

(2006) 01 AHC CK 0091

Allahabad High Court

Case No: Special Appeal No. 93 of 2006

Indu Devi

APPELLANT

Vs

District Magistrate, District
Panchayat Raj Officer, Assistant
Development Officer (Panchayat)
and Santosh Kumar

RESPONDENT

Date of Decision: Jan. 31, 2006

Acts Referred:

- Uttar Pradesh Panchayat Raj Act, 1947 - Section 27, 95(1)(g)

Citation: (2006) 3 AWC 2787 : (2006) 1 RD 436 : (2006) 2 UPLBEC 1580

Hon'ble Judges: Ajay Nath Ray, C.J; Ashok Bhushan, J

Bench: Division Bench

Advocate: Vidya Bhushan Srivastava, for the Appellant; N.C. Tripathi and S.C., for the Respondent

Final Decision: Disposed Of

Judgement

1. Heard learned Counsel for the appellant and the learned Standing Counsel appeared for the respondents.
2. This appeal has been filed against the judgment dated 1.12.2005 passed by a learned Single Judge dismissing the writ petition filed by the appellant challenging the orders dated 29.3.2000 (Annexures-6 and 6-A) filed along with the writ petition. By the two impugned orders in the writ petition dated 29.3.2000, administrative and financial powers of the writ petitioner-appellant ceased under 95 11)(g) proviso of the U.P. Panchayat Raj Act, 1947 and by another order of the same date, i.e. 29.3.2000, it was held that the writ petitioner is guilty of misappropriation of an amount of Rs. 1,00,606/ and consequently the half amount be recovered from the Pradhan-petitioner and half amount from the Gram Panchayat Adh kari.

3. Learned counsel for the appellant challenging the aforesaid two orders contended before the learned Single Judge that the inquiry was not held in accordance with the inquiry rules, namely, U.P. Panchayat Raj (Removal of Pradhan. Up Pradhan and Members) Inquiry Rules, 1907.

4. Learned Single Judge by his impugned judgment held that a show cause notice was given to the appellant to submit her reply and the writ petitioner has submitted her written reply. After consideration of which the District Magistrate has directed that the half amount be recovered from the writ petitioner. Learned counsel for the appellant contended before us that the inquiry was not held in accordance with the rules, lie further submitted that in view of the interim order passed by this Court in the writ petition, the appellant continued to function as Pradhan of the Village, but now the term of office has come to an end.

5. We have considered the submissions and perused the records.

6. With regard to Annexure 6 to the writ petition, i.e. the order ceasing financial and administrative powers of the Pradhan, by virtue of expiry of the term of the Pradhan the relict with regard to the above said order has p! become infructuous and it is not necessary to express any opinion with to the aforesaid. The another order dated 29.3.2000 (Annexure-6-A) is still surviving by which recovery was directed to be made from the appellant to the tune of Rs. 54,803/. The second order dated 29.3.2000 directing for recovery was passed u/s 27 of the U.P. Panchayat Raj Act, 1947, which provides as under:-

27. Surcharge.- (1) Every Pradhan or Up-Pradhan of a [Gram Panchayat] ever, member of a [Gram Panchayat] or of a Joint Committee or any other committee constituted under this Act and every Sarpanch, Sahtiyak Sarpanch or Panch of a Nyaya Panchayat shall be liable to surcharge for the loss, waste or misapplication of money or property [belonging to the Grain Panchayat or Nyaya Panchayat] as the case may be, if such loss, waste or misapplication is direct consequence of his neglect or misconduct while he was such Pradhan, Up-Pradhan, member, Sarpanch, Sahayak Sarpanch or Panch:

Provided that such liability shall cease to exist after the expiration of ten years from the occurrence of such loss, waste or misapplication, or five years from the date on which the person liable ceases to hold his office, whichever is later.

(2) The prescribed authority shall fix the amount of the surcharge according to the procedure that may be prescribed and shall certify the amount to the Collector who shall, on being satisfied that the amount is due, realise it as if it were an arrear of land revenue.

(3) Any person aggrieved by the order of the prescribed authority fixing the amount of surcharge may, within thirty days of such order, appeal against the order to the State Government or such other appellate authority as may be prescribed.

(4) Where no proceeding for fixation and realisation of surcharge as specified in Sub-section (2) is taken the State Government may institute a suit for compensation for such loss, waste or misapplication, against the person liable for the same.

7. The order dated 29-3-2000 directing for recovery was passed on the basis of the charge sheet dated 27.10.1999, which charge was referred to in the preliminary inquiry conducted under 95 (1)(g) and it appears that the District Magistrate on *prima facie* finding of guilt of the appellant has straightaway directed for the recovery.

8. A perusal of the Scheme u/s 27 of the Act indicates that a Pradhan is liable to surcharge for the loss, waste or misapplication of money or property belonging to the Gram Panchayat, if such is direct consequence of his neglect or misconduct while he was such Pradhan. The said finding of misconduct referred to in Section 27 can be based from the inquiry under 95(1)(g) when the misconduct is proved against the Pradhan. On the basis of finding of misconduct under 95(1)(g) of the Act, it is open for the competent authority to issue surcharge police and pass appropriate orders. The competent authority may also independently direct for surcharge u/s 27 of the Act and pass appropriate orders after being satisfied with the misconduct.

9. In the present case, the order dated 29.3.2000 was passed straightaway relying on *prima facie* satisfaction under 95(1)(g) proviso, Which proviso indicates that financial and administrative powers of the Pradhan shall be ceased, if he is *prima facie* found to have committed financial and other...angularities. Proviso to 95(1)(g) is extracted below:-

95. Inspection.- (1) The State Government may

(g) [remove a Pradhan, Up-Pradhan or member of 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 from 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; (in) has abused his position as such or has persistently failed to perform the duties imposed by this Act or rules made there under or his continuance as such is not desirable in public interest;

[(iii-a) has taken the benefit of reservation under Sub-section (2) of Section 11-A or Sub-section (5) of Section 12, as the case may be, on the basis of a false declaration subscribed by him stating that he is a member of the Scheduled castes, the Scheduled Tribes or the backward classes, as the case 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 5-A:

[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.]

10. The prima facie finding of the competent authority u/s 95(i)(g) proviso is not same as finding of misconduct as contemplated under 27 of the Act. We are satisfied that on the basis of mere prima finding of guilt, the order of surcharge could not have been passed Section 27 of the Act.

11. However, learned Counsel for the appellant has submitted that the inquiry as contemplated in 95(1)(g) has not yet been concluded and he further submits that no further proceeding u/s 27 of the Act been drawn.

12. In view of the aforesaid, we are satisfied that without conclusion of final inquiry under 95(1)(g) of the Act with regard to finding of misconduct on the part of the Pradhan, the order of surcharge could not have been passed.

13. From the material brought on record, it is clear that it is necessary that a final inquiry as contemplated in 95(1)(g) and or u/s 27 of the Act be concluded by the competent authority. We direct accordingly.

14. The District Magistrate may take appropriate steps for conclusion/completion of the inquiry under 95(1)(g) and/or u/s of the Act, within six months from today. The appellant-writ petitioner shall communicate this order to the district Magistrate within two weeks from today. Till the final-order is passed within six months, no recovery shall be made from the appellant-writ petitioner, as directed vide impugned order dated 29.3.2000

15. With the aforesaid directions, this appeal is disposed of.