

# ALLAHABAD HIGH COURT

Babu Nandan Gir

Vs.

Sub-Divisional Officer

Civil Misc. Writ No. 3681 of 1964

(R.S. Pathak, J.)

20.11.1964

## ORDER

**R.S. Pathak, J.**

1. The petitioner is the Pradhan of the Gram Sabha of a village in the district of Deoria. A complaint was made against him by one Basist Shukla, the second respondent, to the Sub-Divisional Officer, the first respondent, and on the basis of that complaint a number of charges were framed by the first respondent against the petitioner on August 5, 1964, when a notice incorporating the charges was issued to the petitioner and he was asked to show cause why he should not be removed from office. On the same day an order was passed by the first respondent suspending the petitioner and directing him to hand over charge of his office to the second respondent. By this petition under Article 226 of the Constitution the petitioner challenges the validity of the order suspending him. In the counter-affidavit filed by the first respondent it is admitted that the petitioner has been suspended pending enquiry into the charges against him, and legal support for the suspension order is taken from the provision contained in Section 95(1)(g) of the U.P. Panchayat Raj Act.

2. After hearing learned counsel for the parties, it seems to me that this petition must be allowed.

3. A Gaon Sabha is established under Section 3 for a village or group of villages. It is a body corporate, and consists of all adults ordinarily resident within the area, for which it is established, except those who are not citizens of India or are of unsound

mind declared such by a competent Court. There is a Pradhan and an Up-Pradhan of the Gaon Sabha. The Pradhan is elected by the members of the Gaon Sabha. A Pradhan may be removed under Section 14 by resolution at a meeting of the Gaon Sabha convened specially for the purpose. He may also be removed or suspended by the State Government in exercise of the powers of external control vested in it under Section 95(1)(g). This provision reads :

"95. Inspection.- (1) The State Government may -

(a) .....

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

(g) suspend or remove. .... an office-bearer of a Gaon Sabha .... if he -

(i) absents himself without sufficient cause from more than three consecutive meetings or sittings.

(ii) refuses to act or becomes incapable of acting for any reason whatsoever or if he is accused of or charged for an offence involving moral turpitude,

(iii) has abused his position as such or has persistently failed to perform the duties imposed by this Act or rules made there under or his continuance as such is not desirable in public interest or

(iv) ....."

Learned counsel for the first respondent rests his case upon the ground, mentioned in sub-clause (iii), that the continuance of the petitioner in office as Pradhan was not desirable in the public interest. From an examination of the provisions of Clause (g) it appears that the power to suspend or to remove was intended to be exercised by the State Government as a punitive measure only, except for the specific case in sub-clause (ii) where a person was accused of or charged for an offence involving moral turpitude. In a case falling under the exception, in which action is taken upon the mere accusation or charging of the person for an offence, the action could not obviously be of a punitive nature. There, it is possible to say that the power to suspend may be exercised pending enquiry into the accusation or the charge. For the remaining provisions of Section 95(1)(g), there is nothing to suggest that the power to suspend can be employed also pending enquiry. There is no dispute that it may be used for

making an order by way of punishment, but there is nothing either in the language of the provisions or on the basis of any legal principle to suggest that the power to suspend pending enquiry can necessarily be inferred.

4. The law relating to the right of an employer to suspend an employee pending enquiry was discussed by the Supreme Court in *Management of Hotel Imperial, New Delhi v. Hotel Worker's Union*,<sup>1</sup> and *T. Cajee v. U. Jormanik Siem*,<sup>2</sup> The law laid down in these two decisions was succinctly summarised in *R.P. Kapur v. Union of India*,<sup>3</sup> in the following words :-

".....an order of interim suspension could be passed against an employee while inquiry was pending into his conduct even though there was no specific provision to that effect in his terms of appointment or in the rules. But in such a case he would be entitled to his remuneration for the period of his interim suspension if there is no statute or rule existing under which it could be withheld."

But the right to suspend pending inquiry is a right belonging to an employer. In every case it is a right arising upon the relationship of master and servant. Under the U.P. Panchayat Raj Act, the Pradhan of a Gaon Sabha is neither a servant of the Gaon Sabha nor of the State Government. There is no contract of employment between him and the Gaon Sabha or the State Government. The petitioner was not appointed by either body. For this reason, Section 16 of the U.P. General Clauses Act, upon which reliance also has been placed, does not apply. The petitioner was elected to office by popular will. The State Government had no hand in the petitioner coming into office as Pradhan. Section 11-B of the Act does not provide for the participation of the State Government in the election of a Pradhan. It is only where the Gaon Sabha fails to elect a Pradhan that the State Government is entitled to nominate a person as Pradhan. When the State Government did not appoint the petitioner, as Pradhan, it cannot be said that it enjoyed the power to suspend him from office pending enquiry. In my opinion, that the State Government should enjoy that power it was necessary for the statute to make provision for it.

5. Accordingly, I hold that the order placing the petitioner under suspension pending enquiry is without legal authority. A writ in the nature of certiorari shall issue quashing the order, dated August 5, 1961, made by the first respondent. The petitioner shall be entitled to his costs.

Petition allowed.

Cases Referred.

1. 1960-1 SCR 476
2. 1961-1 SCR 750
3. AIR 1964 SC 787