

STATE OF U.P. AND ORS.

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v.

SMT. JANKI DEVI PAL

FEBRUARY 13, 2003

[R.C. LAHOTI AND ARUN KUMAR, JJ.]

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*Uttar Pradesh Kshetra Panchayat and Zila Panchayats (Removal of Pramukhs, UP Pramukhs, Adhyakshas and Upadhyakshas) Enquiry Rules, 1977:*

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*r.4—Zila Panchayat Adhyaksha—Complaint against—Preliminary inquiry—Conducted by Additional District Magistrate—State Government instituting a formal inquiry and divesting the Adhyaksha of her financial and administrative powers—Writ petition before High Court allowed on the ground that inquiry was a nullity as it was conducted by Additional District Magistrate and not by District Magistrate—The contention of State that in view of provisions of sub-sec.(1) of s.23, Cr.P.C., Additional District Magistrate is not subordinate to District Magistrate and is, therefore, competent to conduct an inquiry against Adhyaksha or Upadhyaksha, reject by High Court—Pending appeal before Supreme Court term of Adhyaksha came to an end and State contended that though its appeal has become infructuous, the interpretation placed by High Court on r.4 was causing serious inconvenience to administration—Held, the decision in the appeal has been rendered merely academic as in spite of the Court entering into interpretation of relevant provisions would not pass any consequential order as the term of respondent as Zila Panchayat Adhyaksha is already over- It is careless and clumsy drafting of r.4 which is responsible for the situation—The draftsman has clearly used the term 'District Magistrate' as distinct from the term 'Additional District Magistrate'.—The definition of District Magistrate in clause(14) of s.2 of the Act is not applicable if there be something repugnant in the subject or context—The very use of 'Additional District Magistrate' and 'District Magistrate' in the same rule, consisting of one sentence, clearly suggests that the two terms are used in two different meanings—Contention raised by State runs counter to the language of the rule—Once the flaw was pointed out by the High Court, State should have promptly removed it by amending the rule instead of filing special leave petition and keeping the certainty of law in suspension—State is one of the largest litigant and such tendency on its part of adding to the bulk*

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A *of pending cases when it can be avoided by taking a quick and convenient step of amending its own rule has to be deprecated.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2065 of 2000.

B From the Judgment and Order dated 11.9.1998 of the Allahabad High Court in W.P. No. 1896 of 1998.

Dinesh Dwivedi and Shail Kumar Dwivedi for the Appellants.

C Garvesh Kabra, Ms. Deepti R. Mehrotra, Ravi P. Mehrotra and P.K. Chakravarty for the Respondent.

The following Order of the Court was delivered :

D In the year 1995 the respondent was elected as Zila Panchayat Adhyaksha in District Sultanpur, State of U.P. Certain complaints were received against her where in the State Government directed an inquiry to be made by the District Magistrate who in his turn got the preliminary inquiry conducted through Additional District Magistrate (Establishment), Sultanpur. Acting on the preliminary inquiry report and a supplementary report prepared by the Additional District Magistrate, the State Government instituted a formal inquiry and at the same time directed the respondent to be divested of financial and administrative powers exercised by her in the capacity of Zila Panchayat Adhyaksh.

F Section 29 of Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam 1961 (U.P. Act No. 32 of 1961), (hereinafter 'the Act', for short) and Rule 4 of Uttar Pradesh Kshetra Panchayat and Zila Pachayats (Removal of Pramukhs, Up-Pramukhs, Adhyakshas and Upadhyakshas) Enquiry Rules, 1977 (hereinafter 'Enquiry Rules', for short) framed in exercise of the powers conferred by Section 237 read with Sections 16 and 29 of the Act provide as under

G Act

H *Section 29. "Removal of Adhyaksha or Upadhyaksha—(1) If in the opinion of the State Government the Adhyaksha or the Upadhyaksha while acting in place of Adhyaksha, willfully omits or refuses to perform his duties or functions under this Act or abuses the powers vested in him or is found to be guilty of misconduct in the*

discharge of his duties or becomes physically or mentally incapacitated for performing his duties the State Government, after giving the Adhyaksha or Upadhyaksha, as the case may, be a reasonable opportunity for explanation may by order remove him from office and such order shall be final and not open to be questioned in a Court of Law.

Provided that where in an enquiry held by such person and in such manner as may be prescribed an Adhyaksha or Upadhyaksha is *prime facie* found to have committed financial and other irregularities such Adhyaksha or Upadhyaksha shall cease to exercise and perform the financial and administrative powers and functions, which shall, until he is exonerated of the charges in the final enquiry, be exercised and performed by a committee consisting of three elected members of the Zila Panchayat appointed in this behalf by the State Government.

(2) xxx                      xxx                      xxx

(3) xxx                      xxx                      xxx”

#### Rules

**Rule 4. Preliminary enquiry—**(1) The State Government May, on the receipt of a complaint referred to in Rule 3, or otherwise appoint an officer not below the rank of an Additional District Magistrate in the case of a Pramukh or Up-Pramukh and District Magistrate in the case of an Adhyaksha or Upadhyaksha to conduct a preliminary enquiry with a view to finding out if there is a *prima facie* case for a formal enquiry in the matter.

(2) The officer appointed under sub-rule (1) shall conduct the preliminary enquiry as expeditiously as possible and submit his report to the State Government within a fortnight of his having been so appointed.”

The impugned order divesting the respondents of her powers was put in issue by the respondent by filing a writ petition in the High Court of U.P. at Allahabad. The principal plea raised on behalf of the respondent was that the complaints against her were false and politically motivated as respondent did not belong to the same political party as was ruling the State and that the preliminary inquiry held under Rule 4 was the foundation of the impugned

A order which inquiry, the respondent being an Adhyaksh, could have been held only by District Magistrate and not by an Additional District Magistrate, and therefore, the inquiry was a nullity having been held by an officer not competent to hold the same. and hence, irrelevant to serve as foundation for the impugned order. The High Court by its impugned judgement dated 11.9.1998 delivered by a Division Bench directed the impugned order to be quashed holding the preliminary enquiry conducted by an Additional District Magistrate to be incompetent and vitiated. The submission made on behalf of the State that District Magistrate included an Additional District Magistrate, and therefore an inquiry held by an Additional District Magistrate could not be said to be incompetent, was rejected. On 19.11.1998 the State filed this petition seeking special leave to appeal under Article 136 of the Constitution. Subsequently, leave was granted and the petition was converted into a Civil Appeal. The respondent was noticed and has vehemently opposed the appeal.

At the hearing it was submitted by the learned counsel for the State of U.P. that the appeal has become infructuous in the sense that the term of the respondent as Zila Panchayat Adhyaksh has already come to an end but the State of Uttar Pradesh was interested in having the legal issue decided as the interpretation placed by the High Court on Rule 4 was causing serious inconvenience to administration as several complaints were being received and the District Magistrate could not be expected to be entrusted with the burden of inquiring himself into all the complaints.

We have heard the learned counsel for the parties it was submitted on behalf of the appellant State that under Clause (14) of Section 2 of the Act the term 'District Magistrate' has been defined to mean 'the district magistrate appointed under Section 20 of the Code of Criminal Procedure, 1973. Section 20 of the Code of Criminal Procedure, 1973' contemplates the State Government appointing as many persons as it thinks fit to be Executive Magistrates and one of them being appointed to be the District Magistrate. The State Government may appoint any Executive Magistrate to be an Additional District Magistrate and such Magistrate shall have such of the powers of a District Magistrate under the Code or under any other law for the time being in force as may be directed by the State Government. Section 23 provides that all Executive Magistrates, other than the Additional District Magistrate, shall be subordinate to the District Magistrate. The District Magistrate may, from time to time, make rules or give special orders, consistent with the Code as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an

Additional District Magistrate. The learned counsel for the State submitted that sub-section (1) of Section 23 of Cr.P.C. suggests that an Additional District Magistrate is not subordinate to the District Magistrate, and therefore, is competent to hold an inquiry against Adhyaksha or Uphadhyaksh within the meaning of Rule 4. On the other hand, learned counsel for the respondent submitted that sub-section (2) of Section 23 contemplates business to an Additional District Magistrate being allocated by the District Magistrate and in a sense he is subordinate to the District Magistrate.

Be that as it may, the decision in this appeal has been rendered merely academic as in spite of this Court entering into interpretation of relevant provisions would not pass any consequential order inasmuch as the term of the respondent as Zila Panchayat Adhyaksh is already over. We are indeed distressed to notice the tendency on the part of the State Government in filing a special leave petition devoid of merit and certainly avoidable and keeping the same pending in this Court for a period of over four years. Lot of confusion and uncertainty must have prevailed in the State of U.P. on account of the legal issue having been entrusted by the State Government for decision by this Court where a minor amendment in the rule would have served the purpose and clarified the law. Instead of putting its own house in order, the State Government has indulged into the luxury of litigation by adding to the number of pendency of cases.

It is careless and clumsy drafting of Rule 4 which is responsible for the situation. The draftsman of the rules has clearly used the term 'District Magistrate' as distinct from the term 'Additional District Magistrate'. The definition of District Magistrate in Clause (14) of Section 2 of the Act is not applicable if there be something repugnant in the subject or context. The very use of 'Additional District Magistrate' and 'District Magistrate' in the same rule, consisting of one sentence, clearly suggests that the two terms are used in two different meanings. The High Court appears to be right in holding that an inquiry against a Pramukh or Uppramukh can be held by an officer not below the rank of an Additional District Magistrate while as against Adhyaksh or Upadhyaksh-these two being democratically elective offices, higher in status than that of Pramukh or Uppramukh, the inquiry should be held by the District Magistrate. The contention advanced on behalf of the State of U.P. before the High Court as also before this Court runs counter to the language of the rule drafted by its own executive wing. Once the flaw was pointed by the High Court, the State of U.P. should have promptly removed the flaw in the rule by amending the same instead of filing special leave petition and

**A** keeping the certainty of law in suspension. The State is one of the largest litigants and such tendency on the part of the State of adding to the bulk of pending cases when it can be avoided by taking a quick and convenient step of amending its own rule has to be deprecated.

**B** The appeal is dismissed with costs. In addition, the State of U.P. is directed to pay an amount of Rs. 2,500 to the Supreme Court Legal Services Committee.

R.P.

Appeal dismissed.