

(2004) 07 AHC CK 0197**Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No"s. 26714 and 27111 of 2004

Chirounji Lal

APPELLANT

Vs

State of U.P. and A.K. Singh,
District Panchayat Raj Officer

RESPONDENT

Date of Decision: July 26, 2004**Acts Referred:**

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

Citation: (2005) 98 RD 744 : (2005) 1 RD 744**Hon'ble Judges:** Ashok Bhushan, J**Bench:** Single Bench**Advocate:** G.R.S. Pal, for the Appellant; N.P. Pandey and S.C., for the Respondent**Final Decision:** Dismissed

Judgement

Ashok Bhushan, J.

Heard Shri G.R.S. Pal, counsel for the petitioner and Shri N.P. Pandey, learned standing counsel appearing for the respondents.

2. In these two writ petitions, the petitioner has challenged the order passed by District Panchayat Raj Officer by which the operation of the Gaon Sabha account has been directed to be stopped.

3. In writ petition No. 27111 of 2004, order has been passed by District Panchayat Raj Officer on 11.6.2004 whereas in writ petition No. 26714, the order has been passed by District Panchayat Raj Officer on 18.6.2004. In writ petition no. 26714 the order states that in the weekly meeting the Assistant Development Officer, (Panchayat) has informed that Pradhan has made construction work arbitrarily by misusing the fund which are not of prescribed standard and quality. The order further states that amounts under the various schemes has been misused. The District Panchayat Raj Officer exercising the power under Rules 178 has passed the order stopping the operation of the Gram Nidhi. The order further states that till the

technical evaluation and documentary evaluation is completed, the operation of the funds be stopped.

4. Shri Pal, learned counsel for the petitioner challenging the order contended that District Panchayat Raj Officer has no jurisdiction to pass any order stopping the operation of the account. He contended that the financial power of Pradhan can be ceased only in accordance with Section 95(1)(g) proviso of the U.P. Panchayat Raj Act and that to after conducting a preliminary enquiry in accordance with the U.P. Panchayat Raj (Removal of Pradhan, Up-Pradhan and Members) Enquiry Rules 1997.

5. Shri Pandey, learned standing counsel refuting the submission of the counsel for the petitioner contended that the order impugned is not an order ceasing the financial/administrative power of the Pradhan. He contended that order is temporary in nature and has been passed to protect the Gaon Sabha fund. He further contended that under Rule 178, the District Panchayat Raj Officer is the Prescribed Authority under whose general control the administration of the Gaon Sabha fund is made. The learned standing counsel referred to notification dated 30.7.1966 by which the authorities were notified as Prescribed Authority for performing various function as entrusted under the Act and the Rules. Perusal of the said notification reveals that under Rule 178(1), it is the District Panchayat Raj Officer who is the Prescribed Authority. The order impugned specifically states that the order is being passed under Rule 178. Rule 178 of the U.P. Panchayat Raj Rules is extracted below:

"178. Maintenance of Gram Fund and its transaction.- The administration of the Gram fund shall be in the hands of the Gram Panchayat subject to the general control of the Prescribed Authority. "

6. Section 95(1)(g) of the Act contains grounds for removal of Pradhan. Proviso to sub section is relevant and extracted below:

"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. "

7. The proviso contemplate the action of ceasing administrative and financial powers of the Pradhan till he is exonerated of the charges in the final enquiry. The enquiry contemplated under the proviso is the final enquiry as contemplated under U.P. Panchayat Raj (Removal of Pradhan, Up-Pradhan and Members) Enquiry Rules 1997. By the impugned order the financial and administrative power of the Pradhan has not been ceased under the proviso. Only operation of the Gaon Sabha fund has been stopped. Stopping of the Gaon Sabha fund is not akin to ceasing of the

financial and administrative power. Both the actions are quite different and has to be passed in different circumstances. It is true that for exercising the power under proviso preliminary enquiry under Rules 1997 has to be held but since present is not the case of exercising of power under the proviso to Section 95(i)(g), there is no necessity of holding any preliminary enquiry. The impugned order states that necessary order has been passed after receipt of the information regarding misuse and misutilisation of fund. Hence, the action of the District Panchayat Raj Officer cannot be said to arbitrary.

8. In above view of the matter, the order impugned cannot be said to be without jurisdiction or illegal. Submissions raised by the counsel for the petitioner has no substance.

9. The writ petitions lack merits and are summarily rejected.