

(1999) 08 AHC CK 0210

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 33627 of 1999

Vishram Dass

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-08-1999

Acts Referred:

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 29(1)

Citation : (1999) 3 UPLBEC 1751

Hon'ble Judges : R.R.K. Trivedi, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : R.N. Singh and R.C. Singh, for the Appellant; Dinesh Dwivedi and Ashok Mehta, Chief Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.R.K. Trivedi and D.R. Chaudhary, JJ.—We have heard Sri R.N. Singh, Senior Advocate, duly assisted by Sri R.C. Singh for the petitioner and Sri Ashok Mehta, the learned Chief Standing Counsel for the respondents and Sri Dinesh Dwivedi for the caveator. As this petition can be decided on a short question of law it is not necessary to call for any counter from the respondents.

2. The facts giving rise to this petition are that petitioner Vishram Dass was elected as Chairman of Zila Panchayat, Allahabad on 2-5-95. On 20-3-98 a complaint was made against him by one Ramesh Narain alias Madan Mishra before the Minister, Panchayat Raj of State of U.P. mentioning therein 18 financial and administrative irregularities allegedly committed by the petitioner. On this complaint State of U.P. by an order dated 27-6-98 directed a preliminary enquiry by Collector, Allahabad. Report on basis of the preliminary enquiry was submitted on 4-12-98. After receipt of the aforesaid report, a show cause notice dated 9-6-99 was served on the petitioner stating therein that on the examination of the report of the Collector, the petitioner had been found responsible for certain points. Petitioner was asked to submit his reply on the said points. In this notice seven points have been mentioned on which the explanation of the petitioner

was required. On receipt of the aforesaid letter dated 9-6-99 petitioner by his letter dated 16-6-99. Annexure 8 to the writ petition requested that he may be supplied a copy of the enquiry report of the Collector, Allahabad, without which it shall not be possible for him to submit his reply, as allegations mentioned in the letter are mainly based on the report of the Collector. The petitioner was not supplied the copy of the report submitted by the Collector and straightway the impugned order dated 4-8-99, Annexure 4 to the writ petition was passed against him depriving the petitioner of his financial and administrative function which he was entitled to discharge as Chairman of the Zila Panchayat. Aggrieved by the aforesaid order the petitioner has approached this Court under Article 226 of the Constitution of India.

3. Learned Counsel for the petitioner has submitted that the impugned order dated 4-8-99 has been passed in gross violation of principles of natural justice as petitioner was not supplied copy of the report submitted by the Collector on basis of the preliminary enquiry conducted by him. It is submitted that save allegations against petitioner were made on the basis of the report of the Collector and for submitting explanation against the said allegations, perusal of the report was necessary. In this connection it has also been submitted that in the impugned order no reasons have been assigned as to why explanation submitted by the petitioner was not satisfactory. The explanation was submitted before the Collector which has not been taken into consideration at all. Reference has been made to the letter dated 16-6-99 by which the petitioner has only requested for supply of the report of the Collector submitted on the basis of the preliminary enquiry. The learned Counsel has submitted that as no reasons have been assigned in the impugned order for not accepting the explanation, the order is bad and suffers from manifestly error of law.

4. Sri Ashok Mehta, the learned Chief Standing Counsel on the other hand submitted that under U.P. Kshettra Panchayats and Zila Panchayats (Removal of Pramukhs, Up-Pramukhs, Adhyakshas and Upadhyakshas) Enquiry Rules, 1997, (hereinafter referred as the Rules of 1997), the petitioner is not entitled for supply of the report of the preliminary enquiry. It has also been submitted that no prejudice caused to the petitioner on account of non-supply of the report has been demonstrated. The order does not suffer from any error of law and the petitioner is not entitled for any relief. However Sri Ashok Mehta could not justify the non-supply of the report of the Collector to the petitioner for which request was made by letter dated 16-6-99. In alternative Sri Ashok Mehta also submitted that if the Court is satisfied that the petitioner has been prejudiced for non-supply of the report of the Collector, respondent-State may be permitted ten days" time to serve a copy of the report on petitioner and then he may be asked to submit his reply within a specified time and it may be left open to the State to pass a fresh order in accordance with law.

5. Sri Dinesh Dwivedi, learned Counsel for the caveator on the other hand submitted that the enquiry against the petitioner has already proceeded. Enquiry

Officer has been appointed and he shall have full opportunity to defend himself before the enquiry officer and no interference is called for at this stage. The impugned order is in the nature of interlocutory order which was thought necessary by the State for protecting the interest of Zila Panchayat. The learned Counsel has further submitted that in case the Court is satisfied that order impugned suffers from any illegality the petitioner may not be allowed to discharge financial functions during the period of pendency of enquiry against him.

6. We have thoroughly considered the rival submissions made by the learned Counsel for the parties and also perused the documents filed alongwith the writ petition. Rule 4 of Rules of 1997 contemplates regarding the preliminary enquiry on the allegations made against Chairman. For convenience, Rule 4 is reproduced below:

"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."

Section 29 of U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961, hereinafter referred to as the Act of 1961 contains provisions for removal of Adhyaksha and Upadhyaksha of Zila Panchayat. Section 29 is reproduced below:

"Removal of Adhyaksha or Upadhyaksha.--(1) If in the opinion of the State Government the Adhyaksha or the Upadhyaksha while acting in place of Adhyaksha, willfully 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 his duties (or becomes physically or mentally incapacitated for performing his duties) the State Government, after giving the Adhyaksha or Upadhyaksha, 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 Upadhyaksha, removed from his office under this section, shall not be eligible for election as Adhyaksha or Upadhyaksha for a period of three years from the date of his removal."

7. From the perusal of the proviso provided to Sub-sections (1) it is clear that passing of an order prohibiting Adhyaksha from exercising financial and administrative powers and functions a prima facie satisfaction is necessary. The State Government directed the Collector for preliminary enquiry against the petitioner on the complaint made against him. After receipt of the report of the Collector, the State Government thought it appropriate to call for an explanation from the petitioner. If the State Government thought it proper to give opportunity to petitioner before passing an order of the nature contemplated in proviso to Sub-sections (1) of Section 29 of the Act, this opportunity should be complete and in consonance with the principles of natural justice, the report received after preliminary enquiry was an important document on basis of which prima facie satisfaction was to be based by the State Government. Thus, for submitting explanation by the petitioner perusal of this report was necessary and the request made by him for supply of copy of the same could not be said to be unreasonable or unjustified. The submission of the learned Chief Standing Counsel that under Rule 4 of the Rules of 1997 the petitioner was not entitled for copy of the report has no substance in view of the fact that the State decided to give an opportunity of hearing to the petitioner before passing the order depriving him of his financial and administrative functions. In our opinion the respondents committed a serious illegality in not supplying the copy of the report of the Collector before passing of the impugned order. As the petition is entitled to succeed on this legal question we do not think it necessary to consider other questions raised by the learned Counsel for the petitioner.

8. For the reasons stated above, this petition is allowed. The order dated 4-8-99 (Annexure-1 to the writ petition) is quashed. As proposed by Sri Ashok Mehta, the copy of the report of the Collector submitted on the basis of the preliminary enquiry shall be supplied to the petitioner within ten days from today. The reply, if any, may be submitted by the petitioner within two weeks thereafter before the appropriate authority. Thereafter the State shall be at liberty to pass a fresh order in accordance with law. During this period though the petitioner will be entitled to exercise and discharge his administrative function as Chairman of the Zila Panchayat, however, so far as financial powers are concerned they shall be exercised by the petitioner after obtaining prior approval of the Commissioner of the Division.

9. There will be no order as to costs.