

(2004) 07 AHC CK 0156

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24883 of 2004

Zaheer Ahmad Ansari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-07-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Municipalities Act, 1916 — Section 48(2A), 48(2K)

Citation : (2005) 1 UPLBEC 40

Hon'ble Judges : Umeshwar Pandey, J; B.S. Chauhan, J

Bench : Division Bench

Advocate : B.P. Singh, for the Appellant; C.B. Yadav, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan and Umeshwar Pandey, JJ.—This writ petition has been filed for quashing the order dated 29th June, 2004 (Annexure 11) by which the petitioner, the President of the Nagar Palika Parishad, Etawah, has been deprived of his financial and administrative powers in exercise of the powers conferred u/s 48 [2-K (a)] of the U. P. Municipalities Act, 1916 (hereinafter called the Act, 1916), as amended by the Amendment Act VI of 2004.

2. Facts and circumstances giving rise to this case are that the petitioner had been elected as the President of Nagar Palika Parishad, Etawah for a period of five years. There were certain allegations against the petitioner for which preliminary enquiry was conducted and, prima facie, the allegations have been found to have some substance. As the charge-sheet has been served upon the petitioner, he has been deprived of the administrative and financial powers by the impugned order. Hence this petition.

3. Shri B. P. Singh, learned Counsel appearing for the petitioner has raised large number of issues including the competence of the District Collector to pass the order dated 29th June, 2004 depriving the petitioner from exercising

administrative and financial powers and further appointing the Additional District Magistrate (F&R), Etawah to exercise the same. It is submitted by Shri Singh that it is the State Government which can deprive the petitioner of such powers and order being passed by the District Collector, is without jurisdiction and, therefore, nullity. Secondly, allegations of mala fide have been made against the respondent No. 5, the then District Collector and Executive Officer of the Nagar Palika Parishad; Etawah, who have also been impleaded as respondents by name, it is submitted by Shri Singh that petitioner became victim of malicious intentions of said respondent Nos. 5 and 6, therefore, the order impugned is liable to be quashed.

4. On the contrary, Shri C. B. Yadav, learned Chief Standing Counsel has submitted that once the allegations are found to have some substance in preliminary enquiry and charge-sheet is served upon the office bearer, he is deprived of performing/discharging the financial and administrative powers automatically by operation of law which came into force by U. P. Act No. 6 of 2004 amending the provision of Section 48 of the U. P. Municipalities Act, 1916. Thus, petitioner has not been deprived of such powers by the order passed by the District Collector. More so, the allegations had been of the period prior to the posting of respondents No. 5 and 6, therefore, the allegations of mala fide cannot be alleged against them, as they cannot be related to the said incidence. Petition is devoid of any merit and is liable to be dismissed.

5. We have considered the rival submissions made by the learned Counsel for the parties and perused the record.

6. The amended provision, as referred to above, in Section 48 of the Act, 1916 reads as under :-

"(2-A) Where in an inquiry and by such persons in such manner as may be prescribed, if a President or Vice President, prima facie, found to be guilty to any of the grounds referred to in sub-section (2), he shall cease to exercise, perform and discharge the financial and administrative powers, functions and duties of the President or the Vice President as the case may be, which shall, until he is exonerated of the charges mentioned in the show cause notice issued to him under sub-section (2), be evoked and performed by the District Magistrate or by an officer nominated by him not below the rank of Deputy Collector.

STATEMENT OF OBJECTS AND REASONS

Section 48 of the Uttar Pradesh Municipalities Act, 1916 (U. P. Act No. 2 of 1916) provides for removal of President of a municipality. In the said section the State Government is empowered to issue show cause notice to the guilty President on the grounds mentioned u/s 48, before removing him from his office. Most of the Presidents used to delay the proceedings by not replying the show-cause notice in time and they continue to misuse their financial powers. It has, therefore, been decided to amend the said Act to cease the financial powers of such President of a Vice-President during the pendency of the inquiry and his financial

powers and functions will be exercised and performed by the District Magistrate until he is exonerated of the charges."

7. The Statement of Objects and Reasons makes it clear that the person facing the enquiry is deprived of his financial and administrative powers automatically by operation of law. Once the charge-sheet is served upon him, his administrative and financial powers cease and he cannot exercise the same, therefore, we find no substance in the submissions made by Shri Singh. Unless petitioner is exonerated of the charges levelled against him, he cannot be permitted to exercise the said powers as mandatorily required by the aforesaid provision.

8. We also find no force in the submissions made by learned Counsel for the petitioner that before depriving the petitioner of financial and administrative powers, an opportunity of hearing was to be given for the reason that upto the stage of serving the charge-sheet in such a matter, the right of hearing cannot be claimed as a matter of right. Petitioner has a right to defend himself and this right comes into existence from the time he is served with the charge-sheet, therefore, he cannot have any grievance on this Court.

9. Shri Singh, learned Counsel appearing for the petitioner placed reliance upon large number of judgments of this Court including Satish Chand Sharma Vs. State of U.P. and Others, ; Umesh Baijal and Others Vs. State of U.P. and Another, ; Smt. R.S. Khan Vs. State of U.P. and Others, . However, the issues involved in all the aforesaid three cases, referred to above, were entirely different. In all those cases, this Court had dealt with the issues which came into the existence subsequent to issuance of the charge-sheet, i.e. regarding the procedure of holding the regular enquiry and passing the order of removal by the State Government. Therefore, the said judgments are quite distinguishable and have no application in the instant case.

10. On the other hand, Shri Yadav, learned Chief Standing Counsel placed reliance on the Division Bench judgment of this Court in Mukesh Rajput Vs. State of U.P. and Others, wherein it has categorically been held that in cases of charges of financial and other irregularities, the Court should not exercise its discretionary jurisdiction under Article 226 of the Constitution of India, as the case is require yet to be examined thoroughly during the inquiry.

11. Shri Singh has placed very heavy reliance upon the interim order passed by this Court on 25.6.2004 in Writ Petition No. 22913 of 2004, Smt. Manjula Dubey v. State of U. P. and others, wherein the learned Single Judge has dealt with the issue at length and granted the interim order after writing 10 pages orders. Thus, it is submitted that the petition has been entertained by the Court in identical case and interim order has also been granted. However, it is not in dispute that the Division Bench of this Court while allowing the special appeal filed by the State vide order judgment and order dated 12.7.2004, has set aside the judgment of the learned Single Judge. Thus, no relief can be granted on that

count.

12. We have also gone through the charge-sheet served upon the petitioner. Considering the seriousness of the allegations, we are not inclined to interfere in the matter. Petition is accordingly dismissed.