

(2024) 10 ILRA 249
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 18.10.2024

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Writ-C No. 7170 of 2024

Smt. Sangeeta Devi ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Rakesh Kumar Srivastava, Abhishek
Durgesh Mishra

Counsel for the Respondents:

C.S.C.

Civil Law - U.P.Panchayat Raj (Removal of Pradhan, Up-Pradhan and Members) Enquiry Rules, 1997 - Rule 6 & 7-
Impugned order-removal of the Petitioner from the post of Pradhan-passed on the basis of an enquiry report –which is a spot inspection report-enquiry conducted against the petitioner was in utter violation to the Rules 6 and 7 of the Rules of 1947-petitioner was never issued a charge sheet and was not called upon by the Enquiry Officers to submit his reply to the charge sheet-impugned order quashed.

W.P. allowed. (E-9)

List of Cases cited:

1. Quadri Begum Vs St. of U.P. & ors. reported in 2009 (4) AWC 3608 Allahabad
2. Sher Ali Vs St. of U.P. & ors. reported in 2013 (7) ADJ 736
3. Mahendra Singh Vs St. of U.P. & ors. reported in 2014 (1) ADJ 434
4. Pushpa Vs St. of U.P. & ors. reported in 2014(1) ADJ 205,

5. Mukesh Kumar Vs St. of U.P. & ors. reported in 2014 (1) ADJ 215

6. Shaukat Hussain Vs St. of U.P. reported in 2019 (7) ADJ 429

(Delivered by Hon'ble Manish Kumar
Nigam, J.)

1. Heard learned counsel for the petitioner, learned Standing Counsel for the State-respondents and perused the record.
2. This writ petition has been filed for following relief:-

“1. Issue a writ, order or direction in the nature of Certiorari for quashing the Final Enquiry Report dated 14.03.2024, Show Cause Notice dated 12.04.2024 and the impugned order dated 26.07.2024 passed by opp. Party no. 2 i.e. District Magistrate Raibareli removing the petitioner from the post of Gram Pradhan pertaining to Gram Panchayat- Arakha, Block & Tehsil- Unchahar, Distt.- Raibareli, as contained in Anneuxres No.1, 2 & 3 to the writ petition.”

3. Brief facts of the case are that the petitioner was elected as a Pradhan of Gram Panchayat, Post-Arakha, Block & Tehsil- Unchahar, District- Raebareli. Certain complaints were made by the villagers, namely, Sunil Kumar son of Mewa Lal, Rakesh Kumar son of Late Ram Nath against the petitioner to the District Magistrate, Raebareli alleging therein the misappropriation of public money by the petitioner in carrying out the development work. The complaint made against the petitioner was got enquired by District Magistrate, Raebareli and preliminary reports dated 21.10.2022 and 29.10.2022 were submitted before the District Magistrate, Raebareli by the District Social

Welfare Officer, Raebareli and Deputy Labour Commissioner, Raebareli. After considering the preliminary enquiry reports, a show cause notice was issued to the petitioner by the District Magistrate, Raebareli on 04.11.2022 as to why proceedings under Section 95(1)(g) of U.P. Panchyat Raj Act, 1947 should not be initiated against the petitioner. Petitioner submitted his reply to the aforesaid show cause notice on 08.12.2022 to the District Magistrate, Raebareli. A copy of the reply has been annexed as Annexure No. 6 to the writ petition. By order dated 12.05.2023, the District Magistrate in exercise of its powers under Section 95(1)(g) of the U.P. Panchyat Raj Act, 1947 ceased the financial and administrative powers of the petitioner. By another order dated 16.06.2023 passed by District Magistrate, Raebareli, a three member committee was constituted for discharging functions of the Gram Pradhan and a final enquiry was also directed. District Programme Officer, Raebareli and Executive Engineer Khand 2 Lok Nirman Vibhag were appointed Enquiry Officers for conducting the final enquiry. The petitioner filed a writ petition being Writ C No. 8462 of 2023 (Sangeeta Devi Vs. State of U.P. and others) before this Court challenging the order dated 12.05.2023 passed by District Magistrate by which the financial and administrative powers of the petitioner were ceased. This Court by order dated 04.10.2023 directed the learned Standing Counsel to file a counter affidavit and the said writ petition is still pending. Copy of order dated 04.10.2023 is annexed as Annexure No. 9 to the writ petition. The aforementioned Enquiry Officers submitted a final enquiry report on 14.03.2024 which has been annexed as Annexure No. 1 to the writ petition. On the basis of final enquiry report dated 14.03.2024, the District

Magistrate, Raebareli issued a show cause notice to the petitioner on 12.04.2024 directing the petitioner to submit his explanation within fifteen days from the date of receipt of the notice. The petitioner submitted a detailed explanation/ reply to the enquiry report on 02.05.2024 denying the charges levied against the petitioner relating to financial irregularities and misappropriation of public money. The petitioner also raised objections regarding the procedure adopted by the Enquiry Officers in conducting the final enquiry. Copy of the explanation submitted by the petitioner dated 02.05.2024 has been filed as Annexure No. 11 to the writ petition. The District Magistrate, Raebareli on 26.07.2024 passed an order removing the petitioner from the post of Post-Arakha, Block & Tehsil- Unchahar, District- Raebareli. Hence the present writ petition.

4. Contention of learned counsel for the petitioner is that the order impugned removing the petitioner from the post of Pradhan has been passed on the basis of an enquiry report dated 14.03.2024, which is nothing but a spot inspection report. It has also been contended by counsel for the petitioner that State of U.P. has framed U.P. Panchayat Raj (Removal of Pradhan, Up-Pradhan and Members) Enquiry Rules, 1997 (hereinafter referred to as 'Rules of 1997') in exercise of powers conferred under Section 110 read with Clause (g) of sub-Section (1) of Section 95 of the U.P. Panchyat Raj Act, 1947. The procedure for holding final enquiry has been provided in Rules 6 and 7 of the Rules of 1997. It has been contended that the order impugned has been passed only on the basis of a spot inspection made by the Enquiry Officers and the enquiry conducted against the petitioner was in utter violation to the Rules 6 and 7 of the Rules of 1947.

5. Rule 6 and Rule 7 of the Rules of 1997 are quoted as under:-

“6. Procedure for the enquiry.-

(1) The substance of the imputations, and a copy of the complaint referred to in Rule 3, if any, shall be forwarded to the Enquiry Officer by the State Government.

(2) The Enquiry Officer shall draw up:-

(a) the substance of the imputations into definite and distinct articles of charge; and

(b) a statement of the imputations in support of each article of charge, which shall contain a statement of all relevant facts and a list of documents by which, and list of witnesses by whom, the articles are proposed to be sustained.

(3) The Enquiry Officer shall deliver or cause to be delivered to the person against whom he is to hold the enquiry, a copy of the articles of charge, the statement of the imputations and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require that person by a notice in writing, to submit within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person, and to appear before him on such day and at such time as may be specified.

(4) On receipt of the written statement of defence, the Enquiry Officer shall enquire into such of that articles as are not admitted and where all the articles of charge have been admitted in the written statement of defence, the Enquiry Officer shall record his findings on each charge

after taking such evidence as he may think fit.

(5) If the person who has admitted any of the articles of charge in his written statement of defence, appears before the Enquiry Officer, he shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the Enquiry Officer shall record the plea, sign the record and obtain the signature of that person thereon, and return a finding of guilt in respect of those charges.

(6) If the person fails to appear within the specified time or refuses or omits to plead, the Enquiry Officer shall take the evidence, and if there is a complaint, require him to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding fifteen days, after recording an order that the said person may, for the purpose of preparing his defence:-

(a) Inspect within five days of the order or within such further time not exceeding five days as the Enquiry Officer may allow, the documents specified in the list referred to in sub-rule (2);

(b) submit a list of witnesses to be examined on his behalf;

(c) give a notice within ten days of the order or within such further time not exceeding ten days as the Enquiry Officer may allow, for the discovery or production of any documents that are relevant to the enquiry and are in the possession of the State Government, but not mentioned in the list referred to in sub-rule (2).

(7) *The person against whom the enquiry is being held may take the assistance of any other person to present the case on his behalf, and the Enquiry Officer may appoint any person as a Presenting Officer to assist him in conducting the enquiry.*

Provided that a legal practitioner shall not be engaged or appointed under this sub-rule.

(8) *If the person applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (2), the Enquiry Officer shall furnish him with such copies as early as possible, and in any case, not later than three days before the commencement of the examination of the witnesses by whom any of the articles of charge is proposed to be proved.*

(9) *The Enquiry Officer shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition.*

Provided that the Enquiry Officer may, for reasons to be recorded in writing, refuse to requisition such of the documents as are, in his opinion, not relevant to the case.

(10) *On receipt of the requisition referred to in sub-rule (9), every authority having the custody or possession of the requisitioned documents shall produce the same before the Enquiry Officer.*

Provided that if the authority having the custody or possession of the

requisitioned documents is satisfied for reasons to be recorded in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the Enquiry Office accordingly and the Enquiry Officer shall, on being so informed, communicate the information to the person against whom the enquiry is being held and withdraw the requisition made by him for the production or discovery of documents.

(11) *On the date fixed for the enquiry, the oral and documentary evidence by which the articles of charge are proposed shall be produced and the witness shall be examined by the Enquiry Officer by or on behalf of the complainant, if there is one, and may be cross-examined by or on behalf of the person against whom the enquiry is being held. The witnesses may be re-examined by the Enquiry Officer or the complainant, as the case may be, on any point on which they have been cross-examined, but not on any new matter, without the leave of the Enquiry Officer.*

(12) *The Enquiry Officer may allow production of evidence not included in the list given to the person against whom the enquiry is being held, or may itself call for new evidence or recall and re-examine any witness and in such case the said person shall be entitled to have if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the enquiry for three clear days before the production of such evidence, exclusive of the day of adjournment and the day to which the enquiry is adjourned. The Enquiry Officer shall give the said person an opportunity of inspecting such documents before they are taken on the record. The Enquiry Officer*

may also allow the said person to produce new evidence, if he is of the opinion that the production of such evidence is necessary in the interest of justice.

Note-New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(13) When the evidence for proving the articles of charge against the person against whom the enquiry is being held, is closed, the said person shall be required to state his defence orally or in writing as he may prefer. If the defence is made orally it shall be recorded, and the said person shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the complainant, if any.

(14) The evidence on behalf of the person against whom the enquiry is being held shall than be produced. The said person may examine himself in his own behalf if he so prefers. The witnesses produced by the said person shall then be examined and shall be liable to cross-examination, re-examination and examination by the Enquiry Officer, according to the provisions applicable to the witnesses for proving the articles of charge.

(15) The Enquiry Officer may, after the person against whom the enquiry is being held closes his case, and shall, if the said person has not examined himself, generally question him on the circumstances appearing in the evidence against him.

(16) The Enquiry Officer may, after the completion of the production of evidence, hear the complainant, if any and the person against whom the enquiry is being held, or permit them, or him, as the case may be, to file written briefs of their respective cases.

(17) If the person to whom a copy of the articles of charge has been delivered does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the Enquiry officer or otherwise fails or refuses to comply with the provisions of this rule, the Enquiry Officer may hold the enquiry ex parte.

(18) Whenever the Enquiry Officer after having heard and recorded the whole or any part of the evidence in an enquiry, ceases to exercise jurisdiction therein and is succeeded by another Enquiry Officer, the Enquiry Officer so succeeding may act on the evidence so recorded by his predecessor or partly recorded by himself.

Provided that if the succeeding Enquiry Officer is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice he may recall, examine, cross-examine and re-examine any such witness as hereinbefore provided.

7. Report of the Enquiry Officer-

- After the conclusion of the enquiry, the Enquiry Officer shall prepare a report, which shall contain-

- (a) the articles of charge and the statement of the imputations;*

(b) the defence of the person against whom the enquiry has been held;

(b) the assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and reasons therefor.

Explanation.--If in the opinion of the Enquiry Officer the proceedings of the enquiry establish any article of charge different from the original articles of charge, he may record his findings on such article of charge.

Provided that the findings on such article of charge shall not be recorded unless the person against whom the enquiry has been held has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such articles of charge."

6. It has been further contended by counsel for the petitioner that from the perusal of the Rules of 1997 framed for enquiry against the alleged misconduct by the Pradhan, Up-Pradhan and Members, it is apparent that the rules do not contemplate only a spot inspection by the Enquiry Officers but requires that Enquiry Officer shall brought the substance of imputation into definite and distinct articles of charge and a statement of imputations in support of each article of charge, which shall contain a statement of all relevant facts, list of documents and the list of witnesses by whom the articles are proposed to be sustained. Rule 6(3) of the Rules of 1997 also provides that the Enquiry Officer shall deliver or cause to be

delivered to the person against whom he has to hold the enquiry, a copy of articles of charge, the statement of imputations and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall also require that person by a notice in writing to submit within such time as may be specified, a written statement of his defence and also to state whether he desires to be heard in person and appear before him on such day at such time as may be specified. Rule 6(4) of the Rules of 1997 provides that on receipt of written statement of defence, the Enquiry Officer shall enquire into such of that articles as are not admitted and where all the articles of charges have been admitted in the written statement of defence, the Enquiry Officer shall record his finding on each charge after taking evidence as he may think fit.

7. Counsel for the petitioner further submitted that from the perusal of order impugned passed by the District Magistrate, Raebareli dated 26.07.2024, it is apparent that the order has been passed only on the basis of spot inspection made by the Enquiry Officers. It has been further contended that the enquiry has been conducted in violation of Rules 6 and 7 of the Rules of 1997 as the petitioner was never issued a charge sheet and was not called upon by the Enquiry Officers to submit his reply to the charge sheet. It has also been pointed out by the learned counsel appearing for the petitioner that even from the perusal of the enquiry report, it is apparent that same does not mention regarding the compliance of Rules 6 and 7 of the Rules of 1997 but only mentions about the spot inspection conducted by the Enquiry Officers. There is no mention in the enquiry report that any charge sheet was issued to the petitioner, a reply was

called for from the petitioner, date and time were fixed for the enquiry. Thus, according to the petitioner, the order impugned has been passed in violation of Rules 6 and 7 of Rules of 1997 framed for the purpose of holding an enquiry.

8. In this regard, learned counsel for the petitioner relied upon judgments of this Court in case of **Quadri Begum Vs. State of U.P. And Others** reported in 2009 (4) AWC 3608 Allahabad, **Sher Ali Vs. State of U.P. and others** reported in 2013 (7) ADJ 736, **Mahendra Singh Vs. State of U.P. And Others** reported in 2014 (1) ADJ 434, **Pushpa Vs. State of U.P. and Others** reported in 2014(1) ADJ 205, **Mukesh Kumar Vs. State of U.P. and Others** reported in 2014 (1) ADJ 215 and **Shaukat Hussain Vs. State of U.P.** reported in 2019 (7) ADJ 429.

9. Per contra, learned Standing Counsel appearing for the State has vehemently submitted that enquiry was conducted in an impartial manner and after considering the reply submitted by the petitioner, the District Magistrate has found the petitioner guilty of financial misappropriation of the funds in carrying out the development work and therefore, no illegality has been committed and the principles of natural justice has been complied with before passing the order impugned as the show cause notice was also issued by the District Magistrate to the petitioner to explain the allegations as made in the show cause notice.

10. A plain reading of the Rules indicates that the Legislature has given appropriate safeguards to check the arbitrary use of power by the authorities. The specific provision has been given in Rule 6 for inquiry.

11. In case of **Quadri Begum Vs. State of U.P. And Others (supra)** this Court in paragraph Nos. 6 and 7 has held as under:-

“6. In the present case, on the basis of the record it appears that neither the inquiry Officer, i.e., the Executive Engineer nor the District Magistrate concerned, had complied with the provisions given in the Rules. The provisions contained in the Rules are statutory in nature and while holding a person guilty of misconduct it shall be incumbent upon the authorities to follow the provisions in letter and spirit.

*7. The Pradhans who are elected and chosen by the people, should not be treated with undue hardship. In the present case, the false implication cannot be ruled out. The Rules contain detailed procedure with regard to holding of inquiry and for the submission of report by the Inquiry Officer. The principles of natural Justice is the part and parcel of Article 14 of the Constitution. Noncompliance of the Rules renders the inquiry report as well as the removal order illegal. The provisions contained in the Rules are mandatory in nature and should be adhered by the authorities while proceeding with the inquiry. The attention has not been invited towards any material on record by the respondents Counsel which may point out that Rules 5, 6 and 7 of the Rules have been followed in the inquiry proceedings. It is settled proposition of law that in case the authorities want to do anything, then that should be in the manner provided by the Act or Statute (Rules) and not otherwise vide, **Nazir Ahmed v. King Emperor** MANU/PR/0119/1936: AIR 1936 PC 253; **Deep Chand v. State of Rajasthar** MANU/SC/0118/1961: AIR 1961 SC 1527;*

Patna Improvement Trust v. Smt. Lakshmi Devi and Ors. MANU/SC/0389/1962: AIR 1963 SC 1077; *State of U.P. v. Singhara Singh and Ors.* MANU/SC/0082/1963: AIR 1964 SC 358; *Barium Chemicals Ltd. v Company Law Board* MANU/SC/0037/1966: AIR 1967 SC 295 Para 34; *Chandra Kishor Jha v. Mahavir Prasad and Ors.* MANU/SC/0594/1999: 1999 (8) SCC 266; *Delhi Administration v. Gurdip Singh Uban and Ors.* MANU/SC/0515/2000: 2000 (7) SCC 296; *Dhananjay Reddy v. State of Karnataka* MANU/SC/0168/2001: AIR 2001 SC 1512; *Commissioner of Income Tax, Mumbai v. Anjum M. H. Ghaswala and Ors.* MANU/SC/0662/2001: 2002 (1) SCC 633; *Prabha Shankar Dubey v. State of M.P.* AIR 2004 SC 486 and *Ramphal Kundu v. Kamal Sharma* MANU/SC/0059/2004: AIR 2004 SC 1657. In the present case, at the face of record, the procedure given in the Rules (*supra*) have not been followed. The writ petition deserves to be allowed.”

12. In case of **Mahendra Singh Vs. State of U.P. And Others** (*supra*), this Court in paragraph Nos. 3, 4 and 5 has held as under:-

“3. The Court finds from a perusal of the inquiry report that no charge sheet was served upon the petitioner as per Rule 6 of the Rules of 1997, which stipulates that the inquiry officer is required to draw up the substance of the imputation or the imputation into different and distinct articles of charge and statement of the imputation in support of each article of the charge and list of the documents, list of the witnesses etc., which are relied upon are required to be indicated. Such charges are required to be served upon the Pradhan and, upon receipt of the evidence, the inquiry officer is

required to conduct an oral inquiry into such charges, which are denied by the Pradhan. Witnesses are required to be examined and opportunity is required to be given for cross-examination of the witnesses. A date, time and place is required to be fixed, which in the instant case has been given a go bye.

4. The inquiry officer has not conducted the inquiry as per Rule 6 of the Rules and has proceeded in his own cavalier fashion conducting an ex-parte inquiry and submitting a report holding that the charges levelled as per the preliminary inquiry stood proved. The Court is of the opinion, that the inquiry report submitted is in gross violation of the provisions of Rule 7 of the Rules of 1997.

5. Consequently, the inquiry report cannot be sustained and the order of removal pursuant to the inquiry report is also erroneous and cannot be sustained. The impugned order is quashed.”

13. In case of **Pushpa Vs. State of U.P. and Others** (*supra*), this Court in paragraph Nos. 5, 6 and 7 has held as under:-

“5. A final inquiry is required to be conducted in accordance with the procedure contemplated under Rule 6 of the Rules of 1997 and thereafter a report is required to be submitted under Rule 7 of the Rules of 1997. The procedure contemplated under Rule 6 is that the inquiry officer shall draw the articles of charges and the statements of imputation and serve such articles of charges along with the statements and relevant documents in support of such statements and the charges to the delinquent, who in the instant case is the Pradhan. Specific

charges are required to be framed by the inquiry officer, so that the Pradhan can give a proper reply to each of the charges. The procedure contemplated indicates, that where the charge is denied by the Pradhan, the inquiry officer is required to conduct an inquiry by taking oral and documentary evidence after giving an opportunity to the Pradhan to cross-examine such witnesses and only thereafter the inquiry officer is required to submit an inquiry report, which would contain the articles of charge and the statement of the imputation, the defence of the Pradhan and the assessment of the evidence in respect of each articles of charge and thereafter the findings on each article of charge and the reasons thereof.

6. In the instant case, the inquiry officer has done nothing as per the procedure provided under Rule 6 of the Rules of 1997. He has neither framed the charge nor the statement of the imputation nor the list of documents or the list of witnesses that was to be relied upon by the prosecution. All that the inquiry officer has done is to hold an inquiry which is nothing but a preliminary enquiry and is not an enquiry contemplated under Rule 6 of the Rules of 1997. The Court finds from a perusal of the record that pursuant to the submission of the report, a show cause notice dated 26.7.2013 was issued by the District Magistrate, which contained the charges and upon receipt of the reply a final order has been passed. The Court finds that the procedure adopted was patently illegal. The charges so framed by the District Magistrate were not proved nor was the inquiry held in accordance with Rule 6 of the Rules of 1976. The entire exercise was wholly illegal and against the clear provisions of Rule 6 of the Rules of 1997. The inquiry report was in violation of

the provisions of Rule 7 of the Rules of 1997.

7. Since no charges were framed against the petitioner nor any inquiry was made in accordance with Rule 6 of the Rules of 1997, which is a mandatory requirement, the impugned order dated 8.10.2013 removing the petitioner under Section 95(1)(g) of the Act was wholly illegal and in violation of the principles of natural justice. The impugned order cannot be sustained and is quashed.”

14. In case of Mukesh Kumar Vs. State of U.P. and others (supra) this Court in paragraph Nos. 4, 5, 6 and 7 has held as under:-

“4. Having heard the learned counsel for the parties and having perused the impugned order as well as the enquiry report, which has been filed by respondent no.7 in his counter affidavit, the Court finds that the impugned order cannot be sustained.

5. An elaborate procedure has been prescribed under Rule 6 of the Rules. Rule 6(2) of the Rules clearly indicates that the Enquiry Officer shall draw the substance of the imputations into definite and distinct articles of charge and that a statement of the imputations in support of each article of charge, shall also be drawn up, which shall contain statement of all relevant facts and the list of documents and list of witnesses and which are all required to be indicated and supplied to the Pradhan. The procedure thereafter as provided under Rule 6 of the Rules is required to be followed.

6. Without going into the details, the Court finds that the Enquiry Officer has

submitted a five line report and held that the imputations mentioned in the preliminary enquiry was inquired and the charges have been found to be true. The Court is of the opinion that the Enquiry Officer has not even read the procedure, which he is required to follow under Rule 6 of the Rules. A very shoddy and careless enquiry has been done by the Enquiry Officer and, on that basis, a Pradhan, who has been given a constitutional status has been removed. No charge was framed by the Enquiry Officer nor any statement of imputation was made nor list of documents or list of witnesses were indicated. Since no charge has been framed, the question of such charge been proved does not arise .

7. In the light of the aforesaid, the Court finds that the impugned order cannot be sustained and is quashed. The writ petition is allowed.”

15. In case of **Sher Ali Vs. State of U.P. and others (supra)**, this Court in paragraph Nos. 12, 13 and 15 has held as under:-

“12. From a perusal of Rule 6 of the Rules of 1997, it is clear that a detailed procedure has been envisaged for holding an enquiry. This procedure is not applicable while holding a preliminary enquiry under Rule 4, and consequently, a definite charge has to be framed under Rule 6. The documents relied upon by the prosecution has to be made known and specified in the charge sheet. The charge is required to be proved against the charged person. It is a full fledged enquiry, which is required to be followed precisely in the manner, in which it has been envisaged under Rule 6 of the Rules of 1997. A preliminary enquiry does not envisage this procedure under Rule 4, and therefore, the

respondents committed a manifest error in holding that since a preliminary enquiry was conducted, there was no need to hold a final enquiry with regard to the same charges.

13. In the light of the aforesaid, the Court finds from a perusal of the impugned order that the respondents did not issue any chargesheet to the petitioner nor conducted an enquiry as per Rule 6 of the Rules of 1997. Consequently, the enquiry report and the orders passed pursuant thereto are patently erroneous in gross violation of the procedure and Article 14 of the Constitution, which cannot be sustained.

15. In the light of the aforesaid, the impugned order cannot be sustained and is quashed. The writ petition no. 35371 of 2013 is allowed.”

16. The same view has been taken by this Court in case of Shaukat Hussain Vs. State of U.P.(supra).

17. I have perused the enquiry report as well as the order passed by the District Magistrate dated 26.07.2024 and I am of the opinion that though a spot inspection was made by the Enquiry Officers appointed by the District Magistrate but the enquiry was not conducted in accordance with provisions of Rules 6 and 7 of the Rules of 1997 as there is no whisper of even issuing charge sheet, calling for an explanation from the petitioner, recording of evidence of witnesses and fixing date and time for enquiry in the impugned order and in the enquiry report.

18. Democracy in our country begins at the grass root level with elections

of Gram Pradhans in villages and the same is the very foundation of our democracy. No doubt, the District Magistrate has the power to either cease the financial and administrative powers or oust the democratically elected Gram Pradhan under Section 95(1)(g) of the Act, but the said power is to be exercised only in exceptional and extra ordinary cases, and should be exercised with utmost caution and not in a routine manner at the whims and fancies of the administrative authorities, without following the procedure prescribed under the Act and the Rules. The present case is a glaring example where action has been taken in gross violation of the Act and the Rules of 1997 framed thereunder and a democratically elected Pradhan has been wrongly kept away and deprived of his elected office for several months.

19. Rules 6 and Rule 7 of Rules 1997 contemplates a formal enquiry as per the provisions made in the aforesaid rules. No order can be passed for removal of Pradhan by the District Magistrate only on the basis of a spot inspection made by the Enquiry Officer without complying with the provisions of Rule 6 and 7 of the Rules 1997.

20. Learned Standing Counsel could not point out either from the order impugned or from the enquiry report that the enquiry was conducted in consonance with the procedure as laid down in Rules 6 and 7 of Rules of 1997. Though, learned Standing Counsel vehemently contended that the Enquiry Officers have gone on spot and verified the work, which was undertaken by the petitioner for which the complaint was made and found that irregularities have been committed by the petitioner. Learned

Standing Counsel submitted that no useful purpose would be served in calling for a counter affidavit. Order dated 26.07.2024 and report dated 14.03.2024 be set aside and liberty be given to the District Magistrate to initiate fresh enquiry in accordance with Rules of 1997 and pass a fresh order.

21. To this proposition, learned counsel for the petitioner has no objection, therefore, with the consent of parties, the writ petition is decided at admission stage without calling for counter affidavit.

22. Thus, in view of discussions made above and stand of learned counsel for the parties, I am of the considered opinion that final enquiry conducted against the petitioner is not in consonance with the procedure prescribed in Rules 6 and 7 of the Rules of 1997 and therefore, the enquiry is vitiated. No reliance can be placed on the said enquiry for passing an order of removal by the District Magistrate and consequently, the order dated 26.07.2024 passed by the District Magistrate, is quashed and the writ petition is allowed.

23. However, it will be open for the respondents to initiate a fresh enquiry against the petitioner in consonance with the provisions of U.P. Panchayat Raj (Removal of Pradhan, Up-Pradhan and Members) Enquiry Rules, 1997. The District Magistrate is directed to conduct an enquiry afresh under Rule 6 of the Rules of 1997 after appointing a fresh enquiry officer under Rule 5 of the said Rules. The enquiry would be completed expeditiously, preferably, within three months from the date of production of a certified copy of this order. During this period, the three

member committee appointed by the District Magistrate will continue to discharge their functions.

(2024) 10 ILRA 260
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 04.10.2024

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Writ-C No. 8666 of 2024
 And
 Writ-C No. 8680 of 2024

Bindu Singh ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
 Amrendra Nath Tripathi, Sant Prasad Singh

Counsel for the Respondents:
 C.S.C.

A. Civil Law – Contents of the show-cause notice – Purpose of serving of show-cause notice is to make the noticee understand the precise case set up against him, which he has to meet. Show-cause notice must contain the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. It is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. A show-cause notice should meet the following two requirements, viz.: (i) The material/grounds to be stated which, according to the department, necessitates an action; (ii) Particular penalty/action which is proposed to be taken. (Para 13)

B. Indian Stamp Act, 1899- Section 47-A – Show-cause notice – In the instant case,

two cases under Section 47-A of the Indian Stamp Act, 1899, were instituted on the basis of two similarly worded notices dated 07.10.2022, stating that sale deeds were executed in favour of the petitioner and it had come to light that there was a deficiency in payment of the sale. Nothing further was stated in the notices regarding the basis of satisfaction that there was a deficiency in the payment of stamp duty. The notices do not even mention the amount of deficiency in the payment of stamp duty or any other particulars. Held – The show-cause notice does not serve any purpose, as, in the absence of the particulars in the notice, the noticee cannot submit a proper reply to the notice. (Para 14)

C. Stamp Duty – Recovery of deficient stamp duty – Uttar Pradesh Stamp (Valuation of Property) Rules, 1997, Rule 7(3)(c) – Collector may inspect the property after due notice to parties to the instrument. Report of any inspection which has not been conducted in accordance with the provisions of Rule 7(3)(c) of the 1997 Rules cannot form the basis of an order for recovery of deficient stamp duty. (Para 16)

D. Indian Stamp Act, 1899 – Recovery of deficiency in payment of registration fee – There is no provision in the Indian Stamp Act, 1899 empowering the authorities to order recovery of any deficiency in payment of registration fee, and in absence of any statutory provision, the authorities cannot pass any order for recovery of deficiency of registration fee in proceedings instituted under the Indian Stamp Act. (Para 17)

Allowed. (E-5)

List of Cases cited:

Gorkha Security Services Vs Govt. of NCT of Delhi & ors. (2014) 9 SCC 105

(Delivered by Hon'ble Subhash Vidyarthi, J.)