RESERVED

Case :- SPECIAL APPEAL No. - 65 of 2017
Appellant :- Shamim
Respondent :- State Of U.P. Thru Secy. And 5 Others
Counsel for Appellant :- Manish Kumar Nigam,Sanjai Kumar Pandey
Counsel for Respondent :- C.S.C.,Satya Priya Upadhyay

Hon'ble Krishna Murari,J.
Hon'ble Suneet Kumar,J.
Hon'ble Ashok Kumar,J.

(Per Suneet Kumar, J)

A Division Bench of this Court in (**Shamim vs. State of U.P. through Secretary**[1]) finding itself unable to accept the law laid down by the co-ordinate Bench in **Smt. Sonia Versus State of U.P.**[2], referred for "authoritative pronouncement by a larger Bench", the following questions for determination:-

> *"(i) As to whether the District Magistrate at the point of time when he proceeds to cease the administrative and financial authority of the Pradhan, he acts as a Tribunal or acts as an administrative authority.*
> *(ii) The view as expressed in the case of Smt. Sonia (supra) that under the scheme of things provided for under the U.P. Panchayat Raj Act, 1947, the District Magistrate exercising delegated authority of State Government acts as Tribunal is a correct view or District Magistrate exercises administrative authority, while exercising authority under Section 95(1)(g) of U.P. Panchayat Raj Act, 1947."*

1 Special Appeal No. 65/2017 dated 31.01.2017
2. 2013(5) ADJ 559

Since the decision rendered by the Division Bench in **Sonia** has been doubted, the reference comes before this Bench of three Judges.

The issue which falls for determination turns upon the provision of Section 95 of U.P. Panchayat Raj Act, 1947[3]. Clause (g) of sub-section (1) of Section 95 deals with removal of Pradhan of a Gram Panchayat and is in the following terms:-

> ***95. Inspection – (1) The State Government may –***
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> *(a) …….....*
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> *(b).....*
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> *(c).....*
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> *(d).....*
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> *(e).....*
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> *(f).....*
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> ***(g) Remove a Pradhan, Up-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 –***
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> *(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 this 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) or Section 12, as the case may be, on the basis of a false declaration subscribed by him stating that*

3. Panchayat Raj Act

he is a member of 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

(vi) 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 is prima facie found to have committed financial and other irregularities such Pradhan 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.

Provided that –

(i) no action shall be taken under ***Clause (f), Clause (g)*** *except after giving to the body or person concerned a reasonable opportunity of showing cause against the action proposed;*

(ii).....

(2) A person under sub-clause (iii) and (iv) of clause (g) of sub-section (1) of this section shall not be entitled to be re-elected or re-appointed to any office under this Act for a period of five years or such lesser period as the State Government may order in any case.

(3) No order made by the State Government under this section shall be called in question in any Court.

(4) Where any [Gram Panchayat][4], Joint Committee or Bhumi Prabandhak Samiti is [dissolved][5] the State Government may appoint such person or persons to exercise and perform the powers and duties thereof as it may deem fit.

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4. Subs. By U.P. Act No. 9 of 1994
5. Subs. By U.P. Act No. 9 of 1994

Section 95 of the Panchayat Raj Act is in Chapter VII. It is titled as 'External Control'. Section 95 is titled 'Inspection'. Section 95(1) (g) of the Panchayat Raj Act provides for removal of a Pradhan.

The main enactment is Section 95(1)(g), it provides for removal and not cessation of financial and administrative power, which is provided in its proviso. Two provisos qualify the main provision namely removal proceedings and not each other.

These two proviso operate in different fields:

(i). proviso to Section 95(1) provides reasonable opportunity in the removal proceedings ;

(ii). proviso to Section 95(1) (g) provides cessation of financial and administrative powers during removal proceeding.

The proviso to section 95(1) provides for reasonable opportunity in proceedings for removal of a Pradhan under Section 95(1) (g). But it does not apply to the proviso to Section 95(1) (g) providing preliminary or fact finding enquiry: the purpose of this enquiry is to find out if there is any prima facie case against the Pradhan or not. Section 95(1) (g) read with its proviso envisages two enquiries:

A preliminary or fact finding enquiry: (i) On the basis of this enquiry, financial and administrative powers of a Pradhan can be ceased and a committee to perform these functions can be appointed. This takes place under Rule 4 of the U.P. Panchayat Raj (Removal of Pradhan, Up-

Pradhan and Members) Enquiry Rules, 1997[6], read with proviso to Section 95(1) (g) of the Act; (ii) The final enquiry is done to remove a Pradhan which takes place under Rule 6 of the Enquiry Rules, 1997 read with Section 95(1) (g) Clauses (i) to (v), as well as, the proviso to Section 95(1). The proviso to Section 95(1) (g) providing cessation of financial and administrative powers does contemplate a preliminary enquiry by a person and procedure to be prescribed; the rules have to be framed for the same. The State Government has framed the Enquiry Rules, 1997. Rule 3 provides, how a complaint may be filed against a Pradhan. Rule 4 provides for conducting a preliminary enquiry. It is on the basis of this preliminary enquiry that action can be taken under the proviso to Section 95(1) (g). This is explained in Rule 5 of the Enquiry Rules, 1997. 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: (i) by a private person that has to be supported by an affidavit and has to comply other conditions of sub-rules (1) to (4) of Rule 3; (ii) the other by a public servant, and in this case the restrictions of the complaint by a private person do not apply.

Rule 4 is titled as 'Preliminary enquiry'. The District Magistrate can order a preliminary enquiry on the complaint or report or otherwise. The enquiry under rule 4 is a preliminary enquiry or fact finding enquiry. It has to be considered prima facie whether any financial or other irregularities have been committed by the Pradhan or not. The final enquiry is yet to be done. Rule 3(5) of the

6. Enquiry Rules, 1997

Enquiry Rules, 1997 provides that the complaint, which does not comply with any of the preceding sub-rule of Rule 3 should not be entertained.

In **Hafiz Ataullah Ansari Vs State of U.P. and others**[7], one of the question before the Full Bench was with regard to providing an opportunity before ceasing financial and administrative powers of a President during his removal proceedings under the Uttar Pradesh Municipalities Act, 1916. Though the words of the Municipalities Act are different but the Full Bench was of the view that the same reasoning applies in connection to Pradhan of a Gram Panchayat:

> "It is not necessary to involve a head of a local body in the process of collecting material or in the preliminary inquiry. However, it is necessary to ask and consider his explanation, or point of view or version regarding charges before issuing notice under the relevant provisos under the different enactments.

In view thereof, a Pradhan is neither entitled to be associated with the preliminary enquiry nor is entitled to get the copy of the preliminary enquiry report. His only right is to have his explanation or point of view or version to the charges considered before the order for ceasing his financial and administrative powers is passed.

The Full Bench in **Vivekanand Yadav Versus State of U.P. and others**[8] relying upon **Hafiz Ataullah Ansari** held that it is not only necessary that the explanation or

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7. 2011 (2) UPLBEC 889 : 2011(3) ADJ 502
8 2010(4) UPLBEC 3278 : 2011 (1) ALJ 694

point of view or the version of the affected Pradhan should be obtained but should also be considered before being prima facie satisfied of his being guilty of financial and other irregularities and ceasing his powers. Of course the consideration of the explanation does not have to be a detailed one. There should be indication that mind has been applied while forming the opinion by the District Magistrate. This has also been explained in **Hafiz Ataullah Ansari**.

In **Vivekanand**, it was clarified that the Enquiry Rules, 1997 were meant to apply in these cases where it was considered expedient to cease the financial and administrative powers and also providing for formal final enquiry for removal (Rule 6). Under proviso to section 95(1)(g) right to exercise financial and administrative powers can only be ceased if the District Magistrate prima facie finds that the Pradhan was guilty of financial or other irregularities in an enquiry (preliminary enquiry or fact finding enquiry) by such person in such manner prescribed and not otherwise. It is only such report that would come within the purview of the word "otherwise" in Rule 5 of the rules. All kinds of reports or information may not be relied under Rule 5 lest the rule may be hit by the statutory provision.

Before we proceed further, it would be appropriate to briefly note the historical background of the local bodies and the legislative history of the Panchayat Raj Act.

Upon the Seventy-third and Seventy-fourth Constitutional Amendments being brought into force, accordingly, a new Part IX and Part IXA relating to

Panchayats and Municipalities was added in the Constitution, which inter alia, provides for:

> Devolution by the State Legislature of powers and responsibilities upon the Panchayats with respect to the preparation of plans for economic development and social justice and for the implementation of development schemes (Article 243G) ;
>
> Sound finance of the Panchayats by securing authorisation from State Legislatures for grants-in-aid to the Panchayats from the Consolidated Fund of the State, as also assignment to, or appropriation by, the Panchayats of the revenues of designated taxes, duties, tolls and fees (Article 243H) ;
>
> Bringing existing laws in conformity with provisions contained in Part IX of the Constitution within one year. (Article 243N).
>
> Article 243B in Part IX envisages three tier system of panchayats ; one at village level, one at district level, and one at intermediate level. In our State, rural areas of a district are divided into blocks that in turn consists of villages and three levels of panchayats were already in existence.
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> A gram panchayat is a local body governing a village ; it could comprise more than one village as well. It is governed by the Panchayat Raj Act;
>
> A kshettra panchayat governs a block (intermediate level) and zila panchayat a district. They are governed by U. P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961, (the Kshettra-Zila Panchayat Act).

The provisions introduced by the Constitutional Amendment Acts have conferred constitutional status on

municipalities and panchayats as institution of local Government. Their role and position are defined by the Constitution as are their powers, duties and responsibilities. They are not mere administrative agencies of the State but, as institutions of local self governance, have been conferred with a degree of autonomy to ensure that democracy finds expression at the groosroots of Indian society. The Constitution seeks to attain a decentralisation of democratic governance through these institutions. (vide: Paras Jain)

In **Vivekanand**, Court noticed the historical background of local bodies and the legislative history of the Panchayat Raj Act, in particular, the changes brought about by the legislature in Section 95:

> *"25. Initially, Section 95(1) (g) provided for suspension as a punishment, but there was no specific provision for suspension during pendency of removal proceeding. It was claimed that power to suspend during removal proceeding is included in power to remove as it was necessary for its execution. This was negated by the courts. Section 95(1) (g) as it stood at that time is given in Appendix-2 ; whereas Appendix-1 is the index of other appendices and includes abbreviations used in the judgment.*
>
> *26. Subsequently, Section 95(1) was amended and Sub-section (gg) was inserted by U. P. Act No. 3 of 1973 giving power to suspend during pendency of removal proceedings. A proviso was also inserted at the end of Section 95(1) . It provides reasonable opportunity before taking proceeding, apart from others, under Section 95(1) (g). It is referred to as the proviso to Section 95(1) of the Panchayat Raj Act. The relevant parts of U. P. Act No. 3 of 1973 and Section 95(1) of the Panchayat Raj Act after this*

amendment are given in Appendix-3 and 4.

27. Subsequently, Section 95(1) of the Panchayat Raj Act was again amended by U. P. Act No. 9 of 1994 to bring it in conformity with the 73rd Constitutional Amendment Act. The relevant parts of the U. P. Act No. 9 of 1994 and Section 95(1) after amendment are given in Appendix-5.

28. By the aforesaid amendment, Section 95(1) (gg), providing for suspension, was deleted however a proviso to Section 95(1) (g) was inserted. It provides ceasing of financial and administrative power of a pradhan during removal proceeding on fulfillment of conditions mentioned therein. This proviso is referred to as proviso to Section 95(1) (g). The other proviso mentioned earlier is referred as proviso to Section 95(1) . The relevant part of Section 95(1) at the time of passing of the impugned orders is given in Appendix-6.

29. The proviso to Section 95(1) (g) contemplates an enquiry before ceasing financial and administrative powers by such person and procedure, as may be prescribed. The State Government has framed the Enquiry Rules in pursuance of the same. The relevant part of these rules is given in Appendix-7."

It is relevant to note that Section 95 confers power upon the State Government to remove Pradhan or to cease financial or administrative powers. However, Section 96A of the Panchayat Raj Act empowers the State Government to delegate all or any of its powers under the Panchayat Raj Act to any authority subordinate to it. The power under Section 95(1) (g), as well as, under the Enquiry Rules, 1997 has been delegated by the State. In Section 95(1)(g), as well as, Enquiry Rules, 1997, use the words "State Government" but its power has been delegated to the "District Magistrate" vide notification

dated 30.04.1997.

Five Judge Bench in **Paras Jain Versus State of U.P. and others**[9]**,** considering similar provision under Section 48(2) of the Municipalities Act, approved the reasoning in **Hafiz Ataullah Ansari.** On the applicability of the principles of natural justice before the financial and administrative powers of the President of a municipality cease, such an order envisages civil consequences which cannot be cured merely by a post-decisional hearing:

> *"In the case, where a head of a local body is deprived to exercise financial and administrative power, and ultimately the proceeding for removal are dropped then in such an event his loss can never be compensated. A post decisional hearing cannot cure the harm/damage done to him.*
>
> *xxx*
>
> *The principles of natural justice or the yardstick of fairness would be met if the explanation of the affected head of the local body or his point of view or version is considered before recording the satisfaction or finding of prima facie guilt before issuing notice and passing order for ceasing financial and administrative powers."*

Hafiz Ataullah Ansari explained that such an opportunity to submit an explanation need not be as detailed as in a regular enquiry and all that is necessary is to enable the elected head of the municipality to have his point of view or version considered. The conclusions which were arrived at by the Full Bench were as follows:

> *"133. Our conclusions are as follows:*
>
> *(a) There can be proceeding for removal of*

9. 2016 (1) ADJ 1

President under section 48(2) of the Municipalities Act without ceasing his financial and administrative power under its proviso;

(b)The following conditions must be satisfied before cessation of financial and administrative powers of a President of a Municipality can take place:

(i) The explanation or point of view or the version of the affected President should be obtained regarding charges and should be considered before recording satisfaction and issuing notice/order under proviso to section 48(2) of the Municipalities Act;

(ii) The State Government should be objectively satisfied on the basis of relevant material that:

The allegations do not appear to be groundless; and The President is prima facie guilty of any of the grounds under Section 48(2) of the Municipalities Act.

(iii) The show-cause notice must contain the charges against the President;

(iv) The show-cause notice should also indicate the material on which the objective satisfaction for reason to believe is based as well as the evidence by which charges against the President are to be proved. Though in most of the cases they may be the same;"

Supreme Court in **Ravi Yashwant Bhoir v. Collector**[10], held that removal of a duly elected member on proved misconduct is a quasi judicial proceeding:

"There can also be no quarrel with the settled legal proposition that removal of a duly elected member on the basis of proved misconduct is a quasi-judicial proceeding in nature. (Vide: Indian National Congress (I) v. Institute of

10. (2012) 4 SCC 407

> *Social Welfare[11]. This view stands further fortified by the Constitution Bench judgments of this Court in Bachhitar Singh v. State of Punbaj[12] and Union of India v. H.C. Goel[13]. Therefore, the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same. Principles of natural justice require a fair opportunity of defence to such an elected office bearer."*

An elected official is accountable to the electorate and removal or cessation of administrative and financial powers has serious repercussions since it takes away the right of the electorate to be represented by a candidate who is elected. Undoubtedly, the right to hold the post is statutory and in that sense is not absolute but removal can take place. Only after strictly adhering to the provisions laid down by the legislature for removal or ceasing administrative and financial power. The requirement of observing the principles of natural justice was hence held to be mandated before an order to that effect is passed. Interpreting the expression "abuse of powers" as a ground for removal, it was held in **Ravi Yashwant Bhoir** that this would not mean the mere use of power which may appear to be simply unreasonable or inappropriate but implies a willful abuse or an intentional wrong.

In **Paras Jain** the Five Judge Bench was of the view that cessation of financial and administrative powers of an

11. (2002) 5 SCC 685
12. AIR 1963 SC 385
13. AIR 1964 SC 364

elected head of a municipality is replete with serious consequences and has a direct impact upon the authority of the elected head. It erodes authority and impacts upon the ability of the President to effectively discharge the functions of the office by preventing the discharge of financial and administrative authority.

> *"The cessation of financial and administrative powers of an elected head of a municipality is a matter of significance and is replete with serious consequences. The effect of the financial and administrative powers, functions and duties being ceased, has a direct impact upon the authority of the elected head. It erodes authority and impacts upon the ability of the President to effectively discharge the functions of the office by preventing the discharge of financial and administrative authority.* ***Bereft of financial and administrative powers, functions and duties, the office of the President of a municipality is reduced to a cipher. In fact, the proviso envisages that upon the powers being ceased, they shall be exercised by the District Magistrate or an officer nominated, not below the rank of a Deputy Collector. This consequence is serious enough to warrant the Court to read a compliance with the principles of natural justice into the provision so as to ensure a fair procedure and safeguard against an unfair recourse to its power by the State Government…."***
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> *(emphasis supplied)*

In the backdrop of the legislative history and the status of an elected Pradhan, after the Constitutional Amendment, the primary issue is whether the power

exercised by the State Government/District Magistrate under the proviso to Section 95(1)(g) of Panchayat Raj Act is a purely administrative or a quasi judicial. In other words whether State Government/District Magistrate while exercising power under the proviso to Section 95(1)(g) is a Tribunal.

Full Bench in **Committee of Management, Shri Kashi Raj Mahavidyalaya, Aurai and another v. Deputy Director of Education, Vth Region, Varanasi and others**[14], explained why judgment of Courts or Tribunal is excluded qua maintainability of Special Appeals under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952. The Court observed:

> *"The rationale behind exclusion of special appeal in respect of a decree or order made by a court is that once a decision has been rendered by a competent court of jurisdiction, one challenge in the High Court against such decree or order should be enough, so far as the High Court is concerned and finality should attach to that decision even if the decision has been rendered by a learned Single Judge of the High Court.* ***Since the tribunals also discharge similar functions of deciding disputes acting judicially, as is done by the courts and they enjoy the same status as the Courts do, as the tribunals have also been entrusted with inherent judicial powers of the State, there is no reason why the same reason should not apply for exclusion of special appeal in respect of order of a tribunal. Therefore, a tribunal within the meaning of rule 5 must be an authority which is required to act judicially and which has been entrusted with the inherent judicial powers of the State."***
>
> *(emphasis supplied)*

14 1997 (29) ALR 417

Supreme Court in ***Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmi Chand & others***[15] and ***Mrs. Sarojini Ramaswami Vs. Union of India & others***[16], laid down as follows:

> *"It would appear that to determine the question whether an authority is a tribunal, the nature of the order passed by the authority and also the characteristic of the body which is called upon to adjudicate upon the matter in dispute are material considerations. Even a judicial authority may, in a given situation, act in administrative or executive capacity. In that situation the authority would not be a tribunal. Likewise an administrative authority, even if required to act judicially would not be a tribunal if it is not invested with the inherent judicial power of the State."*

The term "judicial or quasi-judicial" has been given a liberal interpretation so as to include orders by tribunal or authorities other than the regular Courts of justice. The dictionary meaning of the word quasi is "not exactly" and it is just in between a judicial and administrative function.

In **Durga Shankar Mehta vs. Thakur Raghuraj Singh & others**[17], Supreme Court held:

> *"It is now well settled by the majority decision of this Court in the case of Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd. (1) that the expression "Tribunal" as used in article 136 does not mean the same thing as "Court" but includes, within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions."*

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15 AIR 1963 SC 677
16 AIR 1992 SC 2219
17 AIR 1954 SC 520

In **Associated Cement Companies Ltd. v. P.N. Sharma and another**[18], the Constitution Bench of the Supreme Court held:

> *"Tribunals which fall within the purview of Art.136(1) occupy a special position of their own under the scheme of our Constitution. Special matters and questions are entrusted to them for their decision and in that sense, they share with the courts one common characteristic: both the courts and the tribunals are" constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions". (vide Durga Shankar Mehta v. Thakur Raghuraj Singh, 1955-1SCR 267 at p. 272 : (AIR 1954 SC 520 at 522).* ***They are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction.*** *The procedure followed by the courts is regularly prescribed and in discharging their functions and exercising their powers, the courts have to conform to that procedure.* ***The procedure which the tribunals have to follow may not always be so strictly prescribed, but the approach adopted by both the courts and the tribunals is substantially the same, and there is no essential difference between the functions that they discharge.*** *As in the case of courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent judicial function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the courts established by the Constitution; -but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating*

18 AIR 1965 SC 1595

> *upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the tribunals and the courts, and features which are distinct and separate. The basic and the fundamental feature which is common to both the courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State."*
>
> *(emphasis supplied)*

The Supreme Court relied upon an earlier decision in ***Province of Bombay vs. Kusaldas S. Advani and other***[19], approving the principle stated therein:

i. that if a statute empowers an authority not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other there is a lis and prima facie in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi judicial act;

ii. that if a statutory authority has power to do any act, which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi judicial act provided the authority is required by the statute to act judicially.

The question before the Supreme Court was whether

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19 AIR 1950 SC 222

the State Government is a tribunal when it exercises its authority under R. 6(5) or R. 6(6):

> ***"No rules have been made prescribing the procedure which the State Government should follow in dealing with appeals under these two sub-rules, and there is no statutory provision conferring on the State Government any specific powers which are usually associated with the trial in courts and which are intended to help the court in reaching its decisions. ..... But as we already stated, the consideration about the presence of all or some of the trappings of a court is really not decisive. The presence of some of the trappings may assist the determination of the question as to whether the power exercised by the authority which possesses the said trappings, is the judicial power of the State or not. The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function.*** *Applying this test, there can be no doubt that the power which the State Government exercises under R. 6(5) and R. 6(6) is a part of the State's judicial power. It has been conferred on the State Government by a statutory Rule and it can be exercised in respect of disputes between the management and its Welfare Officers. There is, in that sense, a lis; there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding. Besides, it is an order passed on appeal. Having regard to these distinctive features of the power conferred on the State Government by R. 6(5) and R. 6(6), we feel no hesitation in holding*

> *that it is a Tribunal within the meaning of Art. 136(1)". (Refer:* ***State of H.P. vs. Raja Mahendra Pal and others***[20]*)*
>
> *(emphasis supplied)*

The matter again came up in ***Indian National Congress (I) vs. Institute of Social Welfare and others***[21]; the question before the Supreme Court was whether Election Commission in exercise of its power under Section 29-A of Representation of People Act, 1951 for allotment of symbol acts administratively or quasi-judicially. The Court laid down the principles when an act of a statutory authority would be quasi-judicial:

> *"24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforestated decisions are these :*
>
> *Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.*
>
> *25. Applying the aforesaid principle, we are of the view that the presence of a lis or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi judicial authority. However, in the absence of a lis before a statutory authority, the authority would be quasi-judicial authority if it is required to act judicially."*
>
> *Finally, the Court held as follows:*

20 (1999) 4 SCC 43
21 (2002) 5 SCC 685

> *"We do not find any merit in the submission. At the outset, it must be borne in mind that another test which distinguishes administrative function from quasi-judicial function is, the authority who acts quasi-judicially is required to act according to the rules, whereas the authority which acts administratively is dictated by the policy and expediency. In the present case, the Election Commission is not required to register a political party in accordance with any policy or expediency but strictly in accordance with the statutory provisions....."*

The Court held that Election Commission under Section 29A is required to act judicially by giving a decision after making enquiry, wherein, an opportunity of hearing is to be given to the representative of the political party. In view thereof, Commission is a quasi-judicial authority and the decision rendered by it is a quasi-judicial order:

> *"The Election Commission while exercising its power to register a political party under Section 29A of the Act, acts quasi-judicially and decision rendered by it is a quasi-judicial order and once a political party is registered, no power of review having conferred on the Election Commission, it has no power to review the order registering a political party for having violated the provisions of the Constitution or for having committed breach of undertaking given to the Election Commission at the time of registration.*
>
> *The provisions of Section 21 of the General Clauses Act cannot be extended to the quasi-judicial authority. Since the Election Commission while exercising its power under Section 29A of the Act acts quasi-judicially, the provisions of Section 21 of the General Clauses Act has no application."*

Having due regard to the statement of law as to

when an authority is said to be acting quasi-judicially or administratively, the provision contained in proviso to Section 95(1)(g) is to be examined.

The proviso to Section 95(1)(g) clearly provides that an inquiry (preliminary inquiry) to a complaint is to be held by such person and in such manner as may be prescribed. The inquiry is prescribed under the Enquiry Rules, 1997 (rule 4) and on the report if in the opinion of the State Government/District Magistrate, it is, prima facie, found that Pradhan has committed financial and other irregularities then such Pradhan shall cease to exercise and perform financial and administrative functions until he is exonerated from the charges in final enquiry. Sub-section (3) of Section 95 in clear terms provides that an order passed by the State Government under this section shall not be called in question in any Court.

On conjoint reading of Rule 3, 4 and 5 of Enquiry Rules, 1997 mandates that the State Government/District Magistrate on receiving the complaint in terms of Rule 3 would order the Enquiry Officer to conduct a preliminary enquiry "with a view to finding out if there is prima facie case" for formal enquiry. The State Government/District Magistrate is required to form an opinion on the basis of the report that the formal enquiry should be held against the Pradhan. While determining whether prima facie case has been made out relevant consideration is whether on evidence led it was possible to arrive at the conclusion. Prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the

evidence which is led in support of the case were to be believed. (Refer: **Nirmala J Jhala vs. State of Gujarat**[22].

The words "the State Government is of the opinion" indicate that the opinion must be formed by the State Government and it is implicit that the opinion must be an honest opinion based on the preliminary enquiry report.

In ***Vivekanand***, ***Hafiz Ataullah Ansari*** *and thereafter* reiterated in **Paras Jain** that the elected representative would have to be given an opportunity to raise objection to the findings returned in the preliminary enquiry and his/or her objections will have be considered, though prima facie, by the State Government/District Magistrate before an order ceasing the financial and administrative power and functions is passed. The consequence of the order passed in exercise of power under Section 95(1)(g) is serious consequence as it divests the elected representative from exercising power until exonerated in final enquiry and the decision of the State Government is final. The decision taken by the State Government is not based on any expediency or policy of the State, rather, it is a statutory power conferred upon the State Government exercising inherent judicial power after confronting the elected representative, with show cause notice based on the preliminary report, thereafter, taking a decision upon due application of mind on the objections of the elected Pradhan. Once such an order is passed, it is not open for the State Government to either review or modify the order during the course of final enquiry. The order, therefore, finally decides the issue

22. (2013) 4 SCC 301)

between Pradhan and the Authority (State Government) in so far it relates to exercise of financial and administrative power. The office of the local body is an elected office of the constitutional democratic institution; the elected head is not a government servant and it would be improper to compare these proceeding with departmental proceeding in service jurisprudence. A head of a local body is elected for a limited term. If during the removal proceedings, he is denuded from exercising financial and administrative powers then even if he is exonerated in the enquiry the time spent during enquiry is lost, he does not get his period extended. The consideration about the presence of all or some of the trappings of a court is really not decisive. The main and basic test is whether the adjudicating power which a particular authority is empowered to exercise has been conferred on it by a statute and can be described as part of the State's inherent power exercised in discharging its judicial function. Applying this test there can be no doubt that the power which the State Government/District Magistrate exercises under proviso to Section 95(1)(g) is a quasi-judicial power exercised by a quasi-judicial authority.

Once the financial and administrative function is ceased, it affects the constitutional and statutory right of the Pradhan; no power of review having been conferred on the District Magistrate. He has to act according to the rules exercising the inherent judicial power of the State Government and is not dictated by the policy or expediency of the State.

We accordingly proceed to answer the reference in the following terms:

(A). The District Magistrate exercising delegated authority of the State Government, is a Tribunal exercising quasi judicial power by a quasi judicial authority under the proviso to Section 95(1)(g) of the Panchayat Raj Act while proceeding to cease the administrative and financial authority of the Pradhan pending final enquiry.

(B). Re-Question (i):The decision of the Division Bench in Smt. Sonia vs. State of U.P. (supra) lays down the correct position of law.

The reference to the Full Bench accordingly stands answered. The special appeal shall now be placed before the regular Bench according to roster for disposal in light of the questions so answered.

Order Dated: 01.05.2018
Mukesh

(Ashok Kumar, J) (Suneet Kumar, J) (Krishna Murari, J)