

Court No. - 33

Case :- WRIT - C No. - 13498 of 2025

Petitioner :- Smt. Niti Devi

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Pradeep Kumar Sharma, Sanjay Kumar Mishra

Counsel for Respondent :- C.S.C., Nirbhaya Kumar Mishra, Vijeta Tiwari

Hon'ble Prakash Padia, J.

1. Present writ petition has been filed by the petitioner inter-alia with the prayer to quash the order dated 09.04.2025 passed by respondent no.2-District Magistrate, Deoria in exercise of power conferred under Section 95(1) (g) Sub Section 2 and 3 of U.P. Panchayat Raj Act, 1947.

2. Show cause notice was issued to the petitioner by the respondent no.2-District Magistrate, Deoria on 19.02.2025 under Section 95 (1)(g) of U.P. Panchayat Raj Act, 1947 read with Rules 2 and 3 of U.P. Panchayat Raj Act (Removal of Pradhan, Up-Pradhan and Members) Inquiry Rules 1997 by which financial and administrative power of the petitioner has been seized.

3. It is argued by the learned counsel for the petitioner that pursuant to the show cause notice dated 19.02.2025, detailed reply was submitted by the petitioner, but the same was not at all taken into consideration and only one line mentioning the sentence "स्पष्टीकरण संतोषजनक नहीं पाया गया है", order impugned has been passed. It is further argued that notice has been issued under Rule 2 and 3 of Rule, 1997 but the procedure prescribed under Rule 4 of Rule 1997 was not complied with by the respondent no.2.

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 Ataullah 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."

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."

5. In this view of the matter, it is argued by the learned counsel for the petitioner that order dated 09.04.2025 passed by the respondent no.2-District Magistrate, Deoria is liable to be set aside.

6. On the other hand, it is argued by the learned counsel for the respondents that after taking into consideration the reply submitted by the petitioner, impugned order has been passed by the respondent no.2.

7. Heard Sri Sanjay Kumar Mishra, learned counsel for the petitioner and learned Standing Counsel appearing on behalf of the respondent nos. 1 to 4 and perused the record.

8. 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.

9. Consideration the facts and circumstances of the case and also in the interest of justice, the impugned order dated 09.04.2025 passed by respondent no.2-District Magistrate, Deoria is hereby ***set aside***.

10. With the aforesaid observation, the present writ petition is ***allowed***.

11. Order dated 09.04.2025 is set aside, however, this order will not restrain the respondent no.2-District Magistrate, Deoria to pass fresh order, if so advise.

Order Date :- 26.5.2025

T.S.