

**(2023) 11 AHC CK 0021**

**Allahabad High Court**

**Case No:** Writ - C No. - 37911 Of 2023

Uma Singh

APPELLANT

Vs

State Of U.P. And 3 Others

RESPONDENT

**Date of Decision:** Nov. 9, 2023

**Acts Referred:**

- U.P. Panchayat Raj Rules, 1947 - Rule 256, 257
- U.P. Panchayat Raj Act, 1947 - Section 95(1)(g)

**Hon'ble Judges:** Manju Rani Chauhan, J

**Bench:** Single Bench

**Advocate:** Vineet Kumar Singh

**Final Decision:** Allowed

### **Judgement**

Manju Rani Chauhan, J

1. Heard Mr. Vineet Kumar Singh, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.
2. This writ petition has been filed by the petitioner with a prayer to quash the impugned order dated 21.09.2023 passed by the District Magistrate, Maharajganj and a further prayer to direct the respondents not to give effect to the impugned order referred to above.
3. Brief facts of the case are that the petitioner was elected Pradhan of Gram Panchayat Thuthibari, Block Nichlaul, District Maharajganj, whose tenure had come to an end in the year 2020. A complaint was filed by one Vijay Kumar Maddheshiya alleging commission of financial irregularities in undertaking various development works in the concerned Gram Panchayat. On the basis of the aforesaid complaint, a three member committee, comprising of Consulting Engineer, Vikaskhand-Nichlaul, Maharajganj, Bhoomi Sanrakshan Adhikari, Maharajganj and Sub-Divisional Magistrate, Maharajganj, was constituted to inquire into the matter, which

submitted its report on 02.09.2023. On the basis of which, the impugned order dated 21.09.2023 has been passed stating it to be a show cause notice vide which the petitioner has been directed to submit her explanation within 15 days alongwith an evidence as to why the financial and administrative powers not be seized by appointing a three member committee in terms of Section 95(1)(g) of U.P. Panchayat Raj Act, 1947. Hence, the present writ petition has been filed.

4. Learned counsel for the petitioner submits that the three member committee has submitted the inquiry report dated 02.09.2023 without jurisdiction as it is not competent in law to hold such an inquiry for the purpose of imposition of surcharge in view of the legislative mandate engrafted in Rules 256 and 257 of the U.P. Panchayat Raj Rules, 1947, inasmuch as such inquiry ought to have been conducted by the Chief Audit Officer, which as per the order of delegation made by him is now to be conducted by the District Audit Officer. In support of his contention, he has relied upon the judgment of this Court in the case of Dinesh Kumar and others vs. State of U.P. and others reported in 2023(1) ADJ 181 (DB).

5. He further submits that the District Magistrate, Maharajganj should have taken care to keep its mind open to the issues while seeking explanation from the petitioner but in the instant case, the impugned order has come to be passed in the name of show cause notice with premeditation which would not serve any purpose as the respondent no.2 issuing the alleged show cause notice has already made up its mind.

6. He further submits that the show cause notice issued to the petitioner is not justified as it has been issued with premeditation as at the time of issuing the notice, it has been stated that if the explanation is not found satisfactory then the petitioner will have to deposit the aforesaid amount or the same has to be recovered as an arrear of land revenue, which means that the authorities have already made up their mind, while issuing the notice. In support of his contention, he has relied upon the judgment of this Court in the case of M/s Bcits Pvt. Ltd. vs. Purvanchal Vidhyut Vitran Nigam Ltd. and another reported in 2022(7) ADJ 161 (DB) and he has also relied upon the judgment of the Apex Court in the case of Siemens Ltd. vs. State of Maharashtra and others report in (2006) 12 SCC 33.

7. On the cumulative strength of the aforesaid, learned counsel for the petitioner submits that the impugned order dated 21.09.2023 passed by the District Magistrate, Maharajganj is liable to be set aside.

8. Learned Standing Counsel could not dispute the aforesaid fact.

9. When a notice is issued with premeditation, a writ petition would be maintainable. In the case of Siemens Ltd. vs. State of Maharashtra and others report in (2006) 12 SCC 33, the Apex Court has held as under:-

"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. AIR 1987 SC 943, Special Director and Another v. Mohd. Ghulam Ghouse and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and Others v. Union of India and Others (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause."

10. The Division Bench of this Court in the case of M/s Bcits Pvt. Ltd. vs. Purvanchal Vidhyut Vitran Nigam Ltd. and another has held as under:-

"5. In Siemens Ltd. vs. State of Maharashtra and Others, 2006 (13) SCALE 297 a challenge was made to a show cause notice on the ground that if it has been issued with pre-meditation then issuing notice and seeking explanation would not serve any purpose as the person issuing notice had already made up its mind. The contention was upheld. The relevant observations made in this behalf in Paragraphs No. 8, 9 and 10 are reproduced below:-

"8. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. MANU/SC/0711/1987: [1987] 2SCR444, Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr, MANU/SC/0025/2004: 2004(164) ELT141 (SC) and Union of India and another v. Kunisetty Satyanarayana MANU/SC/5137/2006: AIR2007SC906 but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and Ors. v. Union of India and Ors. MANU/SC/0643/1987: (1988) ILLJ162SC ]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.

9. The said principle has been followed by this Court in V.C. Banaras Hindu University and Ors. v. Shrikant MANU/SC/8170/2006: AIR2006SC2304, stating:

The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High

Court was illusory in this case.

In K.I. Shephard and Ors. etc. etc. v. Union of India and Ors, MANU/SC/0643/1987 (1988): ILLJ162SC, this Court held:

...It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really yield any fruitful purpose.

10. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable."

11. There is no doubt that at the stage of show cause, the person against whom any action has been taken must be informed about the allegations made against him so that he can defend himself and prove his innocence. While issuing show cause notice, the authorities should obviously take care to keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.

12. In the present case, while issuing show cause notice, the authorities have not kept an open mind as they, after calling for an explanation, have proceeded to mention in the notice that in case the explanation is found unsatisfactory then the petitioner shall deposit the recovery amount or the same would be recovered as an arrear of land revenue. Be that as it may, while issuing show cause notice, the authorities must keep an open mind as they are to act fairly in adjudging the guilt, which has not been done in present case.

13. Perusal of the record as well as the inquiry report goes to show that the inquiry has been conducted by a Committee comprising of Consulting Engineer, Vikaskhand-Nichlaul, Maharajganj, Bhoomi Sanrakshan Adhikari, Maharajganj and Sub-Divisional Magistrate, Maharajganj, relying upon which the impugned order has been passed, wherein recovery of Rs.1,21,777/- has been made against the petitioner. Thus the inquiry has not been conducted by the Chief Audit Officer in terms of relevant Rules, therefore, the entire proceedings are vitiated as the same cannot be sustained in the eyes of law.

14. Considering the submissions advanced by learned counsel for the parties and going through the material on record, this Court finds that the order dated 21.09.2023 passed by the District Magistrate, Maharajganj is liable to be set aside. It is, accordingly, set aside.

15. However, it is open to the respondent authorities to look into the matter and after giving proper notice and providing proper opportunity, in accordance with the relevant provisions of the U.P. Panchayat Raj Act and the Rules, 1947, conduct proper enquiry and pass appropriate orders, in accordance with the aforesaid Rules.

16. The writ petition stands allowed, accordingly. No order as to costs.