

Birendra Pal Singh Vs. Additional District Magistrate and ors.

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Court : Allahabad

Decided On : Sep-23-1971

Reported in : AIR1972All392

Judge : K.N. Singh, J.

Acts : Uttar Pradesh Panchayat Raj Act, 1947 - Sections 95(1) and 96A;
[Constitution of India](#) - Article 226

Appeal No. : Writ Petn. No. 679 of 1970

Appellant : Birendra Pal Singh

Respondent : Additional District Magistrate and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : B.B.P. Singh, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.N. Singh, J.

1. Mahipal Singh opposite party No. 3 was Pradhan of Gaon Sabha Palirajapur in the district of Aligarh while the petitioner was a member of that Gaon Sabha.

Certain charges were framed against the Pradhan and inquiries were held which resulted into his removal by an order of the Sub-Divisional Officer Kol dated 25th August, 1969. Mahipal Singh preferred an appeal before the District Magistrate, Aligarh which was allowed by an order of the Additional District Magistrate, Aligarh dated 20th January, 1970. The order of removal was set aside and the Pradhan was reinstated to his office. The Additional District Magistrate, however, directed that a warning be issued to the Pradhan that in future he should comply with the rules more strictly. The petitioner has filed the present petition challenging the validity of the order of the Additional District Magistrate dated 20th January, 1970.

2. Learned counsel for the petitioner has firstly urged that there is no provision for appeal under the U. P. Panchayat Raj Act, 1947 and the rules framed thereunder, as such, no appeal was competent before the District Magistrate, the impugned order is, therefore, without jurisdiction. Under Section 95 (1) (g) of the Act State Government is empowered to suspend or remove a member or a Pradhan of the Gaon Sabha from his office on the grounds stated therein. The powers exercisable by the State Government under the provisions of the Act can be delegated to any officer or authority subordinate to the State Government. Section 96-A lays down that the State Government may delegate all or any of its powers under the Act to any officer or authority subordinate to it subject to 'such conditions and restrictions as it may deem fit to impose'. The State Government issued a notification No. 4193-K/ XXXIII-664 dated 27th July, 1966 published in the U. P. Gazette Part I dated 30th July, 1966 delegating its power under Section 95 (1) (g) of the Act to Sub-Divisional Officer, subject to an order for removal passed by him being appealable to the District Magistrate. The power to remove a Pradhan of the Gaon Sabha was delegated by the State Government to the Sub-Divisional. Officer, subject to the condition that the order of removal shall be subject to an order passed by the District Magistrate in appeal. It appears that certain difficulty was found in implementing these provisions. The State Government thereupon issued another notification No. 1171-B-XXXII-2-116-G-66 dated 30th October, 1967 published in the U. P. Gazette 11th November, 1967 modifying the earlier notification dated 27th July, 1966 in so far as it related to the delegation of power under Section 95 (1) (g) of the Act to the Sub-Divisional Officer. By this notification the State Government further imposed conditions on the exercise of power of

removal by the Sub-Divisional Officer. Under the impugned notification the Sub-Divisional Officer is required to send a copy of the order of removal passed by him against a Pradhan to the District Magistrate who is authorised to call for the record suo motu or on appeal being filed by the affected Pradhan and if on an examination of the record the District Magistrate is satisfied that no case was made out against the Pradhan, he may rescind or vary the order of the Sub-Divisional Officer. It is, therefore, clear that the order of the Sub-Divisional Officer was subject to the order passed by the District Magistrate in appeal, hence, the District Magistrate had full jurisdiction to set aside the order of the Sub-Divisional Officer and reinstate the Pradhan.

3. The learned counsel for the petitioner has, however, urged that no appellate forum could be created by means of a notification issued by the State Government as that would be in excess of the delegated powers. Section 96-A of the Act confers power on the State Government to delegate all or any of its power to any officer or authority subordinate to it subject to such restrictions and conditions as it may deem fit to impose. The State Government while delegating the power of removal to Sub-Divisional Officer, thought it proper to impose a condition that the order so passed by the Sub-Divisional Officer should not be final and, therefore, it placed a restriction on the exercise of that power by making provision for appeal against that order before the District Magistrate. The restrictions so placed are not in excess of the powers conferred upon the State Government under Section 96-A of the Act. In my opinion, there is no force in this contention.

4. Learned counsel has further urged that even if the District Magistrate had jurisdiction to entertain an appeal and set aside the order of removal passed by the Sub-Divisional Officer under Section 95 (1) (g) of the Act. an Additional District Magistrate had no jurisdiction to sit in appeal over that order, the impugned order, therefore, is without jurisdiction. The notification issued by the State Government in exercise of its powers under Section 96-A of the Act delegating powers and functions to the District Magistrate was issued under the Act itself. Section 20 (d) of the Act defines 'Collector', According to the definition of 'Collector' 'District Magistrate' or 'Sub-Divisional Officer with reference to a Gaon Sabha means a Collector, District Magistrate or Sub-Divisional Magistrate of the District or the

Sub-Division as the case may be, in which such Gaon Sabha is situated and shall respectively include the Additional Collector, Additional District Magistrate and Additional Sub-Divisional Magistrate'. The definition given in Section 2 (d) is available to interpret the Act and the notifications issued thereunder unless there is anything repugnant in the subject or context. Nothing has been placed before me to show that the State Government intended to exclude Additional District Magistrate when it authorised the District Magistrate to exercise powers in appeal. According to the definition itself an Additional District Magistrate can exercise the powers of District Magistrate, therefore, the impugned order has not been passed by an authority having no jurisdiction in the matter. A similar view was taken by Satish Chandra. J. in *Tula Ram Pradhan v. Sub-Divisional Officer, Agra*, 1970 All WR (HC) 38.

5. Learned counsel has lastly urged that the Additional District Magistrate while exercising his appellate powers could not create a new head of punishment in directing the issue of warning to the Pradhan. In the first place the petitioner is not entitled to raise this question. The Additional District Magistrate administered a warning to the Pradhan opposite party No. 3 to observe the rules strictly in future. That warning was only in the nature of reminder to the Pradhan to observe rules and to be careful in future; it was innocuous, it did not cast any aspersion on the Pradhan, nor did it inflict any punishment on him. If anybody could be aggrieved by that warning, certainly it could not be the petitioner and the only person so aggrieved could be the Pradhan himself. None of the petitioner's rights have been affected by the issue of warning to the Pradhan. He has no right to approach this Court to challenge the legality of the issue of warning to the Pradhan.

6. No other point has been pressed before me. In the result, the writ petition fails and is accordingly dismissed; but since no one has appeared on behalf of respondent No. 3. I make no order as to costs.

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