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ALLAHABAD HIGH COURT

DIVISION BENCH

VISHWESH NATH — Appellant

Vs.

STATE OF U.P. AND OTHERS — Respondent

(Before : Narayan Shukla, J; Devendra Kumar Arora, J)

Decided on : 22-06-2010

- Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 - Section 21A, Section 29

A. U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 29 — Removal of Adhyaksha — Committee appointment during enquiry — Scope and duration — Committee appointed under Section 29 to discharge functions of Adhyaksha during enquiry ceases to operate once the enquiry concludes and a final decision (removal of Adhyaksha) is taken. The provision's role is specifically tied to the pendency of the inquiry. (Para 9)

B. U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 21A — Temporary arrangement for vacant Adhyaksha office — Scope — Once the office of Adhyaksha becomes vacant (due to removal under Section 29), Section 21A empowers the State Government to make temporary arrangements for the discharge of the Adhyaksha's functions until a new Adhyaksha resumes duties. This power allows the government to appoint a committee for this purpose. (Paras 5, 6, 10)

C. Public Administration — Appointment of Committee to discharge public functions — Democratic principles — Influence of political recommendations — While the State Government has the power to appoint a committee for temporary arrangements (under Section 21A of the Act), such appointments

should adhere to democratic principles and avoid political influence. Appointment based solely on recommendations from ruling party members, especially when records indicate political motivation for replacement of members, undermines the democratic functioning of local bodies and public faith. (Paras 11, 12)

D. Local Self-Government — Vacancy in Adhyaksha office — Interim arrangement — Role of elected members — To uphold democratic principles and ensure public confidence, when an Adhyaksha's office is vacant and a temporary committee is required, it is advisable that the members of such a committee be chosen through a resolution of the majority of the elected members of the Zila Panchayat. This approach reflects the public opinion given that Zila Panchayat members are directly elected. (Paras 12, 13)

E. Judicial Review — Quashing of administrative order — Directions for re-appointment — Where an administrative order appointing a committee to discharge public functions is found to be influenced by political considerations rather than democratic principles, the court can quash the order and provide directions for a fresh appointment process. This process should involve the collective decision of elected representatives (Zila Panchayat members) to ensure democratic legitimacy. Until the new committee is formed, the District Magistrate may have temporary control over the functioning of the Zila Panchayat. (Paras 13, 14, 15)

JUDGMENT

1. Counter affidavit filed by the State is taken on record.
2. Heard Mr. Raghendra Kumar Singh, Senior Advocate assisted by Mr. Anurag Kumar Singh, learned Counsel for the petitioner, Mr. Sanjay Bhasin, learned Additional Chief Standing Counsel for the State, Mr. Vinod Kumar Singh, Senior Advocate assisted by Mr. Ashok Kumar Shukla, learned Counsel for opposite party No. 4.
3. The petitioner has challenged the order dated 8th of June, 2010, issued by the State Government, whereby in exercise of power provided u/s 21A of U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 (hereinafter referred to as the 'Act') the State Government has appointed a three member committee to discharge the functions of Adhyaksha of Zila Panchayat.
4. The learned Counsel for the petitioner submits that earlier three member committee was appointed to discharge the function of Adhyaksha of Zila Panchayat in exercise of power provided u/s 29 of the Act during the course of enquiry. Though on the result of enquiry the

Adhyaksha Smt. Malti Singh, has been removed from the office, but since no election has taken place, the Committee appointed to discharge the function of Adhyaksha is still entitled to continue till the next election takes place. He further submits that it is not the new committee, but one member of the earlier committee has been replaced and in place of one Shri Vishwesh Nath, Smt. Malti Devi, the opposite party No. 4, has been appointed as member of the committee at the behest of one local M.L.A., who recommended her name. The letter of M.L.A. has also been brought on record as Annexure No. 5. Thus he submits that the change in the Committee is absolutely political in nature and that vitiates the appointment of the Committee itself.

5. On the other hand Mr. Vinod Kumar Singh, learned Counsel for the opposite party No. 4 submits that as soon as the enquiry is over and the Adhyaksha of the Zila Panchayat is removed, the operation of the provisions of Section 29 of the Act also becomes over and immediately thereafter the role of provisions of Section 21A comes into play, in exercise of which the State Government can make an arrangement as it thinks fit for discharge of function of said Adhyaksha. Section 21A of the Act provides for temporary arrangement when the office of Adhyaksha is vacant or he is unable to discharge his functions owing to absence, illness or any other cause. Here in the present case it is not in dispute that after removal of the Adhyaksha, Smt. Malti Singh, the office of Adhyaksha of Zila Panchayat has become vacant.

6. In the light of the aforesaid provisions as well as backdrop of the facts, he submits that there is no error in appointment of another Committee in exercise of power provided u/s 21A of the Act and that is entitled to discharge the function of Adhyaksha till the next election takes place, thus he supports the action of the State Government in issuing the order impugned.

7. As per direction of this Court the learned Additional Chief Standing Counsel also produced the relevant record, which reveals that the conduct of Mr. Vishwesh Nath, one member of the earlier Committee has been found against the interest of the Government, therefore, his replacement became necessary resulting to which he has been replaced by Smt. Malti Devi.

8. Before making any discussion on the arguments raised by the parties, we feel it appropriate to reproduce the provisions of Section 29 as well as provisions of Section 21A of the Act, which are reproduced hereunder:

29. Removal of Adhyaksha or (xxx)-(1) If in the opinion of the State Government the Adhyaksha or the (xxx) while acting in place of Adhyaksha wilfully 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 because physically or mentally incapacitated for performing his duties] the State Government, after giving the Adhyaksha or (xxx), 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 (xxx) is prima facie found to have committed financial and other irregularities such Adhyaksha or (xxx) 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]

(3) An Adhyaksha or [xxx], removed from his office under this section, shall not be eligible for election as Adhyaksha or [xxx] for a period of three years from the date of his removal.

Section 21A of the Act is reproduced hereunder: - 21A. Temporary arrangement in certain cases.- When the office of the Adhyaksha is vacant or he is unable to discharge his functions owing to absence, illness or any other cause, the State Government may by order, make such arrangement, as it thinks fit, for the discharge of the functions of such Adhyaksha until the date on which the Adhyaksha resumes his duties.]

9. Upon perusal of the provisions of Section 29 of the Act we find that the provisions of Section 29 of the Act, so far as it relates to appointment of Committee consisting of three elected members of Zila Panchayat to discharge the function of Adhyaksha is concerned, that remains operative till final decision is taken in the matter and as soon as the enquiry is concluded with the result in either way, the role of this provision comes to an end. Therefore, the argument of Mr. Raghvendra Kumar Singh, Senior Advocate that the role of Section 29 of the Act comes to an end only on the event of exoneration of the President from the charges in dispute does not convince us to interfere in the matter.

10. In the present case on the result of enquiry i.e. removal of Adhyaksha of Zila Panchayat from the office of the Adhyaksha, the post became vacant. Thereafter the role of the State Government came into play to make an arrangement for discharge the functioning of Adhyaksha in exercise of power provided u/s 21A of the Act in the nature of temporary arrangement, even State Government also took action accordingly, therefore, we find no error in appointment of three member committee in exercise of powers provided u/s 21A of the Act by the State Government.

11. Only one fact which appeals to us to interfere in the order is the letter of the M.L.A. of Ruling Party, who through his letter recommended the replacement of Mr. Vishwesh Nath as his activity was against the interest of the Government by another member namely Smt. Malti Devi. Though the letter is not in the original record of the file, but noting in the file itself reveals that the said ground has been taken in notice for his replacement and that is

only the ground for appointment of the opposite party No. 4 as a member of the Committee.

12. The functioning of Zila Panchayat or the Committee in place there of, is a democratic functions and it should gain the faith of the public irrespective of interest of any political party either it is ruling or in opposition. In such a matter in order to maintain the rule of democracy and to avoid the misuse of power by the Ruling party to nominate its favourite persons as members of the Committee, it is advisable to the State Government to frame an appropriate Legislation in this regard to appoint the Members of Committee only with the consent/resolution of the majority members of the Zila Panchayat/local body.

13. Keeping in view this fact as well as rule of democracy, we think it proper to hold that let a meeting of the members of the Zila Panchayat be called upon to hold the meeting and to elect three members amongst them to appoint as members of the Committee to discharge the function of the Adhyaksha. We are informed that all the members of the Zila Panchayat are also elected directly by the public, therefore, the opinion of the members of the Zila Panchayat shall be the opinion of the public and in such a manner definitely the democracy shall prevail. Therefore, we hereby provide, that the District Magistrate concerned shall proceed for holding of a meeting of the Zila Panchayat within one month for the aforesaid exercise and he shall recommend the names of those three members in favour of whom resolution of the majority of members of the Zila Panchayat are there for appointment as members of the Committee to the State Government. Thereafter very soon the State Government shall constitute a Committee accordingly to function as Adhyaksha of the Zila Panchayat.

14. In the meantime the District Magistrate shall have the control over the functioning of Zila Panchayat.

15. With the aforesaid observations and directions the order impugned dated 8.6.2010, passed by the State Government, is hereby quashed and the writ petition is disposed of finally.