

1. Civil Misc. Writ Petition No. 36881 of 2008
Vivekanand Yadav Vs. State of UP and another

2. Civil Misc. Writ Petition No. 45376 of 2008
Smt. Kamli Devi Vs. State of UP

3. Civil Misc. Writ Petition No. 49305 of 2009
Het Kishan Vs. State of UP and others

4. Civil Misc. Writ Petition No. 60951 of 2009
Madho Lal (Pradhan) Vs. State of UP and others

Hon'ble Yatindra Singh, J
Hon'ble Rajes Kumar, J
Hon'ble Krishna Murari, J

(Delivered by Justice Yatindra Singh)

1. A *pradhan* of a *gram panchayat* can be removed for his misconduct under sub section (1)(g) of section 95 {Section 95(1)(g)} of the UP Panchayat Raj Act, 1947 (the Panchayat Raj Act). He ceases to exercise and perform the financial and administrative powers and functions (in short, exercise the financial and administrative powers), the moment a show cause notice is issued against him satisfying the conditions of the proviso to section 95(1)(g) of the Panchayat Raj Act. The main question involved in this reference revolves around,

The right of a *pradhan* before an order ceasing his powers is passed and the meaning of the word 'otherwise' in rule 5 of the UP Panchayat Raj (Removal of Pradhan and Up Pradhans and Members) Enquiry Rules, 1997 (the Enquiry Rules).

THE FACTS

2. The petitioners in these four writ petitions (WPs) are *pradhans* of different *gram panchayats*. The show cause notices were issued to them and their right to exercise financial and administrative powers was ceased under proviso to section 95(1)(g) of the Panchyat Raj Act. They have filed the writ petitions (WPs) against the same. The WPs have been referred to the larger bench.

3. There is one reference in WP 36881 of 2008 (the first writ petition) and WP

45576 of 2008 (the second writ petition). In WP 49305 of 2009 (the third writ petition) and WP 69511 of 2009 (the fourth WP) another single Judge has passed two separate but similar referring orders. For convenience, we are mentioning the facts of the first and third WP.

The First WP

4. In the first WP, the petitioner was elected as the *pradhan* of gram panchayat, Barua, district Mau. Some complaints were filed against him. On the basis of the same, a preliminary enquiry was conducted.

5. In pursuance of the preliminary enquiry report, a notice was issued to the petitioner in the first WP on 2.6.2008 by the District Magistrate (DM) Mau. It was mentioned in the notice that in case no cause is shown or if it was found unsatisfactory then action under Panchayat Raj Act would be taken.

6. The petitioner replied the same on 24.6.2008. After considering his reply, an order was passed on 21.7.2008:

The petitioner was held to be prima facie guilty of committing financial and other irregularities and his right to exercise the financial and administrative powers was ceased;

A committee of three members of the Gram Panchayat was appointed to exercise the powers of the *pradhan* till the finalisation of the final inquiry; and

The District Youth Welfare Officer, Mau was appointed as the inquiry officer to conduct the final inquiry against the petitioner.

The first writ petition is against the same.

7. A Single Judge of this Court, entertained the first and second WPs and passed an interim order on 22.9.2008 in the first and second writ petition {Smt. Kamli Devi Vs State of UP 2008(4) AWC 3749} By this order,

Two questions were referred to the larger bench for decision;

The orders ceasing the financial and administrative powers of the petitioners were stayed; however,

Liberty was granted to the authorities to proceed and complete the final enquiry.

The Third WP

8. In the third WP, the petitioner was elected as *pradhan* of gram panchayat, Usmanpur, district Budaun. A complaint was filed against him mentioning financial irregularities. A copy of this complaint was also given to the District Panchayat Raj Adhikari (DPRO), Budaun.

9. The DPRO sent a letter on 2.1.2009 to the petitioner in the third WP as well as secretary of the gram panchayat, requiring them to furnish the entire documents in respect of money allotted to the gram panchayat and work done from 2005 by the petitioner as *pradhan*.

10. They did not produce the records. A recommendation was made on 23.3.2009 to take departmental action against the secretary and a report was submitted against the petitioner.

11. On the basis of the aforesaid report, a show cause notice dated 10.7.2009 was issued by the DM. It was mentioned in the notice that in case no cause is shown or was found to be unsatisfactory then an order to cease the right to exercise financial and administrative powers would be passed against the *pradhan* and three member committee would be constituted.

12. The petitioner submitted his reply. In the reply no objection was taken by the petitioner that:

The report of the DPRO is not the preliminary enquiry report; or

No action can be taken against the petitioner as no preliminary enquiry had been conducted; or

A copy of report be given to him before passing any order?

The only explanation was that,

The secretary was taking the records to show them to the DPRO but they were lost on the way; and

The petitioner is willing to face any enquiry.

13. The third WP was entertained and was referred to the larger bench by order dated 19.3.2010 {Het Kishan Vs. State of UP; 2010 (3) ADJ 395} to be decided alongwith the first and second WPs. By the referring order,

(a) The impugned order ceasing the right to exercise financial and administrative power was kept in abeyance;

- (b) The *pradhan* was free to exercise the Administrative power;
- (c) In respect of exercise of financial power some distinction was made.
 - (i) The financial transactions under Chapter X of the UP Panchayat Raj Rules, 1947 are to be performed by the concerned DPRO on the recommendations of the concerned Gram Panchayat;
 - (ii) Qua other financial matters,
 - Consent is to be taken from the concerned DPRO; and
 - In the matter of the mid-day meal, from the District Basic Education Officer.
- (d) Liberty was granted to the respondents to conclude the final enquiry as envisaged under rule 6 to 9 of the Enquiry Rules.

Similar but separate interim order as well as referring order was passed in the fourth WP.

QUESTIONS REFERRED

14. The counsel for the parties have formulated the following questions from the referring orders that are referred to us:

- (i) Whether the *pradhan* is required to be associated in the preliminary enquiry under the proviso to Section 95(1)(g) of the UP Panchayat Raj Act?
- (ii) In case, the preliminary enquiry is adverse to the *pradhan* then, whether an opportunity is necessary before passing an order ceasing financial and administrative powers of the *pradhan*?
- (iii) If the District Magistrate has sufficient material to undertake a formal enquiry then, is he still required to hold a preliminary enquiry?
- (iv) Whether the following observations in *Chunmun v. District Magistrate, Sonbhadra* reported in 1998 (3) AWC 1892 (paragraph 8) (the *Chunmun* case) are correct:

'The expression 'or otherwise' used in Rule 5 however, does not, in my opinion, empower the District Magistrate to form the requisite opinion under the first *proviso* on the basis of a report other than the ones submitted under the Enquiry Rules, i.e., the report referred to in Rule 4(2) or Rule 7 of the said Rules. At the risk of repetition, it may be observed that the consequences visualised by the first *proviso* can ensue only upon a *prima facie* finding being recorded by the District Magistrate on the basis of a report submitted under Rule 4(2) or Rule

7 of the Enquiry Rules.'

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

HISTORICAL BACKGROUND

Panchayats—Constitutional Status

16. These writ petitions were heard alongwith WP No. 62427 of 2008 Hafiz Ataullah Ansari Vs. State of UP and others (the Hafiz case), where similar questions in respect of a president of a municipality was involved. In the Hafiz case, a final inquiry has been ordered against the president of a municipality ceasing his financial and administrative powers. Some of the questions involved here have been answered in the Hafiz case. A part of historical perspective has also been mentioned there. Some other points relevant to the panchayats are detailed below.

17. A district consists of urban and rural areas. Urban areas are governed by the municipalities and rural areas by the *panchayats*. Our majority lives in rural areas, yet there was no reference to *panchayats* in the draft constitution (October, 1947), prepared by Sri B.N. Rau, the constitutional adviser. This led Mahatama Gandhi to say,

'I must confess that I have not been able to follow the proceedings of the Constituent Assembly...[The correspondent] says that there is no mention or direction about village Panchayats and decentralisation in the foreshadowed Constitution. It is certainly an omission calling for immediate attention if our independence is to reflect the people's voice. The greater the power of the Panchayats, the better for the people' (Harijan, 21 December 1947)

18. The draft constitution was settled by a drafting committee before its introduction in the constituent assembly on November 4, 1948 by its chairman, Dr. BR Ambedkar. This settled draft was criticised, as it also did not have any reference to *panchayats*.

'While introducing the Draft Constitution and referring to criticisms thereof, Ambedkar had expressed himself strongly against the system of village panchayats. Characterising the village as "a sink of localism" and "a den of

narrow-mindedness", he had observed: "I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit" The expression of such a view by Ambedkar had evoked strong resentment and protests from a number of members. (C.A. Deb. Vol VII, pp 39-9).' (The Framing of India's Constitution: A study; published by the Indian Institute of Public Administration, New Delhi, page 330, footnote 3)

19. Subsequently, an amendment (Article 31-A) was adopted on November 22, 1948 without any comments from Dr. Ambedkar. This became Article 40 of the Constitution, one of the Directive Principles of State Policy. It lays down that the State shall take steps to organise *panchayats* and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

20. Sri Jai Prakash Narain in a foreword to the book 'Panchayat Raj and Indian Politics' by Dharampal: Collected Writings says,

'During the freedom struggle, because of Gandhiji's formative influence upon the political thinking of those who fought for freedom, it was more or less taken for granted that gram raj would be the foundation of swaraj. In other words, the concept political and economic decentralisation was axiomatic with the fighters for freedom. But when the constitution came actually to be constructed, that concept somehow was forgotten, or, to be more precise, remembered only as an after-thought.'

21. Our experience with *panchayats* in independent India had not been happy. These institutions were not able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged suppressions, insufficient representation of weaker sections like scheduled castes scheduled tribes and women, inadequate devolution of powers, and lack of financial resources. It was considered necessary that some basic and essential features of Panchayati Raj Institutions be enshrined in the Constitution to impart certainty, continuity, and strength to them.

22. Accordingly, a new Part IX relating to Panchayats was added in the Constitution by 73rd Constitutional Amendment Act. So far as relevant for this case, it, 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).

LEGISLATIVE HISTORY

23. 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.

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 kshetra panchayat governs a block (intermediate level) and zila panchayat a district. They are governed by UP Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961, (the Kshetra-Zila Panchayat Act) .

24. 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*.

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.¹ 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 judgement.

1. See SDO, Faziabad Vs. SN Singh, AIR 1970 SC 140 (paragraph 9) and Swami Prasad Vs. Hargovind Sahai AIR 1970 Allahabad 251 (FB) (paragraph 13).

26. Subsequently, section 95(1) was amended and sub-section (gg) was inserted by UP 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 UP 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 UP Act No. 9 of 1994 to bring it in conformity with the 73rd Constitutional Amendment Act. The relevant parts of the UP 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 fulfilment 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**.

30. The Khettra-Zila Panchayat Raj Act also has similar provisions for removal and cessation of financial and administrative powers of *pramukh* of a block kshetra *panchayat* (Section 16) and *adhayakha* of a *zila* panchayat (Section 29). The State Government has framed UP Khettra Panchayats and Zila Panchayats (Removal of Pramukhs, Up-Pramukhs, Adhyakshas and Upadhyakshas Enquiry) Rules, 1997 (the Khettra-Zila Panchayat Enquiry Rules). These rules are similar. Its relevant rule, namely rule 5, is given in **Appendix-8**.

Power Delegated to DM

31. Section 96-A 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 has been delegated by the State Government to the DM by notification No. 1648/31-1-1979-123/97 Lucknow dated 30.4.1997.

32. Section 95(1)(g) as well as the Enquiry Rules use the words 'State government' but as its power has been delegated to the DM, we are using the words 'the DM' in this judgement in place of the words 'State government' wherever it has been delegated.

POINTS FOR DETERMINATION

33. We have heard the counsel for the parties.² The questions referred to the larger bench have been mentioned under the heading 'QUESTIONS REFERRED'. We have reformulated them into the following points for determination. The answer to the questions referred will depend on their answers.

- (i) Whether the proviso to section 95(1) of the Panchayat Raj Act providing for opportunity applies to the preliminary enquiry under the proviso to section 95(1)(g) or only to the main section 95(1)(g);
- (ii) Whether the rules are necessary to be framed for the preliminary and final enquiry under the proviso to section 95(1)(g);
- (iii) What is the meaning of word 'otherwise' in sub rule 1 of rule 4 {Rule 4(1)} of the Enquiry Rules;
- (iv) Can a *pradhan* object to a complaint on the ground that it is not in conformity with rule 3 of the Enquiry Rules;
- (v) In case the answer to the first point is in the negative then, whether a *pradhan* is entitled to be associated in the preliminary enquiry on the ground that principles of natural justice are applicable to it;
- (vi) In case a *pradhan* is entitled to be associated or given opportunity then what is the extent of his rights;
- (vii) Whether a *pradhan* is entitled to an opportunity before the order ceasing the financial and administrative powers is passed against him under the

2. S/Sri GK Singh, Arvind Srivastava, Vinay Kumar Misra,, PK Singh, Anil Kumar Aditya, Sushil Kumar, CB Mishra, Anil Kumar Dhaka, Rajendra Prasad Tiwari, Rajesh Kumar Tiwari, SB Singh, Ram Niwas Singh, Kr. RC Singh, SS Sengar and Hemant Kumar, appeared for the petitioner; SG Husnain, Addl. AG, MC Chaturvedi, Chief Standing Counsel, Dr. YK Srivastava and AK Sinha, Standing counsel and Vijendra Singh appeared for the respondents.

We are thankful to the counsel appearing in the case for correcting the part of the judgement under the heading 'THE FACTS', 'QUESTION REFERRED' HISTORICAL BACKGROUND, 'LEGISLATIVE HISTORY'; 'POINTS FOR DETERMINATION' and 'Appendices'. However, If there are any mistakes, they are ours.

proviso to section 95(1)(g).

(viii) Can there be proceeding for removal of a *pradhan* under section 95(1)(g) of the Panchayat Raj Act, without ceasing his financial and administrative powers;

(ix) In case answer to the preceding question is in the affirmative then, will rule 6 of the Enquiry Rules providing the procedure in the final enquiry apply to the case where power is not so ceased;

(x) What is the meaning of word 'otherwise' in sub-rule 1 of rule 5 {rule 5(1) of the Enquiry Rules};

(xi) Whether a preliminary report submitted by the DPRO or an officer defined as enquiry officer under sub-rule (c) of Rule 2 {rule (2)(c) of the Enquiry Rules}—without being formally asked to conduct the preliminary enquiry—can be accepted under rule 5 to,

Constitute a three member committee to exercise financial and administrative powers; and

Appoint an enquiry officer to conduct the final enquiry under rule 6.

1st Point: PROVISO TO SECTION 95(1)—NOT APPLICABLE TO PRELIMINARY ENQUIRY

34. The counsel for the petitioner submitted that:

The proviso to section 95(1)(g) provides for the enquiry before ceasing financial and administrative powers;

The proviso to section 95(1) provides that no action can be taken under clause 95 (1)(g) without reasonable opportunity of showing cause;

It applies to the proviso to section 95(1)(g) also that provides for the preliminary enquiry;

A *pradhan* is entitled to be associated in the preliminary enquiry under the proviso to section 95(1)(g); and

He should be afforded opportunity before ceasing his financial and administrative power during pendency of removal proceeding.

35. Section 95(1)(g) contemplates removal of a *pradhan*. The proviso to section 95(1)(g) contemplates an enquiry before ceasing financial and administrative powers during pendency of a removal proceeding. It could only be done if in the enquiry, the *pradhan* is prima facie found to have committed financial and other irregularities. This shows that enquiry under proviso to section 95(1)(g) is a preliminary or a fact finding enquiry. This is how this enquiry is also referred to in

the Enquiry Rules. It has to be conducted under rule 4 of the Enquiry Rules.

36. The final inquiry is to remove the *pradhan* and it is to be conducted under rule 6 of the Enquiry Rules. In this final enquiry admittedly opportunity has to be offered under proviso to section 95(1). This is also detailed in rule 6 of the Enquiry Rules.

The question is:

'Does the proviso to section 95(1) also apply to the proviso to section 95(1)(g)'.

In order to understand it. It would be relevant to refer the legislative history of section 95(1) of the Panchayat Raj Act.

Historically—Not Meant to Apply

37. The changes in section 95(1) of the Panchayat Raj Act have been indicated under the heading 'LEGISLATIVE HISTORY'. It shows that proviso to section 95(1) was inserted alongwith section 95(1)(gg) providing for suspension of a *pradhan* (See Appendix-1). Initially, proviso to section 95(1) had two sub-clauses namely (i) and (ii). Sub-clause (i) is still there but sub clause (ii) has been now deleted by UP Act No. 9 of 1994.

38. Section 95(1)(g) always provided grounds as well as power to remove a *pradhan* earlier. The proviso to section 95(1) provided that no action would be taken under section 95(1)(g) without giving reasonable opportunity. The suspension at that time was under section 95(1) (gg). The proviso to section 95(1) shows that the opportunity under this proviso was to provided only for the proceedings under section 95(1) (f), 95(1) (h) and 95(1)(g) and it was never meant to apply to proceeding for suspension under section 95(1)(gg).

39. By the UP Act No. 9 of 1994, section 95(1) (gg), which provided for suspension during removal proceeding, was deleted and in substance was inserted as first proviso to section 95(1) (g). This proviso provides for cessation of financial and administrative powers of the *pradhan* instead of suspension. It is substantially the same except that the person may not be called a suspended *pradhan*. In fact, it is less drastic than the suspension. It seems strange that the proviso to section 95(1) did not apply when the provision was more drastic but would apply when effect became less drastic.

40. The legislative intent shows that the proviso to section 95(1) was meant to

apply to main section of 95(1)(g) of the Panchayat Raj Act contemplating removal and not to any other provision like the proviso that might be added subsequently. This is also borne out from the present scheme of the section as well.

Language Shows—Not Applicable

41. Justice GP Singh in 'Principle of Statutory Interpretation' 12th edition page 195 and 196) explains,

'The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the preview of the enactment...As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule....The proper function of a proviso is that it qualifies the generality of the main enactment.'

42. Jagdish Swarup 'Legislation and Interpretation' Fourth Edition explains,

'It is often in the nature of a condition precedent to the enforcement of the operative clause (page 353).

...

It is fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso (page 355).

...

A proviso must prima facie be limited in its operation and must be considered in relation to the principal matter to which it stands as a proviso (page 360)'.
'

43. 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. The two provisos qualify the main provision namely removal proceeding and not each other. Had the legislature intended that proviso to section 95(1) should also qualify the proviso to section 95(1)(g) then, it would have so provided.

44. These two provisos act in different fields:

One {proviso to section 95(1)} provides reasonable opportunity in the removal proceedings;

The other {proviso to section 95(1)(g)} provides cessation of financial and administrative powers during removal proceeding.

45. In our opinion, 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.

2nd POINT: RULES NECESSARY—ONLY FOR PRELIMINARY ENQUIRY

46. Section 95(1)(g) read with its proviso envisages two enquiries:

A preliminary or fact finding enquiry: On the basis of this enquiry, financial and administration 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 Enquiry Rules read with proviso to section 95(1) (g) of the Act;

The final enquiry: It is done to remove a *pradhan*. This takes place under rule 6 of the Enquiry Rules read with section 95 (1)(g) clauses (i) to (v) as well as the proviso to section 95(1).

47. Section 95(1)(g) (providing removal of a *pradhan*) or proviso to section 95(1) (providing reasonable opportunity in the removal proceeding) do not contemplate any formal enquiry or rules to be framed. However 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 Enquiry Rules have been framed because it is so mandated in the proviso to section 95(1)(g) of the Panchayat Raj Act and not because of 95(1)(g) or the proviso to section 95(1).

48. It is relevant to point out that Khettra-Zila Panchayat Raj Act has similar provisions (section 16 and 29) and similar rules have been framed. In the Municipalities Act, there is neither any proviso similar to the proviso to section 95(1)(g) mandating enquiry nor any rules have been framed.

49. Rule 2 of the Enquiry Rules is the definition clause. 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.

50. Rule 6 provides the procedure in the enquiry. This is for the final enquiry for removal of the *pradhan*. This procedure is not applicable in the preliminary enquiry under rule 4. Had there been any such intention then it would have been clarified. It also does not make sense to provide the same lengthy procedure and repeating it twice.

51. Rules 7 and 8 provide for submission of the final report prepared under rule 6 and the order made thereupon.

52. The reading of section 95(1) shows that rules were to be prescribed for conducting the preliminary enquiry under the proviso to section 95(1)(g) of the Panchayat Raj Act; but they have been framed for the final enquiry also, which has to be done in consonance with the proviso to section 95(1) of the Panchayat Raj Act.

53. There is no prohibition in the Panchayat Raj Act that rules for the final enquiry could not be framed. In fact, it is better that they are framed so that affected person knows how the final enquiry would proceed.

54. In deciding point-8, we have held that there can be removal proceeding without ceasing the power. The procedure in rule 6 to 8 of the Enquiry Rules applies even to those proceeding as well though the earlier rules 3 to 5 might not apply to them. This is also clarified there.

3rd & 4th POINT : WORD 'OTHERWISE' IN RULE 4 —WIDE

55. 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:

One, by a private person that has to be supported by an affidavit and has to comply other conditions of sub-rule (1) to (4) of rule 3 {rule 3(1) to 3(4)};

The other by a public servant, and in this case the restrictions of the complaint by a private person do not apply.

56. Rule 4 is titled as 'Preliminary enquiry'. The DM can order a preliminary enquiry on the complaint or report or otherwise. The word complaint or report refers to the complaint by a private person or to the report by a public servant under rule 3. The report of the public servant need not conform to the restrictions of a complaint by a private person. The question is,

'What does the word 'otherwise' in rule-4 mean?'

57. The counsel for the petitioner submitted that:

The word 'otherwise' should take the same colour as the words accompanying it, namely complaint or report under rule-3;

A complaint not satisfying rule 3(1) to (4) cannot be entertained under sub-rule 5 of rule 3 {rule 3(5)};

A *pradhan* has right to object to a complaint that does not comply with rule 3(1) to 3(4).

58. Words and Phrases permanent edition volume 30-A page (230) explains,

'Otherwise means but for or under other circumstances...one of the usual meanings of otherwise is contrarily'.

The Black's Law dictionary explains it to the mean,

'In a different manner; in another way, or in other ways'

59. The enquiry under rule 4 is a preliminary or a fact finding enquiry. It has to consider *prima facie* whether any financial or other irregularities have been committed by the *pradhan* or not. The final enquiry is yet to be done. Considering the object, there is no reason to give any restricted meaning to the word 'otherwise' in rule 4 as suggested by the counsel for the petitioner. The normal meaning of 'otherwise' should be adopted: the DM has power to refer a case for preliminary enquiry even if there is no complaint or report or in other words he has powers to act *suo moto*.

60. Rule 3(5) of the Enquiry Rules provides that the complaint, which does not comply with any of the preceding sub-rules of rule 3 should not be entertained. However, even if the complaint is not to be entertained yet the DM can always refer the matter for the preliminary enquiry, if he considers that it should be so enquired: he can act *suo motu*.

61. The counsel for the petitioners cited rulings³ taking the view that a *pradhan* has a right to object to the format of the complaint. With due respect, we do not agree with the same.

62. If the DM can order for the preliminary enquiry even in a case, where a complaint could not to be entertained, then what is the purpose of permitting a

3. Saroj Kumar Yadav vs. State of UP, 1999 UPLBEC 630 (para 21); WP (MB) 856 of 2008 (LB) Sudesh Malik vs state of UP decided on 11.5.2010.

pradhan to object regarding its non-conformity with rule 3(1) to 3(4). To us, it appears to be futile exercise. It is for the DM to consider whether he should entertain the complaint or not.

63. In our opinion:

- (i) The word 'otherwise' in rule 4 means that the DM has suo motu powers to order a preliminary enquiry;
- (ii) In an appropriate case, the DM may order a preliminary enquiry even if there is,
 - No complaint or report; or
 - A defective complaint, not in accordance with rules 3(1) to 3(4).
- (iii) A *pradhan* has no right to object that a complaint is not in accordance with rule 3(1) to 3(4) of the Enquiry Rules;

5th to 7th POINT: PRELIMINARY ENQUIRY— NOT ENTITLED TO PARTICIAPTE

64. In the Hafiz case, one of the question was regarding providing opportunity before ceasing financial and administrative power of a president during his removal proceeding under the Municipalities Act. Though the words of the Municipalities Act are different but the same reasoning applies here.

65. The Municipalities Act contemplates cessation of power on notices being issued, fulfilling the conditions under proviso to section 42(2) of the Municipalities Act. Apart from other conditions, one of the conditions is that the State Government should have reason to believe that the allegation against the president are not groundless and he is prima facie guilty of the charges. In Hafiz case, we have held that the belief of the State Government or satisfaction has to be based on the material. The basic question involved there was:

- Should the President be involved while collecting the material;
- Is the president entitled to any opportunity before ceasing his financial and administrative powers.

66. The aforesaid questions are also involved in these cases as well. It is for this reason that these questions, in connection of *pradhan* of a gram panchayat, were also considered in the Hafiz case. It is held there that:

'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'. {see 6th and 7th POINT: PRESIDENT'S EXPLANATION SHOULD BE SEEN (paragraph 132)}.

67. In these cases, there was an additional argument for opportunity being given namely applicability of proviso to section 95(1) to the proviso to section 95(1)(g). However, we have negated it, while deciding the first point.

68. In view of our decision and reasons detailed in the Hafiz case, a *pradhan* is neither entitled to be associated in the preliminary enquiry nor is he 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 power is passed.

69. In the cases, cited before us from the petitioners' side (see below)⁴, it was held that association of the head of the local body in the preliminary inquiry was necessary. With due respect, we do not agree with them.

70. In the other set of cases, cited from the respondents side (see below)⁵, contrary

4. The following cases are under the under Kshettra-Zila Panchayat Act.

- (i) Smt. Surya Kala vs State of UP: 2006 (1) ADJ NOC 1 = 2005 (II) LDR 142;
- (ii) Chita Yadav vs State of UP, 2008 (3) UPLBEC 2239;
- (iii) WP 3046 (MB) of 2010, Smt. Kamla Devi Vs. State of UP decided on 30.7.2010;
- (iv) WP No. 3291 (MB) of 2008, Smt. Amlawati Yadav vs. state of UP intrim order dt. 19.9.2008;

The following cases are under the Panchayat Raj

- (i) Special Appeal no. 302 of 2008 (LB) decided on 21.5.2008;
 - (ii) WP (MS) 4960 of 2007 (LB) Sridhar vs State of UP decide on 4.3.2008;
 - (iii) WP (MS) 260 of 2008 (LB) Ram Baran vs state of UP decide on 10.3.2008;
 - (iv) WP (MS) 2200 of 2008 (LB) Smt. Sufiya Parveen vs. State of UP decide on 22.5.2008;
 - (v) WP (MS) 6492 of 2008 (LB) Ajay Kumar Verma vs State of UP decide on 9.5.2008
5. In the following cases it was held no opportunity is required even though in some of them explanation was asked for:
- (i) Chandra Pal vs. State of UP, 2008 (2) UPLBEC 1439
 - (ii) Smt. Sangeet vs. state of UP, 2008 (3) ESC 2156
 - (iii) Motila vs. DM Lalitpur 2003 (1) UPLBEC 736
 - (iv) Rajendra Singh vs State of UP 2008 (5) 99 In this case the question that the *pradhan* should be involved in the preliminary inquiry was not raised but the court held that observed that not necessary to get the version of the *pradhan* not necessary though it was called for.
 - (v) Smt Radhili Devi Vs DM holds that proviso to 95(1) does not apply to proviso to section 95(1)(g). No opportunity is necessary before ceasing power;
 - (vi) Radha Krishna Sharma vs. state of UP, 1996 AWC 1601 holds that proviso to 95(1) does not apply to proviso to section 95(1)(g). No opportunity is necessary before ceasing power;
 - (vii) Bitana vs. Collector Sitapur, 2004 (2) AWC 1023 holds that proviso to 95(1) does

view was taken that no opportunity—even asking explanation or point of view to the charges—was necessary before ceasing financial and administrative powers. With due respect, they require modification.

71. It is not only necessary that the explanation or 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. This has also been explained in the Hafiz case. Nevertheless, we would like to clarify it.

72. In the first and the third WPs, the explanations of the affected *pradhans* were not only asked but were also considered. There has been application of mind. The order in these two WPs cannot be faulted on the grounds that:

- The copy of the preliminary report was not given to them;
- The explanation was not asked from them;
- Their explanation was not considered.

Some of these points are applicable in the other WPs but we have not examined them; we leave them to be considered by the bench concerned.

8th & 9th POINT: THERE CAN BE— BUT PROCEDURE HAS TO SAME

73. In the Hafiz case, we have held that there can be proceeding without ceasing financial and administrative powers (see sub-heading 'Position in the Rural-Areas Enactments—Similar' of the heading '2nd to 4th Point: THERE CAN BE PROCEEDING WITHOUT CEASING POWER). Similar reasoning applies here.

74. In our opinion there can be a proceeding for removal of a *pradhan* without ceasing his financial and administrative powers.

75. Section 95(1)(g)—or proviso to section 95(1) empowering removal of a *pradhan* do not contemplate any preliminary or formal enquiry before removing a *pradhan*. They only envisage reasonable opportunity to be given before removal.

not apply to proviso to section 95(1)(g). No opportunity is necessary before ceasing power They act in different fields;

- (viii) Mukesh Rajpoo vs. State of UP, 2003 (4) ESC 1943. There are observations that opportunity is not required but in that case opportunity in the preliminary enquiry was given.;
- (ix) Satish Chandra Tripathi vs. State of UP, 2004 (1) AWC 399. It was held that in case the power is ceased then no rights are violated or infringed

The preliminary enquiry is mandated by the proviso to section 95(1)(g) that stipulates cessation of financial and administrative powers during pendency of the removal proceeding. The Enquiry Rules have been framed in pursuance of the same.

76. Section 95(1) (g) or any of the provisos do not contemplate formal final enquiry for removal but in the Enquiry Rules, a detailed procedure (rule 6) for the final enquiry has been framed. To us, it appears that these rules were meant to apply in those cases where it was considered expedient to cease the financial and administrative power. However, as there can be proceeding for removal of a *pradhan* without ceasing his power, does it mean that procedure of rule 6 does not apply to a removal proceeding if it is undertaken without ceasing power?

77. In our opinion, this cannot be done, as this will amount to discrimination.

78. The proceeding for removal has to be conducted in accordance with rule 6 onwards of the Enquiry Rules, irrespective of the fact whether right to exercise financial and administrative power was ceased or not. However, where right to exercise financial and administrative power is also to be ceased then procedure in rule 3 to 5 has to be followed otherwise there is no necessity to follow them.

79. In other words, preliminary enquiry may not be necessary if the proceeding for removal is to be undertaken without ceasing the power of the *pradhan*. With this in background, lets consider the meaning of the word 'otherwise' in rule 5.

10th & 11th POINT: OTHERWISE IN RULE 5—LIMITED

80. The counsel for the petitioner submitted that:

The proviso to section 95(1)(g) contemplates ceasing of financial and administrative powers only on a preliminary enquiry;

The preliminary enquiry cannot be conducted unless the enquiry officer is asked to do so;

Any other report would merely be a report under rule 3(6) of the Enquiry Rules and on its basis only preliminary enquiry under rule 4 can be ordered and not an order ceasing financial and administrative powers or a final enquiry;

The word 'otherwise' in rule 5 is ultra vires the proviso to section 95(1)(g) of the Panchayat Raj Act.

Some Words in Rule 5—Useless

81. Rule 5 of the Enquiry Rules (see Appendix-7) also contains the words '*under the proviso to clause (g) of sub-section (1) of Section 95*'. We have not been able to understand the meaning or purpose of these words. These words make rule 5 unworkable. Rule 5 only makes sense if they were not there or at least some words were not there and some others were added there. The counsel for the parties were equally at loss to explain what was meant by these words or their purpose.

82. The Khettra-Zila Panchayat Raj Act also provides similar provision for removal and cessation of financial and administrative powers of *Pramukh* and *Adhayakha*. The Khettra-Zila Panchayat Enquiry Rules have been framed. They are similar to the Enquiry Rules. Its rule 5 (see Appendix-8) does not contain the aforesaid words: it makes sense.

83. A comparison of rules 5 of the Enquiry Rules and the Khettra-Zila Panchayat Enquiry Rules suggest that the words '*under the proviso to clause (g) of sub-section (1) of Section 95*' in the rule 5 of the Enquiry Rules (see Appendix-7) is a mistake and are useless. The State Government will do well to correct it.

Rule 5—Limited by Proviso to Section 95(1)(g)

84. Rule 5 is titled as 'Enquiry Officer'. It provides that, on the basis of the report under rule 4 (2) or otherwise, the DM may:

Constitute a committee as envisaged in the proviso to section 95(1)(g) to exercise the financial and administrative powers of the *pradhan*; and
Ask an enquiry officer other than the one who had conducted the preliminary enquiry, to hold the final enquiry to consider the removal of the *pradhan*.
This final enquiry has to be conducted under rule 6.

85. The question is, what is the meaning of word 'otherwise' in rule 5:

Can it include a report by anyone or information coming into hands of the DM;
Has the DM suo motu power to cease the power and refer the case for the final enquiry?

86. The counsel for the respondents submitted that:

The word 'otherwise' in rule 5 should be interpreted as widely as the word 'otherwise' in rule 4;

The DM has right to refer the matter for the final enquiry without any preliminary report if he considered proper.

87. A word used in different parts of the rules or an enactment may have different meaning. It depends upon the context and manner of its use. Justice Homes explains {Towne v. Eisner 245 U.S. 418 (1918)},

'A word is not crystal, transparent and unchanged. It is skin of living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used'.

88. Under proviso to section 95(1)(g) right to exercise financial and administrative powers can only be ceased if the DM prima facie finds that the *pradhan* was guilty of financial and other irregularities in an enquiry (preliminary or fact finding) by such person and in the manner prescribed. It is only on such a report that might 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.

89. In our opinion, in view of proviso to section 95(1)(g) it cannot be given as wide a meaning as we gave to the words 'otherwise' in rule 4. It has to have restricted meaning. Let's consider, what kind of reports may be covered by the proviso to section 95(1) (g) and the word 'otherwise' in rule 5 of the Enquiry Rules.

90. Rule 2(c) defines 'Enquiry Officer'. It means the DPRO or any other district level officer to be nominated by the DM. The following contingencies may be there:

- (i) A complaint can be made directly to the DM who may ask the enquiry officer as defined under rule 2(c) to conduct a preliminary inquiry under rule 4; or
- (ii) A complaint can be made directly to the enquiry officer defined under section 2(c), who may submit a report without the DM asking for it; or
- (iii) A complaint can be made to the DM with copy to the enquiry officer, who may submit a report without the DM asking for it; or
- (iv) A DM can himself conduct a preliminary enquiry; or
- (v) A report can be submitted by any other public servant.

91. In all the aforesaid alternatives, a preliminary enquiry is conducted and a preliminary report is there. The question is, which one of these can be acted upon

under rule 5 to cease the power under proviso to section 95(1)(g) of the Panchayat Raj Act. According to,

The petitioners only first of the aforesaid report can be relied upon;

The respondents all five reports can be relied upon.

In our opinion, answer lies somewhere in between and only the first four reports can be so relied.

92. There is no dispute so far as first contingency is concerned. The fifth one has to be rejected. In case it is accepted, then this would make rule 3(6) otiose. In our opinion this cannot be the case. However this cannot be said about contingencies number two to four.

93. Rule 6 provides a detailed procedure for the final enquiry. However, there is no detailed procedure provided for the preliminary enquiry under rule 4. A *pradhan* is not required to be associated in the preliminary enquiry.

94. The procedure provided in rules 6 to 8 is for the final enquiry and not for the preliminary enquiry. A report by an enquiry officer defined under rule 2(c) is also a report by a person prescribed. It is not necessary for the enquiry officer to conduct the preliminary inquiry only on the direction given by the DM. His job is to submit a report, so that the DM may take a decision,

Whether there is prima facie case against the pradhan or not; and

Whether the final enquiry should be held after ceasing his powers.

95. It is not necessary for the DM to specifically ask the enquiry officer to conduct a preliminary enquiry. There seems to be no point in asking the enquiry officer to conduct a preliminary enquiry again even if he submitted a report after the enquiry. It would be futile exercise unless the DM disagrees with the report of the enquiry officer.

96. A report by an enquiry officer defined under rule 2(c) is also a report by a person and the manner is prescribed under the Rules—irrespective of the fact that he was so asked by the DM or not. In our opinion, it is also a preliminary report within the meaning of the proviso to section 95(1) (g) of the Panchayat Raj Act.

97. The DM exercises the powers of the State Government under section 95(1)(g) as well as under the Enquiry Rules as the powers are delegated to him. He also

appoints the enquiry officer. He is higher than all enquiry officers. He can himself conduct a preliminary enquiry. It would be anomalous that on a preliminary report of a subordinate officer, a final enquiry and cessation of power can be ordered but the DM, who appoints him, cannot conduct a preliminary enquiry.

98. In our opinion, action under proviso to section 95(1)(g) can also be taken on the preliminary report of the DM as well as on a report of a person defined as enquiry officer under rule 2(c) of the Enquiry Rules. Only these reports would be covered in the word 'otherwise' of rule 5. Any other report would be a report under rule 3(6) of the Enquiry Rules or can be considered by the DM under his suo motu power to order a preliminary enquiry but final enquiry with cessation of power can not be ordered on its basis.

99. We would like to explain our point of view as well.

100. In the third WP, the report is by the DPRO. He is defined as an enquiry officer under rule 2(c) of the Enquiry Rules. On his report, the power of *pradhan* can be ceased and the final enquiry can be ordered. The order in the third WP cannot be invalidated on this account.

The Chunmun Case—Observations Should be Limited

101. The observations of the single judge in the Chunmun case, mentioned in the fourth question under the heading 'QUESTIONS REFERRED', should be seen in the light of the facts of that case.

102. In the Chunmun case, a report was sent by a junior engineer. It is not clear from the judgement whether the junior engineer was nominated by the DM as the enquiry officer or not but the single judge had held that a junior engineer was not competent to hold enquiry under the Enquiry Rules. In view of our decision, this report could be treated under rule 3(6) and could be referred for a preliminary enquiry but on its basis alone neither the three members committee could be appointed nor powers of the *pradhan* could be ceased.

103. The judgement on the facts of the Chunmun case is correct but the broad proposition that are extracted by the single judge, referring the third and fourth WPs to the larger bench—are not correct and they require modifications and have to be limited to facts of that case only.

104. In our opinion, the word 'otherwise' in rule 5 includes, and the DM can rely upon, the following reports only to cease financial and administrative powers and direct for the final enquiry.

A report of a person, who is also defined as an enquiry officer under rule 2(c) of the Enquiry Rules—irrespective whether he was directed by the DM to conduct the preliminary inquiry or not;

A preliminary enquiry report conducted by the DM himself.

However, a report by any other officer or any other information cannot be relied upon by the DM to constitute a three member committee ceasing financial and administrative powers. In such a situation, it should be treated as a report under rule 3(6) or would come under word 'otherwise' in rule 4(1) and at the most only a preliminary enquiry can be ordered.

A SUGGESTION

105. Under sub-heading 'Some Words in Rule 5—Useless' of point-10 & 11, we have indicated that, the words 'under the proviso to clause (g) of sub-section (1) of Section 95' of Rule 5 of the UP Panchayat Raj (Removal of Pradhan and Up Pradhans and Members) Enquiry Rules, 1997 do not make sense. Neither we could make out why are they used, nor any of the counsel appearing for the parties. These words are also not there in rule 5 of the Kshettra Panchayats and Zila Panchayats (removal of Pramukhs, Up-pramukhs, Adhyakshas and Upadhyakshas) Enquiry Rules, 1997.

106. It appears that the aforesaid words are there by mistake. The State government will do well to clear its intention by re-framing or changing rule 5 of the UP Panchayat Raj (Removal of Pradhan and Up Pradhans and Members) Enquiry Rules, 1997.

CONCLUSIONS

107. Our conclusions are as follows:

- (a) The DM may ask the preliminary enquiry to be conducted by any officer defined under rule 2(c) of the Enquiry Rules on a complaint or a report under rule 3 or any other material or information. He has suo motu powers as well to order a preliminary enquiry;
- (b) A *pradhan* has no right to object that complaint or report is not in accordance with rule 3 of the Enquiry Rules;
- (c) A *pradhan* is neither entitled to be associated in the preliminary enquiry

nor is entitled to the copy of the preliminary report. However, before an order ceasing the financial and administrative power is passed, his explanation or point of view or the version to the charges should be obtained and considered;

(d) In the first and the third WPs, the impugned orders have been passed on the basis of preliminary report after obtaining and considering the explanation of the *pradhan*. The impugned orders in these WPs cannot be faulted on this ground;

(e) In our opinion the word 'otherwise' in rule 5 includes and the DM can rely upon the following reports only to cease financial and administrative power and direct the final enquiry:

A report of a person who is also defined as an enquiry officer under rule 2(c) of the Enquiry Rules—irrespective of whether he was directed by the DM to conduct the preliminary inquiry or not;

A preliminary enquiry report conducted by the DM himself.

(f) In the third writ petition, the report was submitted by the DPRO, who is defined as an enquiry officer under rule 2(c) of the Enquiry Rules. The impugned order cannot be faulted on the ground that the DPRO was not asked by the DM to conduct the preliminary enquiry;

However, it is open to the petitioners in the first and third WPs to raise other points before the appropriate bench.

108. Our conclusions also answer the questions referred. Let the files of these writ petitions alongwith connected petitions be placed before appropriate bench for decision on merit.

Date: 26.10.2010

SKS

Appendix-1

Index of all other appendixes and the abbreviations used in the judgement

- Appendix-1:** Index of all other appendixes and the abbreviations used in the judgement
- Appendix-2:** The relevant part of section 95(1) of the Panchayat Raj Act before the amendment by UP Act No. 3 of 1973.
- Appendix-3:** The relevant part of UP Act no. 3 of 1973 amending section 95(1) of Panchayat Raj Act.
- Appendix-4:** The relevant part of section 95(1) just before the amendment by UP Act No. 9 of 1994.
- Appendix-5:** The relevant part of the Uttar Pradesh Panchayat Laws (Amendment) Act, 1994 (UP Act No. 9 of 1994).
- Appendix-6:** The relevant part of section 95(1)(g) of the Panchayat Raj Act at the time of passing of impugned orders.
- Appendix-7:** The relevant part of the Panchayat Raj enquiry Rules.
- Appendix-8:** The relevant part of Kshettra-Zila Enquiry Rules.

Words and Abbreviations

Abbreviation	Words
Ceases to exercise financial and administrative powers	Ceases to exercise, perform, and discharge the financial and administrative powers and functions
Heads of the local bodies	President or a chairman of a Municipality, <i>Adhyaksh</i> of a Zila Panchayat, <i>Pramukh</i> of Kshettra Panchayat, and <i>Pradhan</i> of a Gram Panchayat
DM	District Magistrate
DPRO	District Panchayat Raj Officer
SDM	Sub Divisional Magistrate
The Kshetra-Zila Panchayat Act	UP Kshettra Panchayat and Zila Panchayat Adhinyam, 1961
The Municipalities Act	UP Municipalities Act, 1916
The Panchayat Raj Act	UP Panchayat Raj Act, 1947
The Enquiry Rules	Uttar Pradesh Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997

Appendix-2

The relevant part of section 95(1) just before the amendment by UP Act No. 3 of 1973 was as follows:

95. Inspection (1)—The State Government may—

...

(g) suspend or remove a member of a Gaon Panchayat or Joint Committee [or Bhumi Prabandhak Samiti], an office bearer of a Gaon Sabha or a Panch, Sahayak Sarpanch or Sarpanch of a Nyaya Panchayat, if he—

(i) absent himself without sufficient cause from 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.

(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.

...

Appendix-3

The relevant part of UP Act no. 3 of 1973 amending section 95(1) of Panchayat Raj Act, is as follows:

13. Amendment of Section 95— In Section 95 of the principal Act, in sub-section (1),—

(i) in clause (g) for the opening paragraph, the following paragraph shall be substituted, namely:

(g) remove a member of a Gaon Panchayat or a Joint Committee or Bhumi Prabandhak Samiti, an office-bearer of a Gaon Sabha or a Panch, Sahayak Sarpanch or Sarpanch of a Nyaya Panchayat if he—

(ii) after clause (g), the following clause (gg) shall be inserted, namely:

(gg) suspend a Pradhan or Up-Pradhan or a member of a Gaon Panchayat or Joint Committee or Bhumi Prabandhak Samiti or a Panch, Sahayak Sarpanch or Sarpanch of a Nyaya Panchayat against whom proceedings under clause (g) are pending or contemplated or against whom prosecution for an offence, which in the opinion of the State Government involves moral turpitude, is pending:

Provided that an order of suspension under this clause shall not affect the right, if any, of the Pradhan or the Up-Pradhan, as the case may be, to take part in the proceedings of a meeting convened under section 14 and to vote at such meeting.

(iii) at the end, the following proviso shall be inserted, namely:

Provided that—

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

(ii) no action shall be taken under clause (gg) on the ground that proceeding under clause (g) are pending or contemplated unless the State Government in prima facie satisfied that the grounds on which action is proposed under that clause exist.

...

Appendix-4

The relevant part of section 95(1) just before the amendment by UP Act No. 9 of 1994 was as follows:

95. Inspection (1) The State Government may—

...

(f) ...

(g) remove a member of a Gaon Panchayat or a Joint Committee or Bhumi Prabandhak Samiti, an office-bearer of a Gaon Sabha or a Panch, Sahayak Sarpanch or Sarpanch of a Nyaya Panchayat if he—

(i) absents himself without sufficient cause from 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,

(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;

(gg) suspend a Pradhan or Up-Pradhan or a member of a Gaon Panchayat or Joint Committee or Bhumi Prabandhak Samiti or a Panch, Sahayak Sarpanch or Sarpanch of a Nyaya Panchayat against whom proceedings under clause (g) are pending or contemplated or against whom prosecution for an offence, which in the opinion of the State Government involves moral turpitude, is pending;

Provided that an order or suspension under this clause shall not effect the right, if any, of the Pradhan or the UP-Pradhan, as the case may be, to take part in the proceedings of a meeting convened under Section 14 and to vote at such meeting;

(h) remove a person, if, having been elected as Pradhan, he does not possess the qualification specified in Section 5-B:

Provided that—

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

(ii) no action shall be taken under clause (gg) on the ground that proceeding under clause (g) are pending or contemplated unless the State Government in prima facie satisfied that the grounds on which action is proposed under that clause exist.

...

Appendix-5

The relevant part of the Uttar Pradesh Panchayat Laws (Amendment) Act, 1994 (UP Act No. 9 of 1994) are as follows:

Amendment of Section 95-

In section 95 of the principal Act-

(a) sub-section (1)_

(i) in clause (a), the words "by a Gaon Sabha" shall be omitted;

(ii) in clause (f),

(a) the words 'suspend, supersede or' shall be omitted;

(b) the words "Gaon Sabha", wherever occurring, shall be inuted;

(c) the Explanation shall be omitted;

(iii) in clause (g)-

(a) for words 'remove a member of a Gaon Panchayat', the words 'remove a Pradhan, UP-Pradhan or member of a Gram Panchayat' shall be substituted;

(b) the words "an office bearer of a Gaon Sabha' shall be omitted;

(c) at the end, following proviso shall be inserted, namely:

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

(iv) clause (gg), shall be omitted;

(v) clause (h) shall be omitted;

(vi) in the proviso (i) the words "or clause (h)" shall be omitted;

(vii) proviso (ii) shall be omitted;

(b) in sub-section (4)-

(i) the words 'Gaon Sabha' shall be omitted;

(ii) for the words 'superseded' the words 'dissolved' shall be substituted.

Appendix-6

The relevant part of section 95(1)(g) of UP Panchayat Raj Act, 1947 at the time of passing of impugned orders is as follows:

95. Inspection- (1) The State Government may—

...

(f)...or dissolve any Gram Panchayat, Joint Committee, Bhumi Prabandhak Samiti or Nyaya Panchayat if in the opinion of the State Government such Gram Panchayat if in the opinion of the State Government such Gram Panchayat, Joint Committee, Bhumi Prabandhak Samiti or Nyaya Panchayat has abused its position or has continuously failed to perform the duties imposed upon it by or under this Act or if its continuance is not considered desirable in public interest.

(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—

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

(gg) Deleted by UP Act no 9 of 1994

(h) Deleted by UP Act no 9 of 1994

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;

...

Appendix- 7

The relevant part the Uttar Pradesh Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997 (the Rules) are as follows:

2. Definitions—In these rules unless the context otherwise requires—

- (a) 'Act' means the United Provinces Panchayat Raj Act, 1947;
- (b) 'Pradhan and Up Pradhan'. shall respectively means the Pradhan and the 'Up Pradhan' of the gran Panchayat;
- (c) 'Enquiry Officer' means the District Panchayat Raj Officer or any other district level officer, to be nominated by the District Magistrate.'

3. Procedure relating to complaints—(1) Any person making a complaint against a Pradhan or Up-Pradhan may send his complaint to the State Government or any officer empowered in this behalf by the State Government—

(2) Every complaint referred to in sub-rule (1) shall be accompanied by the complainant's own affidavit in support thereof and also affidavits of all persons from whom he claims to have received information of facts relating to the accusation, verified before a notary, together with all documents in his possession or power pertaining to the accusation.

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

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

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

(6) It shall not be necessary to follow the procedure laid down in the foregoing provisions of this rule if a procedure laid down in the foregoing provisions of this rule if a complaints against a Pradhan or Up-Pradhan is made by a public servant.

4. Preliminary Enquiry—(1) The State Government may, on the receipt of complaint or report referred to in Rule 3, or otherwise order the Enquiry Officer to conduct a preliminary inquiry with a view to finding out if there is a prima facie case for a formal inquiry in the matter.

(2) The Enquiry Officer shall conduct the preliminary enquiry as expeditiously as possible and submit his report to the State Government within thirty days of his having been so ordered.'

5. Enquiry Officer—Where the State Government is of the opinion, on the basis of the report referred to in sub-rule (2) of Rule 4 or otherwise that an enquiry should be held against a Pradhan or Up-Pradhan or Member under the proviso to Clause (g) of sub-section (1) of section 95 it shall forthwith constitute a committee envisaged by proviso to clause (g) of sub-section (1) of Section 95, of the Act and by an order ask an Enquiry Officer, other than the Enquiry Officer nominated under sub-rule (2) of the Rule 4, to hold the enquiry.'

6. Procedure of 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 Inquiry Officer by the State Government.

(2) The inquiry 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 of charge are proposed to be sustained.

(3) the Inquiry 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 in person before him on such day and at such time as may be specified.

(4) On receipt of the written statement of defence, the Inquiry Officer shall enquire into such of that articles of charges as are not admitted and where all the article of charge have been admitted in the written statement of defence, the inquiry officer shall record his findings on each charge after taking such evidence as he may think fit.

(5) If the person who has not admitted any of the articles of charge in his written statement of defence, appears before the Inquiry 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 inquiry 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 charge.

(6) If the person fails to appear within the specified time or refuses or omits to plead, the Inquiry 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 charges 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 Inquiry 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 Inquiry Officer may allow, for the discovery or production of any documents that are relevant to the inquiry 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 inquiry is being held may take the assistance of any other person to present the case on his behalf, and the Inquiry Officer may appoint any person as a Presenting Officer to assist him in conducting the inquiry:

(8) If the person applies orally or in writing for the supply of copies of the statement of witnesses mentioned in the list referred to in sub-rule (2), the Inquiry 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 Inquiry Officer shall, on receipt of the notice for the discovery or production of documents, forwarded 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 Inquiry 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 the 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 Inquiry 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 such documents would be against the public interest or security of the State, it shall inform the Inquiry Officer accordingly and the Inquiry

Officer shall, on being so informed, communicate the information to the person against whom the inquiry 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 to be proved shall be produced and the witnesses shall be examined, by the Inquiry 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 inquiry is being held. The witnesses may be reexamined by the Inquiry 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 Inquiry Officer.

(12). The Inquiry Officer may allow production of evidence not included in the list given to the person against whom the inquiry 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 Inquiry for three clear days before the production of such evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The Inquiry 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 any witnesses 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 providing the articles of charge against the person against whom the inquiry 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 inquiry is being held shall then 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 Inquiry Officer according to the provisions applicable to the witnesses for proving the articles of charge.

(15) The inquiry officer may, after the person against whom the inquiry is being held closes his case, and shall, if the said person has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling him to explain any circumstances appearing in the evidence against him.

(16) The Inquiry Officer may, after the completion of the production of evidence, hear the complainant, if any and the person against whom the inquiry 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 Inquiry Officer or otherwise fails or refuses to comply with the provisions of this rule, the Inquiry Officer may hold the inquiry ex parte.

(18) Whenever Inquiry 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 inquiry officer, the Inquiry officer so succeeding may act on the evidence so recorded by his predecessor or partly or recorded by himself:

Provided that if the succeeding Inquiry 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 herein before provided.

Appendix-8

The relevant part of Kshetra Panchayats and Zila Panchayats (removal of Pramukhs, Up-pramukhs, Adhyakshas and Upadhyakshas) Enquiry Rules, 1997 is as follows:

5. Enquiry Officer—Where the State Government is of the opinion, on the basis of the report referred to in sub-rule (2) of Rule 4, that an enquiry should be held against a Pramukh or Up-Pramukh under Section 16 or against an Adhyaksha or Upadhyaksha under section 29, it shall, by an order, appoint an officer to hold the enquiry, who shall not be below the rank of the District Magistrate in the case of an enquiry under Section 16, and not below the rank of a Commissioner in the case of an enquiry under Section 29.