

Pyar Singh Vs. State of Uttarakhand and Others

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Court : Uttaranchal

Decided On : Sep-27-2012

Judge : Sudhanshu Dhulia

Appeal No. : Writ Petition (M/S) No. 1826 of 2011

Appellant : Pyar Singh

Respondent : State of Uttarakhand and Others

Judgement :

Sudhanshu Dhulia, J. (Oral)

Heard Mr. N.S. Pundir, Advocate for the petitioner and Mr. Paresh Tripathi, Additional Chief Standing Counsel for the State of Uttarakhand.

2. The petitioner was elected as a Gram Pradhan of Gram Panchayat Aarsh Block Bhilangana District Tehri Garhwal in the year 2008. The Gram Pradhan is elected for a period of five years. Respondent No. 6 Jai Pal Singh, who is a resident of the same village, moved a complaint before the State Government alleging certain irregularities against the elected Gram Pradhan i.e. present petitioner. On receiving this complaint, the Officer, authorized by the State Government conducted an enquiry into the matter. The procedure as to what has to be done under these conditions is given in Rule 3 of Uttar Pradesh Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997 (hereinafter referred to as the Rules of 1997). Rule 3 of Rules 1997 reads as

under:-

3. Procedure relating to complaints:-

(1) Any person making a complaint against a Pradhan or Up-Pradhan may sent his complaint to the State Government or any officer empowered in this behalf by the State Government-

(2) Every complaint referred to in sub-rule (1) shall be accompanied by the complainants own affidavit in support thereof and also affidavits of all persons from whom he claims to have received information of facts 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 affidavits, respectively.

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

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

(6) It shall be necessary to follow the procedure laid down in the foregoing provisions of this rule if a complaints against a Pradhan or Up-Pradhan is made by a public servant.

Rule 3 (5) of the Rules of 1997 provides that a complaint, which does not comply with any of the foregoing provision of this rule, shall not be entertained. An exception has been curved out in Rule 3 (6) of the Rules of 1997 provides that it shall not be necessary to file affidavit as required under Rule 3 (2) of the Rules of 1997 if it is made by a public servant.

3. In the present case respondent No. 6 and others, who moved a complaint are not public servant, hence, it was a mandatory requirement under the law that the complaint must be duly accompanied with an affidavit. There was evidently no

affidavit here. In view of the complaint, the Chief Development Officer ordered for enquiry on 12.07.2010 to District Development Officer.

4. One of the contentions of the petitioner is that under Rule 2(c) of the Rules of 1997 Enquiry Officer means the District Panchayat Raj Officer or any other district level Officer, to be nominated by the District Magistrate. However, this amendment was brought only on 5th October, 2001 in the State of Uttara Pradesh. In the earlier un-amended provision of Rule 2(c) of the Rules of 1997 reads as under:-

2 Definitions In these rules unless the context otherwise requires -

(a) .

(b) .

(c) Enquiry Officer means the District Panchayat Raj Officer or any other district level Officer, to be nominated by the District Magistrate.

5. The petitioner has not been able to show to this Court as to whether Chief Development Officer was not authorized to be an Inquiry Officer. Therefore, this contention of the learned counsel for the petitioner that the enquiry initiated by an officer who has not authorized under the law to conduct such an enquiry has not been substantiate.

6. Regarding second contention of the petitioner that mandatory provision of Rule 3 of the Rules of 1997 has not been complied with, there is some substance as the complaint made to the District Magistrate or Chief Development Officer dated 29.06.2010 and the enquiry was ordered on 12.07.2010, there was no affidavit till then as contemplated under Rule 3 (2) of the Rules of 1997 before conducting of the Enquiry. Therefore, in view of the Rule 3(5) of the Rules of 1997, no cognizance ought to have been taken on the said complaint. All the same, the enquiry proceeded on the basis of a mere complaint and consequently, District Development Officer was appointed as an Enquiry Officer, who is a District Level Officer. The District Development Officer in the preliminary enquiry found certain irregularities, including financial irregularities in the office of the petitioner, therefore, the powers of a Pradhan were ceased to be now exercised and

performed by the Committee. Section 95 (1)(g) of Uttar Pradesh Panchayat Raj Act, 1947 reads as under:-

95. Inspection (1) The State Government may-

- (a)
- (b)..
- (c)..
- (d)..
- (e)..
- (f)..
- (g) [remove a Pradhan, Up-Pradhan or member of a Gram Panchayat or a Joint Committee or Bhumi Prabandhak Samiti, or a Panch, Sahayak Sarpanch or Sarpanch of a Nyaya Panchayat if he] -
 - (i) absents himself without sufficient cause for more than three consecutive meetings or settings.
 - (ii) refuses to act or becomes incapable of acting, for any reason whatsoever or if he is accused of or charged for an offence involving moral turpitude.
 - (iii) has abused his position as such or has persistently failed to perform the duties imposed by this Act or rules made thereunder or his continuance as such is not desirable in public interest, or
 - (iii-a) has taken the benefit of reservation under sub-section (2) of Section 11-A or sub-section (5) of Section 12, as the case may be, on the basis of a false declaration subscribed by him stating that he is a member of Scheduled Castes, the Scheduled Tribes or the backward classes, as the case may be.
 - (iv) being a Sahayak Sarpanch or a Sarpanch of the Nyaya Panchayat takes active part in politics, or

(v) suffers from any of the disqualifications mentioned in Clauses (a) to (m) of Section 5-A:

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

7. The financial and administrative powers of the Pradhan had to be taken away till the final enquiry is completed. In the present matter, order was passed on 19.08.2011 by the District Magistrate, Tehri Garhwal, by which financial and administrative powers have been taken away from the petitioner. In view of the provision of Section 95 (1) (g) the powers have been given to a Committee and now presently the final enquiry is going on against the petitioner.

8. The State Government in its counter affidavit has denied the allegations made by the petitioner in the writ petition.

9. There was evidently no affidavit of the complainant before the Enquiry Officer, along with his complaint. According to the learned Standing Counsel even if it is an anomaly it is a minor irregularity as in the preliminary enquiry charges of embezzlement, which are serious in nature, have been detected against the petitioner. Therefore, the irregularities are liable to be condoned.

10. The Court on these rival submissions of the parties has to see whether the provision as laid down under Rule 3 of the Rules of 1997, such an affidavit of the complainant or other persons as required under the law are mandatory or merely directory and in a given situation it can be condoned.

11. The Institution of Gram Panchayat (after 73rd Amendment) has now acquired a Constitutional status. A Gram Pradhan is an elected representative of Gram Sabha. Interference with his work, which may be required in a given contingency,

though has to be correct and proceeded with caution and care. It is for this reason that there is a requirement of law that a person who moves a complaint before the concerned Officer, against an elected representative of the Gram Panchayat, shall file an affidavit along with the complaint. In the absence of such affidavit, as provided under Rule 3(5) of Rules of 1997, the Enquiry Officer cannot proceed with the matter.

12. This Court is of the clear view that the provision is mandatory in nature and, therefore liable to be complied with by the concerned Officer. A learned Single Judge of Honble High Court of Judicature of Allahabad in Smt. Sandhya Gupta Vs District Magistrate, Auraiya and others reported in (1999) 1 UPLBEC 718 had given certain guidelines while the matter of complaint against the elected representative of Gram Pradhan. The relevant portion of the said judgment reads under:-

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 under Section 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 endeavor 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) ..

(2) ..

(3) ..

(4) ..

(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) ..

(7) ..

(8) ..

(9) ..

(10) ..

(11) ..

(12) ..

(13) ..

(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 under Section 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.

13. In view of the above, the writ petition succeeds. The impugned order dated 19.08.2011 passed by the District Judge, Tehri Garhwal is hereby quashed.

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