

AFR

Court No:- 5

Reserved On:-13.12.2017

Delivered On:-8.1.2018

Writ C No. 57536/2017

Petitioner :- Sahab Singh

Respondent :- State of U.P. and others

Counsel for Petitioner :- Irfan Chaudhary, Mohd.
Saleem Khan, Ravi Kiran Jain

Counsel for Respondent :- C.S.C, Aklank Kumar Jain

Hon'ble Pankaj Nagvi, J.

Heard Sri Ravi Kiran Jain, learned Senior Counsel assisted by Sri Irfan Chaudhary / Mohd. Saleem, learned counsels for the petitioner, Sri Aklank Kumar Jain, learned counsel for the private respondent and the learned standing counsel.

This writ petition is preferred against the order dated 8.11.2017, passed by respondent no.2, District Magistrate, Saharanpur, under Section 95(1)(g) of the U.P. Panchayat Raj Act, 1947, inter alia, ceasing financial / administrative powers of the petitioner, a Pradhan.

The sheet-anchor of the learned Senior Counsel for the petitioner is that a complaint against a Pradhan not supported by an affidavit, in terms of Rule 3 of U.P. Panchayat Raj (Removal of Pradhan, Up-Pradhan and Members) Enquiry Rules, 1997(short "the Rules"), is virtually a waste-paper, on which no cognizance could be taken, which according to him is also authenticated by the peremptory prohibition under Rule 3(5). He submitted that the word "**otherwise**" in Rule 4 would not encompass a complaint not supported by an affidavit, else Rule 3 would itself become otiose. He further submitted that the observations of the Full Bench in

paragraph-67 of **Vivekanand Yadav Vs. State of U.P. & others, 2010 (10) ADJ 1 (F.B)** did not lay down the correct law as there no reasons have been ascribed for the said observations.

Considering the nature of issues involved, the Court avoids narration of facts. As the fate of this case turns upon the issue raised in the Full Bench, it would be apposite to first examine as to the issues raised therein.

The Full Bench in **Vivekanand Yadav** (supra) formulated question nos. 3 & 4 to the following effect:

(iii) What is the meaning of word “otherwise” in sub-rule (1) of Rule 4 [Rule 4(1)] of the Enquiry Rules;

(iv) Can a Pradhan object to a complaint on the ground that it is not in conformity with Rule 3 of the Enquiry Rules.

The above issues came to be answered in paragraphs- 55 to 63 which are extracted hereunder:

“55. Rule 3 of the Enquiry Rules is titled 'Procedure relating to a complaint' and provides how a complaint may be made. It provides two ways:

-One, by a private person that has to be supported by an affidavit and has to comply other conditions of sub-rule (1) to (4) of rule 3 {rule 3(1) to 3(4)};

-The other by a public servant, and in this case the restrictions of the complaint by a private person do not apply.

56. Rule 4 is titled as 'Preliminary enquiry'. The DM can order a preliminary enquiry on the complaint or report or otherwise. The word complaint or report refers to the complaint by a private person or to the report by a public servant under rule 3 . The report of the public servant need not conform to the restrictions of a complaint by a private person. The question is,

'What does the word 'otherwise' in rule-4 mean?'

57. The counsel for the petitioner submitted that:

-The word 'otherwise' should take the same colour as the words accompanying it, namely complaint or report

under rule-3;

-A complaint not satisfying rule 3(1) to (4) cannot be entertained under sub-rule 5 of rule 3 {rule 3(5)};

-A pradhan has right to object to a complaint that does not comply with rule 3(1) to 3(4).

58. Words and Phrases permanent edition volume 30-A page (230) explains,

'Otherwise means but for or under other circumstances...one of the usual meanings of otherwise is contrarily'.

The Black's Law dictionary explains it to the mean,

'In a different manner; in another way, or in other ways'

59. The enquiry under rule 4 is a preliminary or a fact finding enquiry. It has to consider prima facie whether any financial or other irregularities have been committed by the pradhan or not. The final enquiry is yet to be done. Considering the object, there is no reason to give any restricted meaning to the word 'otherwise' in rule 4 as suggested by the counsel for the petitioner. The normal meaning of 'otherwise' should be adopted: the DM has power to refer a case for preliminary enquiry even if there is no complaint or report or in other words he has powers to act suo moto.

60. Rule 3(5) of the Enquiry Rules provides that the complaint, which does not comply with any of the preceding sub-rules of rule 3 should not be entertained. However, even if the complaint is not to be entertained yet the DM can always refer the matter for the preliminary enquiry, if he considers that it should be so enquired: he can act has suo motu.

61. The counsel for the petitioners cited rulings³ taking the view that a pradhan has a right to object to the format of the complaint. With due respect, we do not agree with the same.

62. If the DM can order for the preliminary enquiry even in a case, where a complaint could not to be entertained, then what is the purpose of permitting a pradhan to object regarding its non-conformity with rule 3(1) to 3(4). To us, it appears to be futile exercise. It is for the DM to consider whether he should entertain the complaint or not.

63. In our opinion:

(i) The word 'otherwise' in rule 4 means that the DM has

suo motu powers to order a preliminary enquiry;

(ii) In an appropriate case, the DM may order a preliminary enquiry even if there is,

-No complaint or report; or

-A defective complaint, not in accordance with rules 3(1) to 3(4).

(iii) A pradhan has no right to object that a complaint is not in accordance with rule 3(1) to 3(4) of the Enquiry Rules;

A careful perusal of paragraphs-59, 60, 62 and 63 of the judgment would manifest that the Full Bench was conscious of the fact that considering the object of Rules 3 and 4, there was no reason to give any restricted meaning to the word “otherwise” in Rule-4 and that even if the complaint is not entertainable, in view of a statutory prohibition, yet the District Magistrate could always refer the matter for the preliminary enquiry, if he considers that it should be so enquired: he can act suo motu. Once the Full Bench refused to give restrictive meaning to the word “otherwise” in Rule-4, the justification for doing so is implicit in the said observations itself, as stated hereunder.

It is well settled that if a literal interpretation of a statute is leading to absurdity, a purposive construction is advancing the cause of justice, then the latter is to be preferred over the former. Reference may be made to **S. Sundaram Pillai, Etc vs V.R. Pattabiraman Etc, 1985 (1) SCC 591**. A literal interpretation of Rule 3 (5) and that of Rule 4(1) would mean that the District Magistrate stands denuded of the power to take cognizance in respect of a complaint of a private person against a Pradhan, not supported by an affidavit, even though the District Magistrate may be of the view that the allegations in the complaint are of such a nature, that it warrants a preliminary enquiry. On the other, if recourse is taken to purposive construction, the District Magistrate

can direct for a preliminary enquiry on a complaint of a private person not supported by an affidavit, provided he is satisfied that the case is of such a nature that it calls for a preliminary enquiry. The purposive construction gives flexibility to the District Magistrate to direct for preliminary enquiry, if he is satisfied that the case is such that a complaint without an affidavit is to be enquired into. This does not mean that Rule-3(5) is rendered nugatory for the reason that a private complainant is statutory obliged to file a complaint along with an affidavit so that the credibility of the allegations is ensured on oath, else it may give rise to reckless allegations without any accountability. Similarly, a private complainant cannot as a matter of right get his complaint not supported by an affidavit enquired into. But this would not be an impediment for the District Magistrate to direct for a preliminary enquiry on a complaint not supported by an affidavit, if he is of the view that there is a justification for directing a preliminary enquiry.

It is not the case of the petitioner, nor was it argued that there was no material before the District Magistrate directing for a preliminary enquiry under Rule-4 (1).

The validity of order dated 8.11.2017 is also assailed on the ground as being in teeth of the judgment of the learned Single Judge in **Narendra Kumar vs. State of U.P., (2013) 2 AWC 1663**.

A perusal of **Narendra Kumar** (*supra*) would manifest that the learned Single Judge did not doubt the correctness of Full Bench in **Vivekanand Yadav** (*supra*), but allowed the writ petition on the ground that the order of financial / administrative ceasure was based upon a report of the committee constituted by the B.D.O, which could have formed a basis for the District Magistrate to order a preliminary enquiry but not for ceasure of administrative/ financial power of the Gram Pradhan. In the instant case, as stated above, a preliminary enquiry has been ordered by

none other than the District Magistrate himself. Thus **Narendra Kumar** (*supra*) would have no application in the instant case.

In view of above discussion, the Court does not find merit in the petition.

The writ petition is **dismissed** *in limine*.

Order Date: 8.1.2018

Chandra

(Pankaj Naqvi, J)