati Raj, Government of U.P., Lucknow, respondent no.2, is quashed. The consequential order dated 12.6.2013 passed by the District Magistrate, Bareilly, respondent no.3, is also quashed. The respondents are directed to forthwith restore the petitioner as Pramukh, Kshetra Panchayat, Nawabganj, District Bareilly.

No order as to cost.