

**Court No. - 6**

**Case :-** MISC. BENCH No. - 24854 of 2020

**Petitioner :-** Prabhu Dayal Chauhan

**Respondent :-** State Of Up Thru Addl.Chief Secy.Panchayat Raj  
Deptt. & Ors.

**Counsel for Petitioner :-** Shobhit Mohan Shukla,Satyanshu Ojha

**Counsel for Respondent :-** C.S.C., Vinod Kumar Pandey

**Hon'ble Rajan Roy,J.**

**Hon'ble Saurabh Lavania,J.**

Heard Sri Shobhit Mohan Shukla, Advocate, for the petitioner, Sri Rakesh Bajpai, Addl. C.S.C. for the State and Sri A.P. Singh, Senior Advocate assisted by Sri Amrendra Pratap Singh for the opposite party No. 4.

A counter affidavit has been filed on behalf of opposite party nos. 1 to 3. Another counter affidavit has been filed on behalf of opposite party no. 4 i.e. the three Members Committee constituted for discharging the duties of Panchayat Maharajganj.

Counter affidavits filed today, are taken on record.

Sri Shobhit Mohan Shukla, learned Counsel for the petitioner makes a statement that he does not wish to file any rejoinder affidavit as he will argue on the basis of admitted facts and the settled legal position.

This is a writ petition under Article 226 of Constitution of India, challenging an order dated 24.11.2020 passed by the Additional Chief Secretary, Panchayat Raj Department, Government of U.P., by which

the financial and administrative powers of the petitioner, who is the elected Chairman of Zila Panchayat, Maharajganj, has been seized, in exercise of powers under ***Section 29 of the U.P. Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961 (in short "Act of 1961")***. By the same order Commissioner Gorakhpur Division has been appointed the Inquiry Officer to conduct final inquiry against the petitioner.

It is not in dispute that today the term of the petitioner is expiring. However, the order was passed on 24.11.2020 and this petition was filed on 09.12.2020 and learned Counsel for the petitioner presses for an adjudication on the validity of impugned action as it can have consequences for the petitioner.

The contention of Sri Shobhit Mohan Shukla, learned Counsel for the petitioner is firstly, that prior to passing of this order neither any preliminary inquiry was ordered or conducted nor any show cause notice was issued to the petitioner, as is mandatory. Such preliminary inquiry is to be conducted by the District Magistrate as per Rules. He relied upon Full Bench decision of this Court in the case of ***Hafiz Ataulah Ansari Versus State of U.P. and Others*** in ***Writ Petition No. 62427(MS) of 2008*** decided on 26.10.2010 and in the case of ***Shamim Versus State of U.P. and Others*** in ***Special Appeal No. 65 of 2017*** decided on 01.05.2018 wherein pari-materia provisions contained in Municipalities Act, 1916 i.e. Section 48(2) thereof and Section 95(1) (g) of the Panchayat Raj Act, 1947 and Rules made thereunder were

considered and it was held that even if the provisions for cessation of financial and administrative powers and removal of elected person does not specifically require the giving of opportunity, before passing such orders seizing his power or removing him, Principles of Natural Justice have to be read into such provisions and opportunity by way of show cause notice is to be given and reply submitted is required to be considered even if briefly but with due applications of mind. A Division Bench judgment *Smt. Kesari Devi Versus State of U.P. and Others* reported in *2005(4) AWC 3563* pertaining to the Act of 1961 and Rules made thereunder has also been relied. Therefore, according to him, the action is void and the impugned order is unsustainable.

The other contention is that the conduct of a preliminary inquiry is not only necessary for seizing of financial and administrative powers, but also for the purposes of initiation of final inquiry as the decision to initiate the final inquiry is to be based on such preliminary inquiry. Therefore, initiation of final inquiry by the impugned order and assigning of such inquiry to Commissioner, Gorakhpur Division, Gorakhpur, is void and liable to be set aside.

Sri Rakesh Bajpai, learned Additional Chief Standing Counsel was specifically confronted as to whether it is the mandate of the Full Bench decision in the case of *Hafiz Ataullah Ansari (Supra)* as also the other decisions on which reliance has been placed by the counsel for the petitioner, that a show cause notice is required to be issued

before any decision is taken for seizing the financial and administrative powers of an elected person such as Chairman of Municipality etc. or not, learned Additional Chief Standing Counsel submitted that it was not so instead the only requirement was to inform the person about the charges.

The other query put to him was as to whether there is any preliminary inquiry report which could form the basis for initiation of a final inquiry. Sri Rakesh Bajpai, learned Additional Chief Standing Counsel fairly accepted that there was no such preliminary inquiry.

He also accepted the fact that no show cause notice has been issued to the petitioner prior to the passing of the impugned order under *Section 29 of the Act of 1961*. He however submitted that as per the averments made in the counter affidavit, certain information was collected under the *Right to Information Act* by the complainant, who submitted the complaint, therefore, the Additional Chief Secretary, based on such public documents, has passed the impugned order, seizing the administrative and financial powers of the petitioner.

He was specifically asked by the Court as to whether the decisions aforesaid permit such an exercise of power based on information received by the Additional Chief Secretary, under the Right to Information Act or by the complainant under the said Act and forwarded to the Additional Chief Secretary, Sri Bajpai fairly admitted that the decision aforesaid did not permit so. He however, argued that

the purpose of preliminary inquiry is to collect material on the basis of which the Chairman of the Zila Panchayat could be proceeded with and as it was already available with the Government, therefore, the impugned order has been passed. However, he was asked by the Court as to whether this is the law laid down by the Full Bench and other decisions referred above, he fairly accepted that it was not so.

Even if for the sake of arguments what has been stated by Sri Bajpai and as has been noted by us hereinabove, is accepted, though we do not actually accept it, the requirement of issuance of show cause notice to the petitioner even on the basis of such material would still survive.

Based on the law declared by this Court in various Full Bench decisions referred hereinabove and the Division Bench decision in the case of Kesari Devi (Supra) which relates to Act of 1961, the minimum requirement for seizing the financial and administrative powers of a person holding office of election such as Chairman Zila Panchayat have not been adhered by the State Government in this matter. This Court in a catena decisions while considering similar provisions of cessation of administrative and financial powers of a Pradhan and his removal under Section 95(1)(g) of the Act, 1947 read with Rules made thereunder, Section 48(2) of Municipalities Act, 1916 pertaining to similar power in relation to elected office as held in the case of *Vivekanand Versus State of U.P.; Hafiz Ataullah Ansari (Supra)* that

such power cannot be exercised without complying with the provisions of natural justice by giving a show cause notice and considering the reply. The order of cessation of powers should demonstrate application of mind and consideration of reply thereof though it need not be detailed one. In *Hafiz Ataullah Ansari (supra)*, the Full Bench considered Section 28(2) of the Act, 1916 and held it to be similar to Section 29 of the Act, 1961, with which we are considered.

In the case of *Kesari Devi (Supra)*, the order of removal of Adhyaksha (Chairman) of Zila Panchayat was passed under Section 29 of the Act of 1961 and the same was in issue and after considering the relevant provisions including the Uttar Pradesh Kshetra Pachayats and Zila Panchayats (Removal of Pramukhs, Up-Pramukhs, Adhyakshas and Upadhyakshas) Inquiry Rules, 1997, the Division Bench of this Court held that preliminary inquiry has to be conducted by the District Magistrate and only if such preliminary inquiry has been conducted as per Rules, based thereon, a decision to further conduct a regular inquiry can be taken. Compliance of Principles of Natural Justice was also emphasized. The relevant paras of the judgment read as under:-

**"56. The 1997 Rules, quoted hereinabove, clearly provide that the preliminary inquiry has to be conducted, in the case of an Adhyaksha, by the District Magistrate and in the case of Upadhyaksha and Member, by Additional District Magistrate. It is, thus, clear that only the District Magistrate can hold the inquiry. The words used in the Statute have to be construed strictly.**

.....

*130.....As per Rule 5 of the 1997 Rules unless the State Government is of the opinion, that the complaint has been processed strictly in accordance with Rule 3, and the*

*preliminary inquiry has been conducted by the designated authority in accordance with the procedure prescribed under the Rules and strict compliance has been observed, it shall be impermissible for the State Government to proceed any further for regular inquiry."*

If the charges are serious it does not mean that the law declared by this Court can be given a go bye, especially as, the law has been declared after going through the relevant provisions of the statute and the law on the subject.

We also asked the learned Counsel for the opposite parties as to whether the decision in Kesari Devi's case, is still good law, they fairly accepted that it was so.

After going through the provision of Section 29 of the Act, 1961 pertaining to Zila Panchayat as also the Full Bench judgments referred hereinabove and the Division Bench judgment in the case of Kesari Devi (Supra), we are of the view that the impugned order dated 24.11.2020 in absence of show cause notice as also absence of a preliminary inquiry by the District Magistrate as per Rules, is unsustainable. We fail to understand as to how the impugned order has been passed in such a manner. The Court is left with no option but to interfere in the matter. We accordingly, quash the impugned order.

As today is the last day of petitioners tenure and no removal order has been passed as yet under Section 29 nor is it the case that it is going to be passed today therefore, the proceedings initiated against the petitioner under the said provision will veritably loose its efficacy

after this day. For the same reason the cessation of financial and administrative powers will also lose its efficacy hereafter, as, such action is only an interim measure till proceedings for removal are concluded. However, if on the basis of the allegations against him any action other than his removal from the office of chairman can be taken in law, it is open for opposite parties to do so.

Once we have quashed the impugned order dated 24.11.2020, the constitution of three Members Committee by another order of the same date, as consequence, also does not survive and the same is also quashed.

With the aforesaid observations and liberty, we *dispose of* this petition.

**Order Date :-** 13.1.2021

Jyoti/-