

**(2011) 05 AHC CK 0251**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 28404 of 2011

Smt. Suhaga Devi (Ex-Pradhan)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision:** May 19, 2011

**Acts Referred:**

- Uttar Pradesh Panchayat Raj Act, 1947 - Section 27

**Citation:** (2011) 6 ADJ 406 : (2011) 5 AWC 4868 : (2011) 2 UPLBEC 1289

**Hon'ble Judges:** Sunil Ambwani, J; K.N. Pandey, J

**Bench:** Division Bench

**Final Decision:** Disposed Of

### **Judgement**

1. We have heard Shri Vijendra Singh, learned Counsel for the Petitioner. Learned Standing Counsel appears for the State Respondents. Shri K.S. Shukla appears for Director, Mid-Day Meal, Lucknow.

2. The Petitioner Smt. Suhaga Devi was Pradhan of Gram Mujaria, block Sahaswan, District Budaun in the previous term of five years upto October, 2010. She has filed this writ petition to set aside the order of the District Magistrate, Budaun dated 14.1.2011 directing her to deposit the balance of conversion cost amounting to Rs. 1,98,224/- transferred to her upto 30.9.2010 and the balance of the quantities of wheat (10.94 quintals) and Rice (32.27 quintals) given to her in the previous five years under the Mid-Day Meal Scheme. The District Magistrate has, in his impugned order, arrived with these figures after balancing the account with the documents produced by the Assistant Basic Education Officer.

3. Learned Counsel for the Petitioner states that the order has been passed without giving opportunity to the Petitioner to show-cause and to submit her explanation. He further submits that the amount was transferred to the Gram Sabha fund and thus was the Gram Sabha property. The District Magistrate should have followed the procedure prescribed for recovery of the amount as surcharge u/s 27 of the U.P.

Panchayat Raj Act, 1947.

4. Shri K.S. Shukla appearing for the Director, Mid-Day Meal Scheme, Lucknow has produced the Government Orders beginning from 25.6.2004 to 12.8.2010, providing for Mid-Day Meal Scheme, its implementation and management. The provision of Mid-Day Meal was made for school going children in pursuance to the directions issued by the Supreme Court in Writ Petition (C) No. 196 of 2001 (People's Union for Civil Liberties v. Union of India and Ors. Writ Petition (C) No. 196 of 2001). The Supreme Court directed the State Governments/Union Territories on 28.11.2001, to implement Mid-day Meal scheme by providing every child in every Government and Government aided primary school with a prepared mid-day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. The Supreme Court further directed that those Governments, which provide dry rations instead of cooked meals, within 3 months, should start providing cooked meals. By the order dated 29.10.2002, directions were issued to the Chief Secretaries/Administrators of the States/Union Territories to carry out the orders.

5. By the Government Order dated 8.9.2004, the Government of UP implemented the mid-day meal scheme providing for cooked food in accordance with the standards and menu. The Gram Panchayats were made responsible for conversion of raw food into cooked mid-day meal to be made available to the children. The specification of the food to maintain the number of calories was provided with seasonal changes. It was provided that the teachers and students shall not be required to help in cooking the mid-day meal, but the Gram Panchayats can employ any woman of the village or local NGO for the purpose. A committee shall be constituted at the Gram Level presided over by the Pram Pradhan as Chairman; two nominated women, who may also be the guardian of the children as members; one member of the Shiksha Samiti; Principal of the School and two male members, who may also be guardians of the children as members of the Committee. Para-7 of the Government Order provided that since the scheme has to be implemented by the Gram Panchayats, the conversion cost will be transferred to the Gram Panchayats through the District Magistrate. This amount shall be deposited in the Gram Nidhi account to be appropriated under the joint signatures of Prachan and Gram Panchayat Vikas Adhikari, who is also Secretary of the Gram Panchayat. The amount given to the Gram Panchayats free of charges shall be maintained by the Gram Panchayat and shall be inspected from time to time by the officers of the education department, revenue department, Panchayati Raj department and Gram Vikas department.

6. The substance of scheme has remained the same, though a number of Government Orders have been issued providing for the amendments on account of the experience gained during the process of the implementation of the scheme. One of these Government Orders, namely the Government Order dated 11.4.2007, requires a special mention inasmuch as the order provided that in pursuance to the

Government Orders dated 3.11.1999 and 25.1.2006, four accounts are to be opened as Gram Nidhi account by the Gram Panchayats in which various amounts of different schemes have to be kept. The amount received for the mid-day meal is deposited in the Gram Nidhi Khata-I in which the amount received from other Central and State Government schemes are also deposited. The money is withdrawn fortnightly and monthly but that in the mid-day meal scheme the amount has to be withdrawn according to the requirement year-wise. The Government come to know that this account is not being maintained properly causing the difficulties in management and maintaining the quality of food and thus with the consent of the Governor of U.P. a direction was issued that a separate account be opened in Gram Panchayat, which shall be known as Khata No. v. (Mid-Day Meal). In this account the conversion cost shall be deposited and account shall be operated in accordance with the Rules of UP Panchayat Raj Act under the joint signatures of the Pradhan and the Secretary, Gram Panchayat.

7. The impugned order contains a statement of fact that as on 30.9.2010 and thereafter 19.10.2010 a last notice was given to the Petitioner to explain as to why balance of the conversion cost and balance of the wheat and rice which has not been accounted for by the Petitioner be recovered from her. There is nothing to show that the Petitioner gave any reply to the notice. It is stated by Shri Vijendra Singh, that the notices were not received. We find that the recital in the notice has not been effectively denied.

8. So far as applicability of provision of Section 27 of the UP Panchayat Raj Act, 1947 is concerned, we are of the opinion that Section 27 is applicable in respect of loss, waste and misappropriation of money or property belonging to Gram Panchayats or Nyay Panchayat as the case may be. Section 27 is quoted as below:

27. Surcharge (1) Every Pradhan or (\*\*\*\*\*) of a Gram Panchayat, every member of a [Gram Panchayat] or of a Joint Committee or any other committee constituted under this Act and every Sarpanch, Sahayak 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 Gram 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, (\*\*\*\*\*), member, Sarpanch, Sahyak 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 of 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 suit for compensation for such loss, waste or misapplication, against the person liable for the same.

9. The food-grain is received by the Committee of the Nyay Panchayat presided over by the Village Pradhan from the allocation made from the fair price shop of the concerned village. The conversion cost is deposited in the account of the Gram Panchayat (as detailed above) through the District Magistrate. This conversion cost does not become the money or property of the Gram Panchayat or Nyay Panchayat as the case may be. It does not constitute the fund of the Gram Panchayat to be spent according to the resolution passed by the Gram Sabha or Nyay Panchayat for the purposes specified in the Act. The amount is given and credited to this Special account opened as Gram Nidhi Khata-V (Mid-Day Meal) under Government Order dated 11.4.2007. The Committee headed by the Pradhan is the trustee of this amount and that in case of any lost, waste or misappropriated the Pradhan and other members of the Committee are liable to be prosecuted for breach of trust. The procedure u/s 27 of the Panchayat Raj Act, 1947 for recovery of surcharge is not applicable for recovery of the amount as the amount transferred, free of cost to the special account namely Khata No. v. (Mid-day Meal) does not become the money or property of the Gram Panchayat or Nyay Panchayat. The amount is entrusted to the committee, to be kept in the special account and spend in accordance with the Scheme, under the supervision of the officers of Education, Revenue, Panchayati Raj and Gramya Vikas departments.

10. In similar matters where complaints were made by the Petitioners that he/she was not given the adequate opportunity before the recovery was initiated, we held that though the Petitioner has not given reply to the notices, and produced the accounts for establishing that the entire food grain and the conversion cost was accounted for, since the recovery was initiated, one more opportunity be given to submit reply and to produce the accounts before the District Magistrate for verification. We directed that the District Magistrate will get the accounts verified from the accounts maintained by the Basic Shiksha Adhikari.

11. This writ petition is also accordingly disposed of with the same directions that if the Petitioner produces the accounts of utilization of the food grain and conversion cost before the District Magistrate, within a month from today, the District Magistrate will get it tallied with the accounts maintained by the Basic Shiksha Adhikari. If the District Magistrate finds that the Petitioner has not accounted the food-grain and conversion cost, he will recover the cost as arrears of land revenue and in addition since the misappropriation amounts to breach of trust, he will lodge a first information report against the Village Pradhan and other members of the

Committee, under the relevant provisions of I.P.C.