

Court No. - 17

Case :- WRIT - C No. - 7721 of 2023

Petitioner :- Shamim Ahmad @ Mohammad Shamim Bagwan

Respondent :- State Of U.P. Thru. Prin. Secy. Panchayati Raj Govt. Civil Sectt. Lko. And 4 Others

Counsel for Petitioner :- Sanjay Kumar Sharma

Counsel for Respondent :- C.S.C., Shyam Mohan Upadhyay

Hon'ble Alok Mathur, J.

1. Heard Sri Sanjay Kumar Sharma, learned counsel for petitioner as well as learned Standing Counsel for respondent Nos. 1 to 3.

2. By means of the present writ petition, the petitioner has challenged the order dated 14.08.2023 passed by District Panchayat Raj Officer, Balrampur thereby seizing financial powers of the petitioner who is working on the post of pradhan, Gram Panchayat Lal Nagar Sipahiya, Vikas Khand Tulsipur, District Balrampur.

3. Learned counsel for petitioner has submitted that the said order is illegal and arbitrary inasmuch as under the provisions of Section 95(1)(g) of U.P. Panchayat Raj Act, 1947 it is the State Government which has been empowered to take any action against the gram pradhan. It has been further submitted that the power of State Government has been delegated in favour of District magistrate by means of Government Order dated 30.04.1997 and submits that it is the District Magistrate who can pass an appropriate order under proviso to Section 95(1)(g) of U.P. Panchayat Raj Act, 1947 for seizing the financial power of the gram pradhan.

4. He further submits that in the present case, an order has been passed by the District Panchayat Raj Officer, Balrampur and no inquiry has been conducted before passing of the said order. He further submits that the entire basis of the said order is the fact that caste certificate of the petitioner has been cancelled by the District Level Caste Scrutiny committee against which the appeal preferred by the petitioner is pending. It is further submitted that as per proviso to Section 95(1)(g) of U.P. Panchayat Raj Act, 1947, the financial power of the pradhan is seized only when the allegation of financial irregularities and merely on account of the fact that his caste certificate has been cancelled cannot be the ground for seizing the financial power of the petitioner.

5. It is in these circumstances, respondents were asked to file a counter affidavit and subsequently inform this Court whether the impugned order has been passed by the competent authority or not.

6. Learned Standing Counsel on the basis of instructions has submitted that the respondents on coming to know of the impugned order having been passed by incompetent authority have again initiated a fresh proceeding for seizing the financial powers of the petitioner and in this regard have issued a fresh show cause notice dated 26.08.2023 to the petitioner.

7. Issuance of the fresh notice clearly indicates that the respondents themselves are aware of the incurable defects and infirmities in the impugned order necessitating passing of fresh order in accordance with law.

8. Learned Standing Counsel also does not dispute the fact that the competent authority to pass any order under the proviso to Section 95(1)(g) of U.P. Panchayat Raj Act, 1947 for seizing the financial powers is the District magistrate who has been delegated the powers by the State Government by means of order dated 30.04.1997.

9. I have heard learned counsel for parties and perused the record.

10. The only issue raised by the petitioner is with regard to competence of the authority who has passed the impugned order dated 14.08.2023. The said order has been passed by District Panchayat Raj Officer, Balrampur in exercise of powers under the proviso to Section 95(1)(g) of U.P. Panchayat Raj Act, 1947 whereby the financial powers of the petitioner who is working on the post of pradhan has been seized.

11. According to the proviso to Section 95(1)(g) of U.P. Panchayat Raj Act, 1947, it is the State Government who is the competent authority to pass such an order but the State Government has further delegated its power to the District magistrate and it is the District Magistrate alone who can pass appropriate orders under the proviso to Section 95(1)(g) of U.P. Panchayat Raj Act, 1947.

12. In the present case, the order has been passed by District Panchayat Raj Officer, Balrampur who is not the competent person to exercise powers under Section 95(1)(g) of U.P. Panchayat Raj Act, 1947 and accordingly the impugned order is illegal and arbitrary and accordingly quashed.

13. It is noticed that the respondents have initiated fresh proceedings by issuance of a show cause notice dated 28.06.2023. It has been submitted by learned counsel for petitioner that he has already filed his reply to the said notice. It is open for the respondents to pass appropriate orders in accordance with law.

14. In light of the above, the order dated 14.08.2023 is quashed. The writ petition is **allowed**.

(Alok Mathur, J.)

Order Date :- 8.11.2023

Ravi/