

(2010) 06 UK CK 0136
Uttarakhand High Court
Case No: None

Rao Bahadur Ali Khan

APPELLANT

Vs

State of Uttarakhand and
Another

RESPONDENT

Date of Decision: June 15, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Dharam Veer, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Dharam Veer, J.

By means of this petition, preferred under Article 226 of the Constitution of India, the petitioner has prayed to issue writ in the nature of certiorari quashing the impugned order dated 25.02.2009 passed by the respondent No. 1 (annexure 12 to the writ petition). A further writ of mandamus has been sought commanding the respondents to proceed with further necessary action against the respondent No. 4 in furtherance of the inquiry report submitted by the Enquiry Officer i.e. Commissioner, Garhwal Division, Pauri against her.

2. Briefly stated, facts of the case are that the respondent No. 4-Smt. Ramesho Devi was elected as the Chairman of the Zila Panchayat, Haridwar, in the elections held in the year 2005. Thereafter, the petitioner-Rao Bahadur Ali Khan and nine other members of the Zila Panchayat, made a complaint to the respondent No. 1 on 31.3.2006 alleging certain allegations against the respondent No. 4. After that the District Magistrate, Haridwar vide order dated 29.9.2006 was appointed as Enquiry Officer by the State Government in view of Rule 4 of U.P. Kshettra Panchayats & Zila Panchayats (Removal of Pramukhs, Up-Pramukhs, Adhyakshas and Upadhyakshas) Enquiry Rules, 1997 [hereinafter to be referred as the Rules] to conduct the preliminary enquiry in the matter and submit the report in the matter. After that on

17.10.2007, the respondent No. 1 directed the District Magistrate to enquire into the allegations made in the complaint and to submit his report within one week. Since the enquiry as envisaged under Rule 4 of the Rules was not completed within a fortnight by the District Magistrate, having been so appointed, the petitioner preferred a writ petition before this Court being WPMS No. 2348/2007, which was disposed of by this Court vide order dated 23.11.2007 directing the District Magistrate, Haridwar to conduct the preliminary enquiry in the spirit of Rule 4 of the Rules of 1997, as expeditiously as possible and submit the same to the State Government. Thereafter, it appears that the District Magistrate, Haridwar conducted the preliminary enquiry and submitted his enquiry report on 27.11.2007. Thereafter, as per Rule 5 of the Rules, the State Government vide its order dated 11.12.2007 appointed the Commissioner, Garhwal Mandal for a detailed enquiry in the matter and the Commissioner was directed to submit his enquiry report along with his recommendations expeditiously to the Government. After that the petitioner preferred another writ petition bearing WPMS No. 53/2008, in which on 4.4.2008, this Court passed the following interim order:

In the meantime, it is provided that the respondent No. 1 shall pass appropriate orders on the preliminary enquiry report as per provision of Section 29 of the U.P. Kshettra Panchayats & Zila Panchayats Adhiniyam, 1961.

3. Assailing the order dated 4.4.2008 passed by the learned Single Judge of this Court, the respondent No. 4-Smt. Ramesho Devi preferred a Special Appeal, which was listed as Special Appeal No. 60/2008. Vide judgment and order dated 30.4.2008, the said appeal was dismissed by the Division Bench of this Court thereby directing that WPMS No. 53/2008 filed by Rao Ali Bahadur Khan and WPMS No. 731/2008, filed by Ramesho Devi be heard and disposed of together. However, WPMS No. 731/2008 filed by petitioner-Ramesho Devi was withdrawn by the petitioner with liberty to file afresh while WPMS No. 53/2008 filed by the petitioner was also dismissed as infructuous for the reason that the Government had taken a decision on the preliminary enquiry report by directing to hold final enquiry and divesting the respondent No. 4 of her administrative and financial powers.

4. On 28.4.2008, the State Government, on the basis of the preliminary report of District Magistrate, Haridwar dated 27.11.2007, divested the respondent No. 4 of administrative and financial powers u/s 29 of the U.P. [Kshettra Panchayats & Zila Panchayats] Adhiniyam, 1961 (hereinafter to be referred as the Act) and constituted a Three Members Committee to perform the financial and administrative powers of Zila Panchayat, Haridwar. On the same day i.e. on 28.4.2008, the State Government issued another order directing the Commissioner, Garhwal Mandal to enquire into the matter and submit his enquiry report along with his recommendations to the Government.

5. Assailing the preliminary report dated 27.11.2007 submitted by the District Magistrate, Haridwar and the aforesaid order dated 28.4.2008 passed by the State

Government divesting the respondent No. 4 of her administrative and financial powers as well as appointing the Commissioner, Garhwal Mandal as Enquiry Officer, the respondent No. 4-Ramesho Devi preferred a writ petition bearing WPMS No. 894/2008 before this Court. The said writ petition was dismissed by this Court vide judgment and order dated 1.12.2008 with the direction that the Enquiry Officer (Commissioner Garhwal Division) conducting the final enquiry initiated against the petitioner (Ramesho Devi), shall not be influenced by the observations made in the judgment. Assailing the aforesaid judgment and order dated 1.12.2008, the respondent No. 4-Smt. Ramesho Devi preferred a Special Appeal being Special Appeal No. 269/2008. The Division Bench of this Court on 17.2.2009 passed the following interim order:

Having gone through the record of the case, we are of the view that the operation of the judgment and order dated 1.12.2008 passed by the learned Single Judge in Writ Petition No. 894 of 2008 (M/S) Smt. Ramesho Devi Kashyap v. State of Uttarakhand as well as operation of the order No. 383/XII/2008/90(14)/2006 dated 28.4.2008 and order dated 384/XII/2008/90(14)/2006 dated 28.4.2008 passed by the respondent No. 1 should remain stayed.

The orders mentioned above shall remain stayed till further orders. However, the State Counsel prays for and is granted one month time to file reply to the special appeal.

6. After the above-said order dated 17.2.2009 was passed by the Division Bench of this Court, the State Government on 25.2.2009, in order to protect the right to contest, also passed an order staying the operation of the aforesaid orders No. 383 dated 28.4.2008 and No. 384 dated 28.4.2008, and further directing that the final orders shall be subject to the orders passed in the special appeal. Feeling aggrieved, the petitioner has come up in petition before this Court.

7. In the counter affidavit filed on behalf of respondent No. 1, it has been stated that the Division Bench of this Court by its order dated 17.2.2009 in SPA No. 269/2008, has stayed the operation of the orders dated 28.4.2008 passed by the respondent No. 1 divesting her of financial and administrative powers. Since the said special appeal is still pending, hence the order dated 25.2.2009 passed by the State Government cannot be modified, varied or set aside till the Special Appeal No. 269/2008 is decided.

8. In the counter affidavit filed on behalf of respondent No. 4, it has been stated that since the Special Appeal No. 269/2008 is pending before the Division Bench of this Court, the petitioner has no locus standi to file the present petition before this Court.

9. I have heard learned Counsel for the parties and perused the entire material available on record.

10. Learned senior counsel for the petitioner states that now the enquiry against the respondent No. 4 has already been completed but the respondent No. 1, instead of taking any further steps in furtherance of the enquiry report, passed the impugned order dated 25.2.2009, staying the entire proceedings.

11. I do not find any force in the argument advanced by the learned senior counsel on behalf of the petitioner. In the present case, vide orders dated 28.4.2008, the State Government, on the basis of the preliminary report of the District Magistrate, Haridwar dated 27.11.2007, divested the respondent No. 4 of administrative and financial powers u/s 29 of the Act and thereby constituted a Three Members Committee to perform the financial and administrative powers of Zila Panchayat, Haridwar. On the same day i.e. on 28.4.2008, the State Government issued another order directing the Commissioner, Garhwal Mandal to enquire into the matter and submit his enquiry report along with his recommendations to the Government.

12. Assailing the preliminary report dated 27.11.2007 submitted by the District Magistrate, Haridwar and the aforesaid order dated 28.4.2008 passed by the State Government divesting the respondent No. 4 of her administrative and financial powers, the respondent No. 4-Ramesho Devi preferred a writ petition bearing WPMS No. 894/2008 before this Court, which was dismissed by this Court vide judgment and order dated 1.12.2008 with the direction that the Enquiry Officer (Commissioner Garhwal Division) conducting the final enquiry initiated against the petitioner (Ramesho Devi), shall not be influenced by the observations made in the judgment. Assailing the aforesaid judgment and order dated 1.12.2008, the respondent No. 4-Smt. Ramesho Devi preferred a Special Appeal being Special Appeal No. 269/2008, in which the Division Bench of this Court vide order 17.2.2009, stayed the operation of the judgment and order dated 1.12.2008 passed by the learned Single Judge in Writ Petition No. 894 of 2008 (M/S) Smt. Ramesho Devi Kashyap v. State of Uttarakhand as well as operation of the order No. 383/XII/2008/90(14)/2006 dated 28.4.2008, whereby the respondent No. 4 was divested to perform administrative and financial powers and the order No. 384/XII/2008/90(14)/2006 also dated 28.4.2008, whereby the Commissioner, Pauri Garhwal has been appointed as the Enquiry Officer and was directed to submit his report along with his recommendations. Now, in compliance of the order dated 17.2.2009 passed by the Division Bench of this Court, the State Government, passed the order dated 25.2.2009 thereby staying the effect and operation of aforesaid orders No. 383/XII/2008/90(14)/2006 dated 28.4.2008 and No. 384/XII/2008/90(14)/2006 dated 28.4.2008, and further directing that the final orders shall be subject to the orders passed in the special appeal. Therefore, I have no hesitation to state that the order dated 25.2.2009, impugned in the writ petition, has been passed by the State Government in compliance of the order dated 17.2.2009 passed by the Division Bench of this Court in Special Appeal No. 269/2008 and the said appeal is still pending disposal before this Court and therefore, the above said order dated 17.2.2009 still survives. The State Government cannot be directed to proceed in view

of the fact that the order dated 17.2.2009 still survives and sub judice before the Division Bench of this Court. Even the State Government cannot be directed to proceed on the basis of the report submitted by the Commissioner, Garhwal Mandal, Pauri inasmuch as the order No. 383/XII/2008/90(14)/2006 divesting the respondent No. 4 of her administrative and financial power as well as Order No. 384/XII/2008/90(14)/2006 dated 28.4.2008 appointing the Commissioner, Garhwal Mandal as Enquiry Officer, has been stayed by the Division Bench. Thus, the order dated 25.2.2009 passed by the State Government is just, legal and proper and that has been passed as per law.

13. In view of the above-said discussion, it is reiterated that the order dated 25.2.2009 passed by the respondent No. 1 is absolutely just, legal and proper and the same has been passed in compliance of the order dated 17.2.2009 passed by the Division Bench of this Court in Special Appeal No. 269/2008, and as such, the writ of certiorari, as sought by the petitioner to quash the order dated 25.2.2009 passed by the respondent No. 1 as well as writ of mandamus directing the respondents to further proceed with the necessary action against the respondent No. 4 in furtherance of the enquiry report submitted by the Commissioner, Garhwal Mandal, cannot be issued at this stage.

14. For the reasons as aforesaid, the writ petition is devoid of merits and is accordingly dismissed at this stage. Costs easy.