

**Court No. - 33**

**Case :-** WRIT - C No. - 33122 of 2024

**Petitioner :-** Umesh Singh

**Respondent :-** State Of Up And 3 Others

**Counsel for Petitioner :-** Arvind Kumar Mishra,Devendra Mishra

**Counsel for Respondent :-** Bharat Singh Pal,C.S.C.

**Hon'ble Vikram D. Chauhan,J.**

1. The writ petition has been filed with the following prayers:-

*"i. issue a writ, order or direction in the nature certiorari quashing the impugned order dated 17.09.2024 (Annexure no. 6 of the writ petition) passed by respondent no. 2.*

*ii. issue a writ, order or direction in the nature of mandamus commanding and directing the respondent no. 2 to re-conclude the proceedings against the respondent no. 4 according to the provision of Section 95(1) (g) of U.P. Panchayat Raj Act, 1947."*

2. Learned counsel for the petitioner submits that petitioner is the member of Gram Panchayat and was a complainant and had made a complaint against the Gram Pradhan, who is respondent no. 4 in the present writ petition. The enquiry was initiated against the Gram Pradhan and after submission of the final enquiry report, the District Magistrate has directed for recovery of the amount of Rs. 21,950/- which has been deposited by the Gram Pradhan. Learned counsel for the petitioner further submits that the District Magistrate instead of proceeding under Section 95 (1) (g) of the U.P. Panchayat Raj Act for removal of Pradhan has let off the Gram Pradhan by giving him warning.

3. On a query being made to learned counsel for the petitioner as to what was the allegation against the Gram Pradhan in which enquiry proceedings have been initiated, learned counsel for the petitioner submits that as per the enquiry report, it has been found that the purchase was made for an amount of Rs. 21,950/- under the head of inventory register although one table and chair was also purchased which was not described in the bill submitted by the firm in question. Learned counsel for the petitioner could not dispute the fact that chair and table were part of the property of the Gram Panchayat and only the inventories were not properly

described in the bill and on the aforesaid basis the Gram Pradhan has already deposited the amount as per the order of the District Magistrate.

4. It is to be seen that removal of Gram Pradhan is provided under Section 95 (1) (g) of the U.P. Panchayat Raj Act which is quoted hereinbelow :-

*"Remove a Pradhan, or member of a Gram Panchayat or a Joint Committee or Bhumi Prabandhak Samiti, or a Panch, Sahayak Sarpanch or Sarpanch of a Nyaya Panchayat if he -*

*(i) absents himself without sufficient cause for 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 the Act or rules made thereunder or his continuance as such is not desirable in public interest, or*

*(iii-a) has taken the benefit of reservation under sub-section (2) of Section 11-A or sub-section (5) of Section 12, as the case may be, on the basis of a false declaration subscribed by him stating that he is a member of the Scheduled Castes, the Scheduled Tribes or the Backward Classes, as the case may be.*

*(iv) being a Sahayak Sarpanch or a Sarpanch of the Nyaya Panchayat takes active part in politics, or*

*(v) suffers from any of the disqualifications mentioned in clauses (a) to (m) of Section 5-A :*

*Provided that where, in an enquiry held by such person and in such manner as may be prescribed, a Pradhan or is prima facie found to have committed financial and other irregularities such Pradhan or 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 members of Gram Panchayat appointed by the State Government."*

5. According to learned counsel for the petitioner Section 95(1)(g) (iii) of the U.P. Panchayat Raj Act would come into play in the

present facts and circumstances of the case. Learned counsel for the petitioner further submits that once the District Magistrate has found that there is a financial irregularity to the tune of Rs. 21,950/- then it was imperative on the part of the District Magistrate to have proceeded for removal of the Gram Pradhan and there is no other option available to the District Magistrate.

6. On a further query being made to learned counsel for the petitioner to demonstrate from the record and from the facts of the case as to how the Gram Pradhan has abused his position or has persistently failed to perform the duties imposed by the Act or rules made thereunder or his continuance as such is not desirable in public interest, learned counsel for the petitioner submits that at the best the case would come under the clause that the Gram Pradhan continuance in the office is not desirable in public interest and on the strength of the aforesaid provision, learned counsel for the petitioner submits that removal of Gram Pradhan was desirable.

7. Learned Standing Counsel for the State submits that in the enquiry against the Gram Pradhan it was found that in the bill purchase of one chair and one table was found to be missing although the same was part of the inventory of the Gram Pradhan. Learned Standing Counsel for the State further submits that on the strength of the aforesaid fact, the District Magistrate has recovered the amount of Rs. 21,950/-, however, proceedings under Section 95(1)(g) of the U.P. Panchayat Raj Act was not found required. Learned Standing Counsel for the State further submits that there was no error in the impugned order passed by the District Magistrate.

8. Sri Bharat Singh Pal, learned counsel for respondent no. 4 submits that petitioner is a complainant and as such the present writ petition would not be maintainable.

9. It is to be seen that Gram Pradhan is an elected member of the Gram Panchayat and his removal from the office of the Gram Panchayat required under Section 95(1)(g) of the U.P. Panchayat Raj Act then it is necessary that unless there is material to indicate removal, otherwise the same cannot be accepted against the elected representative as the same itself hits the basic tenets of democracy.

10. In the present case Gram Pradhan is alleged to have purchased under the inventory register one chair and one table which was not stated in the bill although the bill amount included the aforesaid

purchase. The chair and table are part of the Gram Panchayat inventory has not been disputed by learned counsel for the parties. The bill may have not been clearly stated the inventory purchase and that might have been an irregularity are not required to be proceeded under Section 95(1)(g) of the U.P. Panchayat Raj Act. It is the discretion of the District Magistrate, as under Section 95(1) of U.P. Panchayat Raj Act word "may" has been used instead of "shall". It gives a discretion to the District Magistrate to proceed. However, when the District Magistrate have been shown that there exist circumstances for removal, then the power is required to be exercised imperatively. In the present case there is an irregularity in the bill, however, purchase of chair and table are part of the inventory of the Gram Panchayat, the same may be an error, however, the same by itself cannot be stated that the Gram Pradhan be discontinued from the office in public interest. The public interest is something more larger than mere error in the accounting process. There is no allegation against the Gram Pradhan in the present writ petition with regard to any misappropriation. There is a distinction between error and misappropriation and the every error cannot be a ground of proceeding against the Gram Pradhan specifically when such error does not result any loss of property. In the present case purchase and payment have been made and the chair and table being found in inventory is admitted by both the parties. Once aforesaid is a position, the impugned order passed by District Magistrate does not warrant any interference.

11. The writ petition lacks merit and is hereby dismissed.

**Order Date :- 8.11.2024**

VMA