

Court No. - 8

Case :- WRIT - C No. - 7073 of 2023

Petitioner :- Manoj Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Rural Development Deptt.
Lko. And 3 Others

Counsel for Petitioner :- Ashwani Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

1. Heard the counsel for the petitioner and the learned Standing Counsel.
2. The present petition has been filed by the petitioner challenging the order dated 10.06.2023 as well as the order dated 31.07.2023.
3. The counsel for the petitioner states that with regard to challenge to the order dated 10.06.2023, in terms of an order earlier passed by this Court, the petitioner has preferred an appeal, as such, the writ petition insofar as the challenge to the order dated 10.06.2023 is concerned, is dismissed.
4. As regards the challenge to the order dated 31.07.2023, the submission of the counsel for the petitioner is that the petitioner was working as a Gram Pradhan and on the basis of certain allegations levelled, an order imposing surcharge came to be passed against the petitioner on 10.07.2023. He argues that solely based upon the said order, an order has been passed exercising the power under section 95(1)(g) of the U.P. Panchayat Raj Act 1947 seizing the financial and administrative power of the petitioner in terms of the mandate of proviso to section 95(1)(g) of the U.P. Panchayat Raj Act, 1947.
5. The submission of the counsel for the petitioner is that the petitioner was served with a show cause notice dated 03.05.2023 (Annexure no.7) whereby the petitioner was called upon to show cause as to why the order of surcharge may not be passed in respect of certain works done which were found to be not in order.
6. It is argued that the petitioner gave a reply to the said show cause notice, which is contained in Annexure no.8, which bears seal of the office of the District Magistrate that the same was served on 25.05.2023. He argues that despite there being specific objections filed by the petitioner two orders came to be passed, firstly being the order dated 10.06.2023 saddling the

petitioner with surcharge and the second order dated 31.07.2023 was passed seizing the administrative and financial powers of the petitioner. It is argued that no show cause notice was issued to the petitioner by the respondents proposing to seize the financial and administrative powers of the petitioner, as such, the exercise of power as has been done by means of the order dated 31.07.2023 is wholly arbitrary and illegal. He places reliance on the second proviso to section 95 (1)(g) to buttress his submission that the grant of opportunity of hearing is must, in case the authority concerned proposes to pass an order under Clause (f) of clause (g) to Section 95(1) of the Act. He also places reliance on the Full Bench Judgment of this court in the case of ***Vivekanand Yadav vs. State of U.P. and others; 2010 (11) RD 699 as well as another Full Bench judgment of this Court in the case of Shamim vs. State of U.P. and others; (2018) 4 UPLBEC 2573. He also places reliance on the judgment dated 22.03.2023 passed by this Court in Writ C No.9084 of 2023 (Smt. Priyamada Tomar vs. State of U.P. and others).***

7. The Sanding Counsel tries to justify the order by arguing that in view of the apparent financial and administrative irregularities, the order was properly passed.

8. On the basis of the materials on record, it is clear that no show cause notice was served upon the petitioner proposing to seize the financial and administrative powers, which is clearly in violation of the second proviso to section 95(1)(g) read with the clear verdict of the cases referred to above, as such, on that ground alone, the order dated 31.07.2023 is quashed giving liberty to the respondents to pass fresh order that he may propose to in accordance with law. The net effect of this order is that the financial and administrative power of the petitioner shall stand restored forthwith.

9. The writ petition stands ***disposed off*** in terms of the said order.

Order Date :- 17.10.2023

VNP/-