

Court No. - 7

Case :- WRIT - C No. - 4740 of 2024

Petitioner :- Smt. Meera Tripathi

Respondent :- State Of U.P. Thru. Prin. Secy. Panchayati Raj Lko. And 5 Others

Counsel for Petitioner :- Yogendra Singh

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Yogendra Singh, learned counsel for petitioner as well as learned Standing Counsel on behalf of respondent Nos. 1 to 5.

2. This writ petition is directed against an order dated 01.02.2024, passed by the District Magistrate, Barabanki whereby petitioner's financial and administrative powers as Pradhan has been ceased and three member committee has been constituted to perform the work of Pradhan. The order is assailed by the petitioner on the ground that the reply given by the petitioner to the show cause notice dated 12.08.2023 has not been considered and there is complete non-application of mind on part of the District Magistrate, Barabanki.

3. Learned counsel for the petitioner places reliance upon a Full Bench Judgment of this court in **Vivekanand Yadav Vs. State of U.P. and others 2010(4) UPLBEC 3278** as also the subsequent Full Bench Judgment in **Shamim Vs.State of U.P. and others (2018) 4 UPLBEC 2573** to submit that there is absolute non consideration of petitioner's defence at the level of District Magistrate inasmuch as the statutory power vested by virtue of Section 95 (1)(g) of the U.P. Panchayat Raj Act, 1947 in the District Magistrate cannot be delegated to the District Panchayat Raj Officer. It is stated that the order of the District Magistrate must reflect application of mind on part of the District Magistrate while ceasing administrative and financial powers.

4. The question as to what would be the manner of exercising powers by the State Government/District Magistrate for ceasing financial and administrative powers of the Pradhan fell for consideration before a Full Bench of this Court in **Hafiz Ataulлах Ansari Vs. State of U.P. and others, 2011 (2) UPLBEC 889**. A subsequent Full Bench in the case of Shamim (supra) has examined all previous judgments and the powers of District Magistrate for the purposes of exercise of jurisdiction under Section 95(1)(g) of the Act of 1947. The 73rd and 74th Constitutional Amendments have been noticed by the Full Bench to observe that Panchayats and Municipalities have now

been conferred constitutional status. The question for consideration before the Full Bench has been noticed in para 23 of the judgment, which is reproduced hereinafter:-

"23. In the backdrop of the legislative history and the status of an elected Pradhan, after the Constitutional Amendment, the primary issue is whether the power exercised by the State Government/District Magistrate under the proviso to Section 95(1)(g) of Panchayat Raj Act is a purely administrative or a quasi judicial. In other words whether State Government/District Magistrate while exercising power under the proviso to Section 95(1)(g) is a Tribunal."

5. While answering the reference, the Full Bench observed as under in para 37 of the judgment in **Shamim** (supra):-

"37. In Vivekanand, Hafiz Ataullah Ansari and thereafter reiterated in Paras Jain that the elected representative would have to be given an opportunity to raise objection to the findings returned in the preliminary enquiry and his/or her objections will have be considered, though prima facie, by the State Government/District Magistrate before an order ceasing the financial and administrative power and functions is passed. The consequence of the order passed in exercise of power under Section 95(1)(g) is serious consequence as it divests the elected representative from exercising power until exonerated in final enquiry and the decision of the State Government is final. The decision taken by the State Government is not based on any expediency or policy of the State, rather, it is a statutory power conferred upon the State Government exercising inherent judicial power after confronting the elected representative, with show cause notice based on the preliminary report, thereafter, taking a decision upon due application of mind on the objections of the elected Pradhan. Once such an order is passed, it is not open for the State Government to either review or modify the order during the course of final enquiry. The order, therefore, finally decides the issue between Pradhan and the Authority (State Government) in so far it relates to exercise of financial and administrative power. The office of the local body is an elected office of the constitutional democratic institution; the elected head is not a government servant and it would be improper to compare these proceeding with departmental proceeding in service jurisprudence. A head of a local body is elected for a limited term. If during the removal proceedings, he is denuded from exercising financial and administrative powers then even if he is exonerated in the enquiry the time spent during enquiry is lost, he does not get his period extended. The consideration about the presence of all or some of the trappings of a court is really not decisive."

The main and basic test is whether the adjudicating power which a particular authority is empowered to exercise has been conferred on it by a statute and can be described as part of the State's inherent power exercised in discharging its judicial function. Applying this test there can be no doubt that the power which the State Government/District Magistrate exercises under proviso to Section 95(1)(g) is a quasi-judicial power exercised by a quasi-judicial authority."

6. Since the power to be exercised by the District Magistrate is quasi-judicial in nature and has serious consequences for elected representative, it is expected that the District Magistrate would apply his mind to the nature of charges levelled and would record a prima facie satisfaction with regard to existence of materials collected in the preliminary enquiry, which necessitates holding of regular enquiry and justify seizure of financial and administrative powers of Pradhan. The District Magistrate, therefore, is expected to look into the nature of charges as also the defence set up by the elected Pradhan or else the very object of issuing show cause notice would be frustrated. Law is otherwise settled that reason is the soul of an order and considerations which have prevailed in passing of the order must be reflected from the order itself. Merely stating that the explanation is not satisfactory would not suffice. In such circumstances this Court finds that the order of District Magistrate is wanting on relevant parameters, notice above, and therefore the order impugned cannot be sustained.

7. Learned Standing Counsel submits that instead of keeping the matter pending it would be appropriate that the authority concerned be permitted to re-visit the issue.

8. In view of the above, this writ petition succeeds and is **allowed**. Order dated 01.02.2024 stands quashed. It shall, however, be open for the District Magistrate to pass a fresh order after specifically adverting to the reply submitted by the petitioner, keeping in view the principles laid down by this Court in Vivekanand Yadav (supra) and in Shamim (supra) expeditiously say, within a period of four weeks from the date a certified copy of this order is produced before him.

9. Learned counsel for petitioner undertakes to cooperate with the District Magistrate, Barabanki and shall not seek any unnecessary adjournments.

(Alok Mathur, J.)

Order Date :- 8.7.2024/Ravi/