Bitana Vs. Collector and ors.

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Court : Allahabad

Decided On : Sep-03-2003

Reported in : 2004(2)AWC1023

Judge : A.N. Varma, J.

Acts : Uttar Pradesh Panchayat Raj Act, 1947 - Sections 95(1)

Appeal No. : Writ Petition No. 3183 (M/S) of 2003

Appellant : Bitana

Respondent : Collector and ors.

Advocate for Def. : Nirmal Tiwari, Adv.

Advocate for Pet/Ap. : V.K. Pandey, Adv.

Disposition : Petition dismissed

Judgement :

A.N. Varma, J.

1. Through the instant writ petition, the petitioner who is a Pradhan, has prayed for quashing of the order dated 1.7.2003 passed by opposite party No. 1 whereby her financial and administrative powers have been withdrawn and the same has been directed to be exercised and performed by a Committee consisting of 3 members

of the Gram Panchayat. The members of the said committee have been impleaded as opposite parties No. 3 to 5 on behalf of whom a counter-affidavit has been filed by Sri Nirmal Tiwari.

2. The contention of the petitioner is that the order impugned is manifestly illegal and suffers from an error apparent on the face of the record inasmuch as prior to the passing of the said order, no opportunity was afforded to the petitioner nor any explanation was called for from her. His submission thus is that the same is in utter violation of principles of natural justice. He next submitted that the action of the opposite party No. 1 is illegal and arbitrary as the enquiry upon which the reliance has been placed by the opposite parry No. 1 is an ex parte enquiry in which too the petitioner was not afforded any opportunity. He further submitted that the said enquiry is not based on any material which could lead to the conclusion that there has been a misappropriation or embezzlement of the amount indicated in the impugned order. He submits that the petitioner is not guilty inasmuch as neither has she committed any embezzlement nor misappropriated any amount. According to him, Gram Panchayat Officer has also been indicated to have misappropriated the money but no action has been taken against the said officer. Annexures-6 and 7 are the applications said to have been moved before opposite party No. 1 for getting an enquiry conducted against the said Gram Panchayat Officer.

3. In support of his arguments the learned counsel for the petitioner attracted the attention of this Court to Section 95 (g) and provisos appended to the said Section of U.P. Panchayat Raj Act, 1947 (hereinafter referred to as an 'Act'). On the strength of the said provisos, he submitted that prior to the withdrawal of the administrative and the financial powers an opportunity was required to be given to her. Section 95 (g) is reproduced herein under :

(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 sittings ;

(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 the Act or rules made thereunder or his continuance as such is not desirable in public interest ;

(iii-a) has taken the benefit ofreservation under Sub-section (2) of Section 11Aor Sub-section (5) ofSection 12, as the casemay be, on the basis of afalse declarationsubscribed by him statingthat he is a member of theScheduled Castes, theScheduled Tribes or theBackward Classes, as thecase 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 5A :

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 and 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.

Provided that--

(1) no action shall be taken under Clause (f) and Clause (g) except after giving to the body or person concerned a reasonable opportunity of showing cause against the action proposed ;

(2) a person removed under Sub-clauses (iii) and (iv) of Clause (g) of Sub-section (1) of this section shall not be entitled to be re-elected or re-appointed to any office under this Act for a period of five years or such lesser period as the State Government may order in any case.

(3) no order made by the State Government under this section shall be called in question in any Court.

(4) where any (Gram Panchayat), Joint Committee or Bhumi Prabandhak Samiti is (dissolved) the State Government may appoint such person or persons to exercise and perform the powers and duties thereof as it may deem fit.

4. A perusal of the first proviso appended to Section 95 (g) reveals that wherein 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 and other irregularities, such Pradhan or up-Pradhan shall cease to exercise and perform the financial and administrative powers and function. It does not speak of the fact that in case the administrative or financial power are to be withdrawn, an opportunity is required to be given. Learned counsel for the petitioner next placed reliance on the second proviso. According to him the first proviso cannot be read in isolation of the second proviso. His argument is that both should be read together. The second proviso contemplates that no action shall be taken under Clause (f) or Clause (g) of Section 95 (g) except giving to the body or person concerned a reasonable opportunity of showing cause against the action proposed. The second proviso, as would appear, will come into play only when any action is proposed under Clause (f) or Clause (g) of Section 95. In such contingencies, an opportunity of showing cause would arise. The learned counsel appearing on behalf of the opposite parties points out that till date, no action under Section 95 (g) has been proposed. The argument of the learned counsel for the petitioner thus, that prior to the passing of the impugned order, an opportunity ought to have been given thus falls to the ground. The second proviso cannot be read in conjunction with the first proviso, both work in different field and are independent of each other. Under the first proviso, if in an enquiry held in the manner prescribed a Pradhan or up-Pradhan is prima facie found to have committed financial and other irregularities, that itself is sufficient to withdraw the financial and administrative powers. No opportunity is required.

5. So far as the second limb of the argument of the learned counsel for the petitioner, that while conducting the enquiry no opportunity was given, also cannot

be sustained as no opportunity is required to be given nor the same is provided under any rule, where a fact-finding preliminary enquiry has to be conducted in the manner prescribed. Further against the action proposed on 7.1.2003 a notice to show cause was given to the petitioner which was replied on 16 and 17 February, 2003 vide Annexures-6 and 7. It is after taking into account her version that the impugned order was passed.

6. The action against the petitioner has been taken in exercise of the powers conferred under the provisions of the Act and is within the four corners of the proviso appended, to Section 95. There is absolutely no error, nor any illegality in the impugned order. The petition being devoid of merits is thus dismissed.