

(2024) 01 UK CK 0123

Uttarakhand High Court

Case No: Writ Petition No. 242 Of 2024 (M/S)

Rajni Bhandari

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision: Jan. 31, 2024

Acts Referred:

- Uttarakhand Panchayati Raj Act, 2016 - Section 14(2), 138(1)
- General Clauses Act, 1897 - Section 19, 19A
- Uttar Pradesh Kshettra Panchayats And Zila Panchayats (Removal Of Pramukhs And Up-Pramukhs, Adhyakshas And Upadhyakshas) Enquiry Rules, 1997 - Rule 3, 3(5), 4, 4(1), 4(2), 6
- Constitution Of India, 1950 - Article 311, 367

Hon'ble Judges: Rakesh Thapliyal, J

Bench: Single Bench

Advocate: Devadatt Kamat, Vikas Bahuguna, S.N. Babulkar, C.S. Rawat, Gajendra Tripathi

Judgement

Rakesh Thapliyal, J

1. By the instant petition, the petitioner is challenging the order dated 10.01.2024, whereby the petitioner has been removed from the post of Chairperson of Zila Panchayat, Chamoli. This order has been passed by invoking the power as conferred under Section 138(1) of the Uttarakhand Panchayati Raj Act, 2016 (hereinafter referred as, "the Act"). The petitioner is challenging the order dated 10.01.2024 primarily on two grounds:-

(i) The impugned order dated 10.01.2024 has been passed in violation of the Act and in violation of the procedure prescribed in U.P. Kshettra Panchayats And Zila Panchayats (Removal of Pramukhs and Up-Pramukhs, Adhyakshas and Up-Adhyakshas) Enquiry Rules, 1997 (hereinafter referred as, "the 1997 Rules").

(ii) The second ground of challenge is that the impugned order dated 10.01.2024, has been passed without application of mind and without being any finding the petitioner is guilty of any misconduct, or has caused loss or damage to the fund or property of the Panchayat as contemplated under Section 138(1) of the Act.

2. In the year of 2012-13, No Confidence Motion was passed against the then Chairperson of Zila Panchayat, who was removed from the office of Zila Panchayat, Chamoli and due to such removal the petitioner was elected as Chairperson of Zila Panchayat, Chamoli for 15 months. Thereafter, the petitioner was again elected as Chairperson, Zila Panchayat, Chamoli in the month of December, 2019 for five years.

3. In the present case, in respect of certain charges in awarding the contract in the year 2012-13, the respondents have decided to initiate an inquiry by appointing the District Magistrate, Chamoli as an Inquiry Officer pursuant to an order dated 31.07.2014 and thereafter, after appointment of the District Magistrate, the District Magistrate delegated the power to the Chief Development Officer, Chamoli for holding a preliminary inquiry and the Chief Development Officer constituted a Three Members Committee for the purposes of

holding of preliminary inquiry. Thereafter, the Three Members Inquiry Committee submitted a preliminary report and it was forwarded by the Chief Development Officer, Chamoli to the District Magistrate, Chamoli by letter dated 12.02.2015 and the District Magistrate, Chamoli forwarded the said report to the Principal Secretary on 03.06.2016.

4. Learned Senior Counsel for the petitioner submits that in the Three Members Committee Report it is clearly mentioned that there is no financial loss in awarding the contract. Thereafter, on 15.06.2015, the State Government directed the District Magistrate, Chamoli, to ascertain the financial loss suffered due to the non-acceptance of the lowest bid, however no decision was taken. Subsequently, a WPIL No.71 of 2016, Mahendra Bhatt vs. State of Uttarakhand and others was preferred before this Court and the said PIL was disposed of finally by this Court on 28.08.2018, whereby the directions were issued to the State Government to take a decision on the report dated 12.02.2015, submitted by the Chief Development Officer within a period of six months. Thereafter, respondent no.4, the District Magistrate on 02.04.2019, submitted another report reiterating that there was no financial loss to the Zila Panchayat, Chamoli and it was for the State to take appropriate further action. In the meantime, the petitioner was re-elected as Chairperson, Zila Panchayat, Chamoli.

5. Thereafter, without conducting the final inquiry as contemplated under the 1997 Rules, a show cause notice was issued to the petitioner on 18.01.2021 and on 07.03.2021 the petitioner filed response to the show cause notice wherein it was categorically indicated that there was no irregularity, as alleged. Subsequently, on 25.01.2023, the petitioner was removed from the post of Chairperson and the same was assailed in WPMS No.291 of 2022, by the petitioner. The order of removal dated 25.01.2023, passed by the Additional Secretary was quashed by this Court by order dated 01.02.2023 leaving it open for the State that if at all any action is required to be taken based on the preliminary inquiry report referred to in para 4 of the order of removal dated 25.01.2023, they will have to resort to second phase of proceedings too of conducting a final inquiry in the light of the provisions contained under Rule 6 of the Rules 1997. Relevant extract of the said order dated 01.02.2023 is being reproduced as under:-

“Subject to the aforesaid, the impugned order is quashed, the writ petition is allowed. The allowing of the writ petition will be without prejudice to the rights of the State to proceed to conduct a final inquiry as per the procedure conducted under the Rules of 1997.

Having allowed the writ petition would obviously mean that when there is a direction to proceed with in accordance with Rule 6 of 1997, it will imply within itself the right of the person reserved to put a challenge and question to the observations made in the preliminary inquiry, which is the basis of the passing of the impugned order in question.”

6. Thereafter, a further show cause notice was issued to the petitioner on 15.04.2023, levelling the same charges as was levelled earlier, and the petitioner submitted a detailed reply to the said show cause on 01.05.2023, which was further followed by a supplementary reply, which was submitted on 08.05.2023, and thereafter, a detailed inquiry report was submitted by the Commissioner Garhwal Mandal, who was the Inquiry Officer. Again the petitioner was given a show cause notice on 02.08.2023, which was again challenged by the petitioner in WPMS No.2367 of 2023, Rajni Bhandari vs. State of Uttarakhand, and the writ petition was dismissed as withdrawn with liberty to the petitioner to file response to the show cause notice and directions were issued to the respondents to take a decision on the said show cause notice. Thereafter, on 30.08.2023, the petitioner submitted a detailed response to the show cause notice dated 02.08.2023 and after submitting a reply by the order impugned dated 10.01.2024, the petitioner has been removed from the post of Chairperson, Zila Panchayat Chamoli and being aggrieved with the same, the present petition has been filed.

7. Mr. Devadatt Kamat, learned Senior Counsel for the petitioner submits that the procedure as stipulated under Rule 4 and 6 of the 1997 Rules has been completely over looked and not followed while passing the order impugned. Learned Senior Counsel submits that in the present case, the District Magistrate, Chamoli was appointed to hold the preliminary inquiry in view of Rule 4 of the 1997 Rules, but instead of this what the District Magistrate has done, he has delegated the powers to the Chief Development Officer, who constituted a Three Members Inquiry Committee to hold the preliminary inquiry and the said Three Members Inquiry Committee submitted its report, which was forwarded to the Chief Development Officer, who further forwarded it to the District Magistrate, Chamoli and the District Magistrate, Chamoli forwarded the said report to the Government. Learned Senior Counsel submits that in view of Rule 4 of the 1997 Rules, the District Magistrate has no power to delegate the powers to any authority for the purposes of holding the preliminary inquiry. Now for examining this aspect Rule 4 of the 1997 Rules is being extracted herein before:-

“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.”

8. Learned Senior Counsel for the petitioner submits that the District Magistrate, Chamoli was appointed by the State Government in view of Rule 4(1) and if the District Magistrate is appointed for conducting the preliminary inquiry then in view of Rule 4(2) of the 1997 Rules the District Magistrate should conduct the preliminary inquiry himself and he should not delegate the powers to the Chief Development Officer. In reference to this Mr. Devadatt Kamat, learned Senior Counsel for the petitioner submits that as per Rule 4(2) of the 1997 Rules, it is mandatory for the District Magistrate to conduct the preliminary inquiry himself. On this aspect he has placed reliance on the judgment in the case of **Kesari Devi vs. State of U.P. and others, 2005 SCC OnLine All 2371** and he particularly placed reliance on para nos.44, 45 and 46 of the said judgment which are being reproduced herein under:-

“44. The 1997 Rules, quoted hereinabove, clearly provide that the preliminary inquiry has to be conducted, in the case of an Adhyaksha, by the District Magistrate and in the case of Upadhyaksha and Member, by Additional District Magistrate. It is, thus, clear that only the District Magistrate can hold the inquiry. The words used in the Statute have to be construed strictly.

45. In Kailash Nath Agarwal v. Pradeshia Indust. & Inv. Corp. of U.P., (2003) 4 SCC 305 : AIR 2003 SC 1886, the Hon'ble Supreme Court held that if the legislature has used two different words in the same statute, it is to be construed as carrying different meanings. The Hon'ble Supreme Court had an occasion to examine the said Rule 4 of 1997 Rules in State of U.P. v. Smt Janki Devi Pal, (2003) 3 SCC 117 : AIR 2003 SC 1825, wherein the Hon'ble Apex Court interpreting the said rule held as under:-

“The draftsman of the Rules has clearly used the term “District Magistrate” as distinct from the term “Additional District Magistrate”. The definition of District Magistrate in clause (14) of Section 2 of the Act is not applicable if there be something repugnant in the subject or context. The very use of “Additional District Magistrate” and “District Magistrate” in the same rule, consisting of one sentence, clearly suggests that the two terms are used in two different meanings. The High Court appears to be right in holding that an inquiry against a Pramukh or Up-Pramukh can be held by an officer not below the rank of an Additional District Magistrate while as against Adhyaksha or Upadhyaksha - these two being democratically elective offices, higher in status than that of Pramukh or Up-Pramukh-the inquiry should be held by the District Magistrate.”

46. Thus, it is evident from the above that the preliminary inquiry is to be conducted only by the District Magistrate and he cannot ask any other officer to hold the inquiry.
COMPLAINT/AFFIDAVIT-VERIFICATION THEREOF:”

9. Another judgment which has been placed reliance by Mr. Devadatt Kamat is in the case of **Harish Singh Aithani vs. State of Uttarakhand and others, 2023 SCC OnLine Utt 1166**. In this judgment, this Court also take note of the judgment rendered by Allahabad High Court in the case of Keshri Devi in para 47 and the conclusion has been drawn in 56, para 47 and para 56 of the said judgment are being reproduced as herein under:-

“47. In the case of Kesari Devi (supra), the Hon'ble Allahabad High Court has categorically dealt with this aspect and has held that “preliminary inquiry under Rule 4 has to be conducted in accordance with law by the District Magistrate himself”.

56. In view of the foregoing discussion, this Court is of the view that the complaint on which action is taken against the petitioner is not in conformity with Rule 3 of the 1997 Rules. In view thereof, the provisions of sub-Rule (5) of Rule 3 of the 1997 Rules would come into play and according to it, the complaint should not have been entertained. By entertaining such a complaint, an irregularity has been committed, which is incurable. In addition to it, the respondent no. 4, the District Magistrate did not conduct an enquiry on his own, as mandated under Rule 4 of the 1997 Rules. Therefore, initial enquiry is also bad in the eye of law. Accordingly, this Court is of the view that every consequential action taken on the complaint gets vitiated. In view thereof, the impugned order dated 28.04.2023 is liable to be quashed.”

10. By referring the aforesaid judgment Mr. Devadatt Kamat, learned Senior Advocate for the petitioner submits that the District Magistrate is not authorized to delegate the powers to the Chief Development Officer, therefore, the initial action of the respondents is bad, and, is contrary to the mandate of Rule 4 of the 1997 Rules. In reference to this learned Senior Counsel placed reliance on another judgment which is in the case of **State of Punjab vs. Davinder Pal Singh Bhullar and others, (2011)14 SCC 770** and submits that in this case, the Hon'ble Supreme Court has held that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order.

11. In respect to the arguments as advanced by Mr. Devadatt Kamat, learned Senior Counsel for the petitioner, learned Advocate General submits that in view of Section 19 and 19-A of the General Clauses Act, 1897 read with Article 367 of the Constitution of India, the District Magistrate can delegate powers to his subordinates. In support of his arguments, learned Advocate General placed reliance on para 13 of the judgment rendered by the Hon'ble Supreme Court in the case of **Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited and another, (2016)16 SCC 818**. Para 13 is reproduced as herein under:-

“13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision.”

12. In reference to the arguments of learned Advocate General, Mr. Devadatt Kamat, learned Senior Counsel further placed reliance on the judgment of this Court in the case of Harish Singh Aithani (*Supra*) and submits that the same arguments were advanced by the learned Advocate General in the said case also, which were turned down.

13. Yesterday, this matter was heard and on the request of learned counsel for the parties this matter is posted for today.

14. Mr. Devadatt Kamat, learned Senior Counsel for the petitioner submits that the petitioner is the elected representative and the manner in which she has been removed without following the procedure as prescribed under Sections 4 and 6 of the 1997 Rules is unsustainable. He submits that since petitioner is an elected representative, he is answerable to the public and, therefore, he is pressing for interim relief. Mr. Kamat has already placed reliance on the judgment of Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir vs. District Collector, Raigad and others, (2012)4 SCC 407**, of which, he further placed reliance on para nos.31, 32, 33, 35 and 36. The extracts of para nos. 31, 32, 33, 35 and 36 are being reproduced hereinunder:-

“31. Undoubtedly, any elected official in local self-government has to be put on a higher pedestal as against a government servant. If a temporary government employee cannot be removed on the ground of misconduct without holding a full-fledged inquiry, it is difficult to imagine how an elected office-bearer can be removed without holding a full-fledged inquiry.

32. In service jurisprudence, minor punishment is permissible to be imposed while holding the inquiry as per the procedure prescribed for it but for removal, termination or reduction in rank, a full-fledged inquiry is required otherwise it will be violative of the provisions of Article 311 of the Constitution of India. The case is to be understood in an entirely different context as compared to the government employees, for the reason, that for the removal of the elected officials, a more stringent procedure and standard of proof is required.

33. This Court examined the provisions of the Punjab Municipal Act, 1911, providing for the procedure of removal of the President of the Municipal Council on similar grounds in Tarlochan Dev Sharma v. State of Punjab [(2001) 6 SCC 260 : AIR 2001 SC 2524] and observed that removal of an elected office-bearer is a serious matter. The elected office-bearer must not be removed unless a clear-cut case is made out, for the reason that holding and enjoying an office, discharging related duties is a valuable statutory right of not only the elected member but also of his constituency or electoral college. His removal may curtail the term of the office-bearer and also cast stigma upon him. Therefore, the procedure prescribed under a statute for removal must be strictly adhered to and unless a clear case is made out, there can be no justification for his removal. While taking the decision, the authority should not be guided by any other extraneous consideration or should not come under any political pressure.

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide Jyoti Basu v. Debi Ghosal [(1982) 1 SCC 691 : AIR 1982 SC 983], Mohan Lal Tripathi v. District Magistrate, Rae Bareilly [(1992) 4 SCC 80 : AIR 1993 SC 2042] and Ram Beti v. District Panchayat Raj Adhikari [(1998) 1 SCC 680 : AIR 1998 SC 1222]).

36. In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of their choice.”

15. Mr. Devdatt Kamat further placed reliance on the judgment passed by this Court in the case of **Deepak Bijalwan vs. State of Uttarakhand and others, WPMS No.97 of 2022**, decided on 27.01.2022 and submits that the petitioner being elected representative cannot be removed without following the procedure as prescribed under the 1997 Rules. He further submits that the manner in which the petitioner has been removed is wholly unwarranted and if, interim order is not granted, then the entire object of filing the writ petition will be frustrated. This Court is in agreement with the submission made by Mr. Devadatt Kamat that balance of convenience lies in favour of granting an order of stay.

16. In response to this, learned Advocate General placed reliance on a judgment of the Hon'ble Supreme Court in the case of **State of U.P. vs. Ram Sukhi Devi**, decided on 05.10.2004 and I gone through this judgment, but in my opinion, this judgment will not help the respondents particularly, in view of the observation of the Hon'ble Apex Court in the case of Ravi Yashwant Bhoir (*Supra*). Even otherwise, on perusal of the preliminary inquiry report, which is submitted by Three Members Committee, there is no financial loss to the Government. Apart from this, admittedly here in this case, the District Magistrate delegated the powers to the Chief Development Officer, which is not permissible in view of Rule 4 of the 1997 Rules itself as well as in view of the judgment placed reliance upon by the learned Senior Counsel for the petitioner. Therefore, this Court is of the view that the removal of the petitioner should be stayed.

17. Let the respondents may file their counter affidavit within two weeks.

18. One week thereafter, is granted to the learned counsel for the petitioner to file rejoinder affidavit.

19. List this matter on 27.02.2024.

20. In the meantime, the order impugned dated 10.01.2024, passed by respondent no.1 shall remain stayed.