(2003) 04 AHC CK 0265

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 15022 of 2003

Usha Kumari (Smt.)		APPELLANT
	Vs	
District Magistrate and Others		RESPONDENT

Date of Decision: April 8, 2003

Acts Referred:

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

Citation: (2003) 5 AWC 3510 : (2003) 94 RD 582 : (2003) 2 UPLBEC 1102

Hon'ble Judges: Sushil Harkauli, J

Bench: Single Bench

Advocate: S.K. Pandey, R.K. Pandey and P.S. Baghel, for the Appellant; Raghavendra Dwivedi and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Sushil Harkauli, J.
I have heard learned Counsel for the petitioner as well as the learned Counsel for the caveator, whose name is Ramesh Kumar Singh, son of Ranjit Singh.

2. The petitioner is the Pradhan of a Gram Panchayat. The impugned order dated 28.2.2003 (Annexure-8), has found the petitioner prima facie guilty of financial and other irregularities on the basis of a preliminary inquiry conducted by the District Development Officer, Mirzapur, and on that basis the financial and administrative powers of the petitioner have been ceased u/s 95(1)(g) of the U.P. Panchayat Raj Act, 1947 and a three Member Committee has been constituted to submit a final inquiry report. It has also been directed by the same order that the final inquiry should be completed within one month.

3. The petitioner has challenged this order on basically two grounds.

4. The first ground is that the complaint upon which the preliminary inquiry was instituted was not in accordance with Rule 3 of the U.P. Panchayat Raj (Removal of Pradhans and Up-Pradhans and Members) Enquiry Rules, 1977. The said Rule 3 requires every complaint to be supported by an affidavit of the complainant as well as affidavits of the persons from whom the complainant claims to have received information of facts relating to the accusation. It also requires these affidavits to be verified before a Notary and to be submitted with all documents in his possession or power pertaining to the accusation. The complaint is also required to be verified in the manner laid down in C.P.C. for verification of pleadings and affidavits. It is required to be submitted in not less than three copies and Rule 3 further, says that a complaint, which does not comply with the aforesaid provisions, shall not be entertained. The only exception provided in Rule 3 aforesaid is that where such a complaint is by a public servant, it is not required to follow the procedure given above.

5. On the above basis, it is submitted that the present complaint which was admittedly not by a public servant but, by a private complaint should not have been entertained.

6. The argument does not take into account the provisions of Rule 4 which before and after the amendment by notification dated 5.10.2001 says that the Enquiry Officer may be ordered to conduct a preliminary enquiry on receipt of a complaint or report referred to in Rule 3 "or otherwise". Thus, under Rule 4 even if there is no complaint or report as provided by Rule 3, a preliminary enquiry can be ordered even "otherwise". It is obvious, that the words "or otherwise" in Rule 4(1) of 1997 Rules or the amended Rules cannot be said to be redundant. Therefore, it would appear from a joint reading of Rules 3 and 4 that preliminary enquiry may be ordered even if there is no complaint or report in accordance with Rule 3. However, it is expected that where there is no complaint in accordance with Rule 3, which will deprive the authorities of fixing responsibilities and taking action in respect of frivolous and motivated complaints, the authority ordering a preliminary enquiry should Act with greater caution. Any information received otherwise than in accordance with Rule 3 should be such which inspires confidence of the authority ordering preliminary enquiry either because of intrinsic reasons or because of external corroboration. However, it cannot be said that unless there is a complaint or report in accordance with Rule 3, no preliminary enquiry can be ordered under any circumstances.

7. The second objection of the petitioner, is that in respect of same or similar charges, an earlier complaint had been made on which an inquiry had been set-up and during the enquiry, the complainant along with other persons snatched the original records and ran away because of which in that earlier enquiry, the petitioner was exonerated and the petitioner''s powers were restored. He has relied upon a copy of the F.I.R. annexed as Annexurc-1 to this writ petition. In the F.I.R.. the persons who are alleged to have run away with the records are named. These persons do not include the petitioner. Learned Counsel for the caveator has orally submitted that the persons who ran away with the records were actually the supporters of the petitioner who wanted to scuttle the enquiry. I am not inclined to decide this question whether these persons were actually the

supporters of the petitioner or not. However, the complainant of the earlier complaint could not stand to gain anything by scuttling the enquiry and if anybody could gain in absence of the records it was the petitioner who would have to be exonerated for want of records and evidence. Therefore, without recording a positive finding on this issue, I am not inclined to accept the submission of the petitioner, that it was the present complainant-caveator who ran away with the records because the complainant is not named in the FIR. Further, rightly or wrongly the authority ordered a preliminary enquiry which has been conducted by a District Level Officer as is permissible after the amendment of the Rules on 5.10.2001, and that Officer has recorded a finding of prima facie guilt of the petitioner. Even, if the complainant had some oblique motive, the preliminary enquiry by a District Level Officer against whom there are no allegations cannot, at this stage, be thrown out on quashed.

8. Further, the petitioner, is also not seriously prejudiced inasmuch as a final enquiry is yet to take place and the District Magistrate, Mirzapur, has already fixed the time limit of one month for submission of the report of the final enquiry.

9. In the circumstances, I am not inclined to interfere in the writ petition.

10. In case, the petitioner wants to inspect some documents for the purpose of final inquiry and if those documents arc not considered to be wholly irrelevant by the three Member Committee, it may permit the petitioner to inspect those documents during the final inquiry.

11. The writ petition is accordingly dismissed.