

Smt. Ramesho Devi Kashyap Vs. State of Uttarakhand and anr.

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Court : Uttaranchal

Decided On : Dec-01-2008

Reported in : AIR2009Utr41

Judge : Prafulla C. Pant, J.

Appellant : Smt. Ramesho Devi Kashyap

Respondent : State of Uttarakhand and anr.

Disposition : Petition allowed

Judgement :

ORDER

Prafulla C. Pant, J.

1. By means of this writ petition, the petitioner has sought writ in the nature of certiorari, quashing the preliminary enquiry report dated 27-11-2007 (An-nexure-1 to the writ petition) and orders dated 28-4-2008 (copies Annexures-2 and 3 to the writ petition), whereby the respondent No. 1 has divested the petitioner of administrative and financial powers under Section 29 of the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Act, 1961 and appointed Commissioner, Garhwal Division, to conduct the final enquiry.

2. Heard learned Counsel for the parties and perused the affidavit, counter-affidavit and rejoinder affidavit filed on behalf of the parties.

3. Brief facts of the case, as narrated in the writ petition, are that the petitioner was elected as Chairman of the Zila Panchayat, Haridwar, in the elections held in the year 2005. She took over the charge of said office on 18-11-2005, and since then was discharging her duties. The Vice-Chairman and nine other members of the Zila Panchayat, with ulterior motive to settle the political score, made false complaint to respondent No. 1 on 31-3-2006 with eight allegations against the petitioner. Copy of said complaint is Annexure-5 to the writ petition. The respondent No. 1, vide letter dated 29-9-2006, appointed respondent No. 2 (District Magistrate, Haridwar) as an Enquiry Officer to conduct the preliminary enquiry in the matter. On 11-12-2006, the respondent No. 2 issued a notice to the petitioner to give reply against each allegation mentioned in the complaint. It is alleged by the petitioner that neither the compliance of Rule 3, nor that of Rule 4 of the Uttar Pradesh Kshettra Panchayats and Zila Panchayats (Removal of Pramukhs, UpPramukhs, Adhyakshas and Upadhyakshas) Enquiry Rules 1997, were made, as such, the preliminary enquiry report conducted by the respondent No. 2, is illegal and without jurisdiction. It is submitted that no show-cause notice was given to the petitioner within the time prescribed, nor any reply could have been sought under the law from the petitioner by the respondent No. 2 in respect of new allegations made in the subsequent complaints made against the petitioner, as the subsequent complaints were not supported with the affidavits as required under the rules. Challenging the orders passed by respondent No. 1 to hold the final enquiry on the basis of the preliminary enquiry submitted by respondent No. 2, it is stated in the writ petition that the respondent No. 1 has not recorded the satisfaction to hold the final enquiry, as per the rules. As to the findings recorded in the preliminary enquiry report it is stated that there was no intentional disregard of any Rules on the part of the petitioner. No financial loss was caused to the Zila Panchayat. It is further stated in the writ petition that as to the finding relating to misconduct on the part of Sri Pal Singh Kashyap (husband of the petitioner) the same is false. It is also stated that the contracts were given to the highest bidders. Lastly, it is stated that there is no finding in the preliminary enquiry report, as to the embezzlement of public money done by the petitioner.

4. In the counter-affidavit filed on behalf of the respondents It has been stated that the preliminary enquiry was conducted in accordance with the provisions of the Uttar Pradesh Kshettra Panchayats and Zila Panchayats (Removal of Pramukhs, Up-Pramukhs, Adhyakshas and Upadhyakshas) Enquiry Rules, 1997 (applicable to the State of Uttarakhand). It is further stated that a detailed enquiry (preliminary) was conducted by the District Magistrate, Haridwar (respondent No. 2), who submitted his preliminary enquiry report on 27-11-2007. It is only after considering said report that the State Government through the impugned orders dated 28-4-2008, divested the petitioner of her administrative and financial powers by appointing a three member committee and by a separate order nominated Commissioner, Garhwal Division, Pauri, as an Enquiry Officer to conduct the final enquiry. It has been further stated in the counter-affidavit that the ground taken in the writ petition, challenging the impugned report and the orders are not tenable In law.

5. The background of the case is that one Rao Ali Bahadur Khan, Vice Chairman, and some other members of the Zila Panchayat, Haridwar, made a complaint to the State Government against the present petitioner on which the State Government vide its order dated 17/29-10-2007 17/29-10-2007 , directed the District Magistrate, Haridwar (respondent No. 2) to conduct enquiry and submit the report. The said complainant Rao Ali Bahadur Khan, thereafter, filed writ petition No. 2348 (M/S) of 2007, seeking a direction from the Court that respondent No. 2 should conduct the preliminary enquiry within reasonable time as directed by the State Government. This Court vide its order dated 23-11-2007 (copy of which is Annexure-14 to the writ petition) directed the respondent No. 2 to hold the preliminary enquiry keeping in mind the spirit of Rule 4 of the Uttar Pradesh Kshettra Panchayats and Zila Panchayats (Removal of Pramukhs, Up-Pramukhs, Adhyakshas and Upadhyakshas) Enquiry Rules, 1997. Thereafter it appears that the respondent No. 2 conducted the preliminary enquiry as per the orders dated 17-10-2007 issued by the State Government and submitted the impugned preliminary enquiry report dated 27-11-2007. Once again, Rao Ali Bahadur Khan filed another writ petition No. 53 (M/S) of 2008, in which vide order dated 4-4-2008, the respondent No. 1 (State of Uttarakhand) was directed to pass the appropriate orders as per the provisions contained in Section 29 of the Uttar

Pradesh Kshettra Panchayats and Zila Panchayats Act, 1961 (copy of said order dated 4-4-2008 is Annexure-17 to the writ petition). Thereafter, the present petitioner, who was respondent in said writ petition filed Special Appeal No. 60-of 2008, which was disposed of by the Division Bench of this Court vide order dated 30-4-2008 (copy of which is Annexure-18 to the writ petition). The order dated 4-4-2008, passed by learned single Judge in Writ Petition No. 53 of 2008 (M/S) was not disturbed by this Court, but it was directed that writ petition No. 53 of 2008 (M/S) filed by Rao Ali Bahadur Khan and writ petition No. 73 of 2008 (M/S) filed by Ramesho Devi (present petitioner) be heard and disposed of together. However, writ petition No. 73 of 2008 (M/S) was withdrawn by the petitioner with liberty to file afresh, and writ petition No. 53 of 2008 (M/ S) was also dismissed as infructuous, for the Government had taken a decision on the preliminary enquiry report by directing to hold final enquiry and divesting the present petitioner of her administrative and financial powers. As such, this writ petition, which was filed by the petitioner after withdrawing the writ petition No. 73 of 2008 (M/ S) is heard by this Court.

6. Before further discussion, this Court thinks it just and proper to quote the relevant provisions of law applicable to this case. Rules 3, 4 and 5 of the Uttar Pradesh Kshettra Panchayats and Zila Panchayats (Removal of Pramukhs, Up-Pramukhs, Adhyakshas and Upadhyakshas) Enquiry Rules 1997, read as under:

3. Procedure relating to complaints.- (1) Any person making a complaint against a Pramukh, Up-Pramukh, Adhyaksha or Upadhyaksha may send his complaint to the Secretary to the State Government in the Panchayati Raj Department, Vidlian Bhawan, Lucknow.

(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 fact 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 affidavit respectively.

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

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

4. Preliminary enquiry.- (1) The State Government may, on the receipt of a complaint referred to in Rule 3 or otherwise appoint an officer not below the rank of an Additional District Magistrate in the case of a Pramukh or Up-Pramukh and District Magistrate in the case of an Adhyaksha or Upadhyaksha to conduct a preliminary enquiry with a view to finding out if there is a prima facie case for a formal enquiry in the matter.

(2) The officer appointed under Sub-rule (1) shall conduct the preliminary enquiry as expeditiously as possible and submit his report to the State Government within a fortnight of his having been so appointed.

5. Enquiry Officer - where the state Government is of the opinion, on the basis of the report referred to in Sub-rule (2) of Rule 4, that an enquiry should be held against a Pramukh or Up-Pramukh under Section 16 or against an Adhyaksha or Upadhyaksha under Section 29, it shall, by an order, appoint an officer to hold the enquiry, who shall not be below the rank of the District Magistrate in the case of an enquiry under Section 16, and not below the rank of a Commissioner in the case of an enquiry under Section 29.

7. Learned Counsel for the petitioner argued that the State Government has not recorded the opinion before directing to hold final enquiry under Rule 5 of the aforesaid rules, as such, impugned Order dated 28-4-2008, passed by respondent No. 1 to hold final enquiry against the petitioner, nominating Commissioner Garhwal Division, Pauri, is illegal. Plain language of the Rule 5 only requires that where the State Government is of the opinion on the basis of the preliminary enquiry report that an enquiry should be held it can direct any enquiry be held against the Chairman or Vice-Chairman of Zila Panchayat under Section 29 by

appointing an officer not below the rank of the District Magistrate. The impugned order No. 384 dated 28-4-2008 (copy of which is Annexure-3 to the writ petition) clearly discloses. that the respondent No. 1 (State) has considered the preliminary enquiry report submitted by the District Magistrate before nominating Commissioner, Garhwal Division, as Enquiry Officer, in the matter. The expression (Vernacular matter omitted.) in the impugned order. (Annexure-3) clearly shows that the State Government has opined to hold the enquiry after considering the report of the District Magistrate. No special reasons are required to be mentioned by the State Government in the order nominating the Enquiry Officer.

8. Mr. Alok Singh, learned senior Counsel assailing the preliminary enquiry report dated 27-11-2007 (copy Annexure-1 to the writ petition) submitted that the provisions of Rule 3 and Rule 4, quoted above, are not complied with. Having gone through the record, this Court finds that it is not a disputed fact that a written complaint was made against the petitioner by Rao Ali Bahadur Khan, Vice-Chairman and nine other members of the Zila Panchayat to the State Government. A copy of the complaint is filed as Annexure-5 to the writ petition. Copies of affidavits of all the complainants filed in support of said complaint are also annexed with the copy of the complaint as is apparent from pages 69 to 110 of the paper book, which form part of Annexure-5 to the writ petition. The contention of learned Counsel for the petitioner is that the District Magistrate has wrongly entertained the subsequent complaints to the complaint originally submitted by the complainants, and only on the nine points mentioned in the complaint (Annexure-5 to the writ petition) the enquiry should have been confined. There is no such bar either under Rule 3 or under Rule 4, quoted above, which requires that if more than one complaints are received and referred to the District Magistrate for enquiry by the State Government, the same cannot be clubbed together. Apart from this, copy of the letter dated 29-9-2006, issued by the Secretary, Government of Uttarakhand to the District Magistrate, Haridwar, whereby the respondent No. 1 has directed the respondent No. 2 to hold the preliminary enquiry (a copy of which is Annexure-6 to the writ petition) clearly shows that the District Magistrate was directed to hold preliminary enquiry also in respect of allegations that the petitioner's husband is interfering in the working of the Zila Panchayat (this allegation relating to the husband of the petitioner finds place in the subsequent

complaint which also forms part of the enclosures of the order passed by the Government on 29-9-2006) as such, it cannot be said that the District Magistrate has held preliminary enquiry in respect of such allegations regarding which there was no order from the State Government.

9. Learned senior Counsel appearing on behalf of the petitioner drew attention of this Court to the preliminary enquiry report dated 27-11-2007 (copy Annexure-1 to the writ petition) and argued that out of the 22 points on which the enquiry was made, none of the allegations found true are so serious which can be said to be sufficient for exercising powers by the State Government to divest the petitioner of her financial and administrative powers or to hold a final enquiry against her. I have gone through the 24 pages detailed preliminary enquiry report submitted by the District Magistrate and found that on some of the points petitioner has not been found guilty, but the allegations with regard to which petitioner has been found guilty cannot be brushed aside, lightly. No doubt, as to the financial irregularities viz. accepting tenders and payment made to the contractors for the work done, it is possible that the petitioner might not have any intentional act on her part to cause any wrongful gain to her. But, Point Nos. 8 and 12 relate to open interference in the functioning of the Zila Panchayat, Haridwar, by Sri Pal Singh Kashyap (husband of the petitioner), who is also said to be Vice President of the State Unit of Bahujan Samaj Party. There are allegations that he compels the employees and officers of Zila Panchayat to work illegally. The preliminary enquiry report shows that Sri Sher Singh, Financial Advisor to the Zila Panchayat was called by him in the office of the Chairman of the Zila Panchayat, where he was sitting in place of his wife, and asked the aforesaid officer to grant licenses in violation of the rules. When, he was told that the same would be against the rules, he hurled abuses and misbehaved with the Financial Advisor, and forced him to sign on the papers. It has also come in the preliminary enquiry report that he (husband of the petitioner) assaulted the said officer, who had to run away in order to save his life. The enquiry report and finding on this point is very serious in nature and it cannot be said that the State Government has acted illegally in divesting the petitioner of her financial and administrative powers, and in nominating the Commissioner, Garhwal Division to hold the enquiry, in the matter.

10. On behalf of the petitioner attention of this Court is drawn to the case of Smt. Chinta Yadav v. State of U.P. decided on 1-4-2008, Reported in (2008) 6 All LJ (All) 101 by the Division Bench of the Allahabad High Court (Lucknow Bench) in which in Para 36, following observations have been made:

The mandatory requirement of holding a preliminary enquiry before a formal enquiry is ordered by the State Government, is, in fact, a provision which safeguards the interest of the elected Adhyaksha or Upadhyaksha, giving due sanctity to the elected office and not only of protecting the office bearer from being ousted from office but also the institution of self-Government, being protected by designed and concerted actions and for avoiding casual complaints, which may be politically motivated or which may suffer from any ulterior motive and may be in some cases, based on non-existing facts.

This Court does not disagree with the observations of the Division Bench of the Allahabad High Court (2008) 6 All LJ (DOC) (All) 101 and has no hesitation in saying that an elected Adhyaksha of Zila Panchayat has a statutory right to exercise his functions and discharge his duties for which he is elected and he can neither be removed nor his powers can be curtailed, otherwise than in accordance with law. Of course, such elected authority can only be removed by an order of removal passed by the State Government, if the authority is found guilty of gross misconduct or abuse of powers. It is pertinent to mention here provisions contained in Section 29 of the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Act, 1961 (applicable to the State of Uttarakhand), which reads as under:

29. (1) If in the opinion of the State Government the Adhyaksha or Up-Adhyaksha while acting in place of Adhyaksha wilfully omits or refuses to perform his duties or functions under this Act or abuses the powers vested in him or is found to be guilty of misconduct in the discharge of his duties, (or because physically or mentally incapacitated for performing his duties) the State Government, after giving the Adhyaksha or Up-Adhyaksha, as the case may be a reasonable opportunity for explanation may by order remove him from office (and such order shall be final and not open to be questioned in a Court of law):

Provided that where in an enquiry held by such person and in such manner as may be prescribed, an Adhyaksha or Upadhyaksha is prima facie found to have committed financial and other irregularities such Adhyaksha or Upadhyaksha 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 elected members of the Zila Panchayat appointed in this behalf by the State Government.

(2) xxx xxx xxx(3) An Adhyaksha or Up-Adhyaksha, removed from his office under this section, shall not be eligible for election as Adhyaksha or Up-Adhyaksha for a period of three years from the date of his removal.

11. The proviso to Sub-section (1) quoted above, clearly empowers the State Government to divest the Adhyaksha of Zila Panchayat from discharging his/her administrative, financial powers if such person is prima facie found to have committed financial and other irregularities. Sub-section (1) quoted above, further empowers the State Government to remove the Adhyaksha from his office after giving reasonable opportunity for explanation if such person is found to have abused the powers vested in him. Permitting the husband to sit in the office of the Zila Panchayat independently and to direct the subordinate staff to act in a particular manner, that too against the rules, is nothing but gross abuse of powers by the person holding the office. As such, after going through the preliminary enquiry report submitted by the District Magistrate, this Court does not find any illegality on the part of the State Government in issuing the two orders dated 28-4-2008, whereby the petitioner was divested of administrative and financial powers, and Commissioner, Garhwal Division, was appointed to hold the final enquiry.

12. For the reasons as discussed above, this Court does not find any sufficient reason to interfere with the preliminary enquiry report (Annexure-1). Also, there is no illegality in the impugned orders dated 28-4-2008 (Annexure-2 and Annexure-3 to the writ petition) whereby the petitioner is divested of administrative and financial powers, and Commissioner, Garhwal Division is nominated enquiry officer. Therefore, this writ petition is dismissed with the direction that the Enquiry Officer (Commissioner, Garhwal Division) conducting the final enquiry initiated

against the petitioner, shall not be influenced by the observations made in this judgment.

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