

Shiv Prasad Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Oct-23-2008

Reported in : 2009(2)AWC1391

Judge : Tarun Agarwala, J.

Appellant : Shiv Prasad

Respondent : State of U.P. and ors.

Disposition : Petition allowed

Judgement :

Tarun Agarwala, J.

1. Heard Sri Arvind Srivastava, the learned Counsel for the petitioner and Sri R.K. Chaube, the learned standing counsel on behalf of the respondents.

2. The petitioner is the elected Pradhan and by the impugned order dated 23.8.2008 the financial and administrative powers of the petitioner was ceased under the proviso to Section 95(1)(g) of the U.P. Panchayat Raj Act. It transpires that on Tehsil Diwas, a complaint was made by some of the villagers against the petitioner on 6.5.2008 and, on that complaint, the District Magistrate passed an order directing the District Panchayat Raj Officer to make an enquiry. This order is found on the record of the District Panchayat Raj Officer, which the Court has

perused. Based on this direction, it transpires that the Block Development Officer as well as the District Panchayat Raj Officer submitted their separate reports and based on these reports, a show cause notice dated 23.6.2008 was issued which is alleged to have been pasted on the house of the petitioner. Since no reply was furnished, the impugned order was passed ceasing the financial and administrative powers. The petitioner, being aggrieved, has filed the present writ petition.

3. The learned Counsel for the petitioner submitted that the Inquiry Officer was not nominated in accordance with the Rules of 1997 nor any opportunity of hearing was provided by the respondent before passing the impugned order. Further, a copy of the preliminary inquiry report was also not supplied and therefore, the impugned order was passed in violation of the principles of natural justice. It was also alleged that compliance of Rules 3 and 4 of the Rules of 1997 was not made and that the material documents were ignored by the respondents while giving their respective inquiry reports.

4. This Court, by an earlier order had directed the respondents to produce the original records which the Court has perused. The financial powers of a Pradhan can be ceased under the proviso to Section 951(1)(g) of the Act provided the inquiry is held by such person and in such manner as may be prescribed. The procedure and the manner for holding the inquiry is prescribed under the U.P. Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997 (hereinafter referred to as the Rules of 1997). For facility, Rule 3 of the Rules which is relevant for the purpose of the case is quoted hereinbelow:

3. Procedure relating to complaints.-(1) Any person making a complaint against a Pradhan or Up-Pradhan may send 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 complainant's 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 complainant.

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

5. From the aforesaid procedure, it is clear that a complaint against the Pradhan has to be accompanied by an affidavit of the complainant verified before a Notary. Sub-clause (5) of Rule 3 indicates that a complaint which does not comply with any of the foregoing provisions of Rule 3 of the Rules shall not be entertained. The usage of the word 'shall' is important and in my opinion, is mandatory. The non-compliance of Rule 3 of the Rules of 1997 would vitiate any inquiry made pursuant to such noncompliance of the Rules.

6. In the present case, a perusal of the original record of the District Panchayat Raj Officer clearly indicates that a complaint was made by certain members of the Gram Panchayat against the petitioner on Tehsil Divas on 6.5.2008 and this complaint was not supported by a notarised affidavit. Consequently at the initial threshold itself, the complaint ought to have been rejected by the District Magistrate and no inquiry could have been initiated against the petitioner.

7. In view of the aforesaid, the impugned order ceasing the financial and administrative powers of the petitioner cannot be sustained and is quashed. The writ petition is allowed. It would be open to the District Magistrate to initiate a fresh inquiry in accordance with law against the petitioner.