

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

SPECIAL APPEAL No. 19 OF 2021

30TH SEPTEMBER, 2021

Between:

Deepak Bijalwan.

...Appellant

and

State of Uttarakhand and others.

...Respondents

Counsel for the appellant. : Mr. Arvind Vashishtha, the learned Senior Counsel assisted by Mr. Vikas Bahuguna, the learned counsel.

Counsel for the respondent nos. 1 to 4. : Mr. Pradeep Joshi, the learned Additional Chief Standing Counsel for the State of Uttarakhand.

Counsel for the respondent no. 5. : Mr. Abhijay Negi, the learned counsel.

Counsel for the respondent nos. 6 and 7. : Mr. Rajendra Dobhal, the learned Senior Counsel assisted by Mr. Shubhang Dobhal, the learned counsel.

Counsel for the respondent nos. 8 and 9. : Mr. Nalin Saun, the learned counsel.

The Court made the following:

JUDGMENT : (per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

Aggrieved by the order dated 07.01.2021, passed by a learned Single Judge, in Writ Petition (M/S) No. 2570 of 2020, the appellant has preferred the present Special Appeal. By the said order, the learned

Single Judge had dismissed the Writ Petition filed by the appellant-writ petitioner with a liberty to approach the Court, as and when cause of action arises to him.

2. Briefly stated the facts of the case are that in the election of December, 2019, the appellant was elected as the Chairman of the Zila Panchayat, Uttarkashi. In the said election, the appellant had defeated the respondent no. 6, namely Chandan Singh Panwar. During the course of tenure of his office, a complaint was filed by the respondent no. 5, namely Hakam Singh Rawat, which was addressed to Hon'ble the Chief Minister. On the basis of the said complaint, by order dated 10.11.2020, the Commissioner, Garhwal Mandal, directed the respondent no. 4, namely the District Magistrate, Uttarkashi, to conduct a detailed enquiry, and to submit his report within a period of one week.

3. Since the appellant was aggrieved by the order dated 10.11.2020, he filed a Writ Petition, namely ***Writ Petition (M/S) No. 2324 of 2020 "Deepak Bijalwan v. State of Uttarakhand and others"***, before this Court.

4. By order dated 09.12.2020, a learned Single Judge stayed the operation of the order dated 10.11.2020. When the case was taken up on 23.12.2020, the learned counsel for the State made a statement before the Court that the State Government has decided not to proceed in pursuance of the order dated 10.11.2020. Hence, the Writ Petition was dismissed, as having become infructuous.

5. However, according to the appellant, just a day prior to 23.12.2020, namely on 22.12.2020, the District Magistrate, Uttarkashi, was appointed as the Enquiry Officer to look into the allegations made against the petitioner in a complaint, which was filed by some members of the Zila Panchayat. Since the appellant was aggrieved by the order dated 22.12.2020 he filed the present Writ Petition before the learned Single Judge. However, the learned Single Judge has dismissed the Writ Petition, *inter-alia*, on the ground that "*no legal injury has been caused to the petitioner as yet. Appointment of an Enquiry Officer does not cause any prejudice to the petitioner*". Hence, the present Special Appeal before this Court.

6. Mr. Arvind Vashishtha, the learned Senior Counsel for the appellant, has raised the following contentions before this Court :-

(i) A mis-statement was made by the learned counsel for the State on 23.12.2020 before the learned Single Judge that the State has decided not to proceed in pursuance of the order dated 10.11.2020. In fact, the State had already directed the District Magistrate, Uttarakashi, on 22.12.2020, to commence an enquiry against the appellant.

(ii) The complaint made by some members of the Zila Panchayat, was made to Hon'ble the Chief Minister. However, according to Section 3 of the Uttar Pradesh Kshettra Panchayats and Zila Panchayats (Removal of Pramukhs, Up-Pramukhs, Adhyakshas and Upadhyakshas) Enquiry Rules, 1997 ("*Rules of 1997*", in short), such a complaint can only be made to the Secretary to the State Government in the Panchayati Raj Department. Such a complaint cannot be made to Hon'ble the Chief Minister. Thus, the complaint is *void ab initio*. Therefore, by order dated 22.12.2020, the District

Magistrate, Uttarkashi could not have been appointed as an Enquiry Officer to look into the complaint made by some members of the Zila Panchayat.

(iii) These two aspects have been ignored by the learned Single Judge. Therefore, the impugned order, dated 07.01.2021, passed by the learned Single Judge, deserves to be set-aside by this Court.

7. Heard the learned Senior Counsel for the appellant, perused the impugned order, and considered the documents submitted by the appellant.

8. The first contention raised by the learned Senior Counsel for the appellant is clearly untenable. For, the statement made by the learned counsel for the State, in Writ Petition (M/S) No. 2324 of 2020, was that the State Government does not propose to proceed against the appellant on the basis of the order dated 10.11.2020. Admittedly, the order dated 10.11.2020 related to a complaint filed by the respondent no. 5 against the appellant. Undoubtedly, the District Magistrate, Uttarkashi, has been appointed as the

Enquiry Officer, by order dated 22.12.2020, on the basis of the complaint filed by some members of the Zila Panchayat. Hence, the proceedings initiated by the State Government are on a different footing, and do not relate to the complaint filed by the respondent no. 5. Thus, there was no mis-statement of fact.

9. Moreover, there cannot be an estoppel against a statute. Merely because a concession was made by the State that it will not proceed against the appellant on the basis of the complaint filed by the respondent no. 5, the State cannot be prevented from proceeding against the appellant on the basis of the complaint filed by others, namely the members of the Zila Panchayat.

10. The only issue before this Court is with regard to the interpretation of Rule 3 of the Rules of 1997.

11. Rule 3 is as under :-

3. Procedure relating to complaints.- (1) *Any person making a complaint against a Pramukh, Up-Pramukh, Adhyaksha or Upadhyaksha may send his complaint to the Secretary to the State Government in the Panchayati Raj Department, Vidhan Bhawan, Lucknow.*

(2) *Every complaint referred to in sub-rule (1) shall be accompanied by the complainant's own affidavit in support thereof and also affidavits of all persons from whom he claims to have received information of fact relating to the accusation, verified*

before a notary, together with all documents in his possession or power pertaining to the accusation.

(3) Every complaint and affidavit under this rule as well as any schedule or annexure thereto shall be verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings and affidavit respectively.

(4) Not less than three copies of the complaint as well as of each of its Annexures shall be submitted by the complainant.

(5) A complaint which does not comply with any of the foregoing provisions shall not be entertained.

12. Indeed, the learned Senior Counsel for the appellant has argued that a complaint can be submitted only to the Secretary, Panchayati Raj Department. However, the interpretation being placed by the learned Senior Counsel is unsustainable. For, Rule 3, of the Rules of 1997, clearly uses the word "may", and not the word "shall". Therefore, Rule 3(1) does not prevent a person from sending his complaint to other competent authority, such as Hon'ble the Chief Minister, in order to bring alleged misconduct, of a Pramukh, Up-Pramukh, Adhyaksha or Upadhyaksha, to the notice of Hon'ble the Chief Minister. Merely because the complaint was not submitted before the Secretary, Panchayati Raj Department, but was submitted before Hon'ble the Chief Minister, it would not make the complaint *void ab initio*. Therefore, the contention raised by the learned Senior

Counsel, that a complaint can be made only to the Secretary, Panchayati Raj Department, and not to anyone else, is clearly untenable.

13. Lastly, the learned Single Judge is justified in concluding that the holding of an enquiry does not violate any civil right, or a fundamental right of the appellant. Ample opportunities would be given to the appellant to counter the allegations levelled against him by the members of the Zila Panchayat.

14. For the reasons stated above, this Court does not find any illegality or perversity in the impugned order, dated 07.01.2021, passed by the learned Single Judge.

15. This Special Appeal, being devoid of any merit, is, hereby, dismissed.

16. No order as to costs.

RAGHVENDRA SINGH CHAUHAN, C.J.

ALOK KUMAR VERMA, J.

Dt: 30th September, 2021
Rahul