2026:AHC:153411-DB

Reserved on 25.05.2026
Delivered on 24.07.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT – C No. -29356 of 2018

Shivpoojan Tiwari		…..Petitioner(s)
	Versus	
State of U.P. and 7 others		…..Respondents(s)

Counsel for Petitioner(s)	:	Chandra Bhushan Mishra, Mahesh Dwivedi, Prem Shanker Mishra, Santosh Kumar Tripathi, Subodh Tripathi
Counsel for Respondent(s)	:	C.S.C. Pawan Kumar Dubey, Sunil Kumar, Vipaj Pal, Virendra Singh

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Court No. -1

HON'BLE AJIT KUMAR, J.
HON'BLE INDRAJEET SHUKLA, J.

(Per: Indrajeet Shukla, J.)

For the convenience of exposition, this judgement is divided into following segments:

TABLE OF CONTENTS

Sl. No.	Heading	Page Nos.
1.	FACTUAL MATRIX OF THE CASE	2-4
2.	SUBMISSIONS ON BEHALF OF THE PETITIONER	4-5
3.	SUBMISSIONS ON BEHALF OF THE RESPONDENT STATE	6
4.	PRELIMINARY ISSUE OF MAINTAINABILITY OF WRIT PETITION	6-8
5.	ISSUES/QUESTIONS	8-9
6.	RELEVANT STATUTORY PRESCRIPTIONS	9-14
7.	ANALYSIS/REASONING	14-23
8.	CONCLUSION	23-24

1. Heard Sri Santosh Kumar Tripathi, Learned Senior Counsel assisted by Sri Pradeep Kumar Shukla, learned counsel for the petitioner and Sri Pradeep Singh, learned Standing Counsel for the State.

2. The Instant writ petition is directed against order dated 22.05.2018 passed by District Magistrate, Allahabad/second respondent whereby the Pradhan and the Secretary Village Panchayat concerned jointly liable for financial irregularities thereby fixing liability of Rs. 29,69,021/- as a loss/damage to Gram Sabha concerned. Petitioner being Ex-Pradhan has further been asked to pay half of the total loss assessed i.e. Rs. 14,84,510/-.

FACTUAL MATRIX OF THE CASE

3. Shorn of unnecessary details the factual matrix emerging from the pleadings is as follows: Petitioner demitted office of elected Pradhan after completion of his term (2010-2015) in the year 2015. A complaint was filed by one Daya Shanker Tiwari on 28.05.2016 (after the term of petitioner as Pradhan). The petitioner had levelled various allegations of malafides against said Daya Shanker Tiwari but chose not to implead him as a party in the instant writ petition, consequently the allegations of malafides and vindictiveness cannot be examined by this Court in absence of complainant being arrayed as a party herein.

4. The District Magistrate Allahabad/second respondent passed an order on 6th June, 2016 for conducting an inquiry in relation to allegations levelled in the complaint dated 28th May, 2016 by constituting an inquiry committee comprising of District Probation

Officer Allahabad/Nodal Officer Handia, Allahabad and Junior Engineer (Rural Engineering), Handia, Allahabad (Technical Member), and in turn they submitted their report on 18.08.2017. Founded on the inquiry report dated 18.08.2017, a show cause notice dated 21st August, 2017 was issued by second respondent mentioning therein various financial irregularities noticed by Inquiry Committee, with the stipulation that the show cause notice be replied to within a fortnight, failing which the recovery proceedings under Section 27 (2) of U.P. Panchayat Raj Act, 1947[1] be resorted to.

5. Upon receipt of show cause notice dated 21st August, 2017, petitioner submitted his reply along with material documentation. After receipt of reply, the District Magistrate Allahabad on 14.10.2017 directed the District Development Officer Allahabad for submitting further report, by analyzing enquiry reports, and explanation submitted by petitioner. The District Development Officer Allahabad further forwarded the matter to Chief Development Officer Allahabad for evaluation of explanation rendered by petitioner.

6. On 13.03.2018, District Development Officer Allahabad submitted his report before District Magistrate Allahabad for taking final decision. The District Magistrate, vide impugned order dated 22.05.2018, directed for registration of first information report as well as fixed the joint liability of loss/damage against petitioner and village Panchayat Secretary concerned, taking into account the inquiry report. Petitioner's liability was fastened levying surcharge to the effect of of Rs. 14,84,510/-.

1 'Act, 1947'

7. The principal legal challenge which has been pleaded by petitioner is of defect in the inquiry report dated 18.08.2017, mentioning that the Rule 3 of U.P. Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997[2] contemplates that 'Enquiry Officer' means the District Panchayat Raj Oficer or any other or District Level officer to be nominated by District Magistrate but in the case in hand neither District Panchayat Raj Officer, nor any other officer of District Level was inducted in the Inquiry Committee. Thus the inquiry so conducted stands vitiated for want of competence and jurisdiction.

SUBMISSION ON BEHALF OF THE PETITIONER

8. The learned Senior Counsel for petitioner independent of the pleadings and the grounds raised in the writ petition has strenuously urged that for levying surcharge, the only procedure contemplated under the Statute is Section 27 of the 'Act, 1947' read with Rules 256 and 257 of U.P. Panchayat Raj Rules, 1947[3] and submitted that this contention aforesaid being purely legal and going to the root of jurisdiction may be considered.

9. The learned Senior Counsel further urged that neither the impugned order, nor the counter affidavit filed by the State reflects that the proceedings envisaged under Statute regarding recovery of surcharge contained in Section 27 of the 'Act, 1947' and the procedure therefore prescribed by Rules 256 and 257 of the 'Rules, 1947' has also not been adhered which vitiates the entire exercise of levying surcharge and renders impugned order of recovery without jurisdiction.

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2 Rules, 1997
3 Rules, 1947

10. The learned Senior Counsel further submitted that petitioner being erstwhile elected Pradhan, demitted his office in the year 2015, as such no surcharge can be levied against petitioner and alternatively submitted that a complaint lodged by a private individual cannot be made foundation for levying surcharge being alien to the procedure laid down under surcharge rules contained in 'Rules, 1947'.

11. Learned Senior Counsel for petitioner invited our attention towards Rules 256 and 257 of the 'Rules, 1947' emphasizing that an inquiry ought to have been conducted by the Chief Audit Officer, Cooperative Societies and Panchayats and not by any other authority. In the case in hand, the inquiry has been conducted jointly by District Probation Officer, Allahabad and Junior Engineer (Rural Engineering), Handia, Allahabad and they, from no stretch of imagination, could substitute the authorized officer as per rules i.e. Chief Audit Officer, Cooperative Societies and Panchayats.

12. The counsel for the petitioner heavily relied upon judgment of Single Judge of this Court rendered in the case of **Shiv Kumar Patel Vs. State of U.P. and others**[4], referring its persuasive value for this Court, wherein learned Single Judge has held that surcharge proceeding against Ex-Pradhan is not permissible. The operative portion reads as under :

> *"Having considered the arguments and the pleadings this Court finds that no complaint/proceedings can be initiated against an ex Pradhan after her term came to an end in pursuance to the provisions of Section 95 (1) (g) and Section 27 of the Act of 1947. Proviso to Sub-section 2 of Section 27 only protects and saves the proceedings launched prior to the term of Pradhan coming to an end."*

4. Neutral Citation No. 2021:AHC:119864

SUBMISSION ON BEHALF OF THE RESPONDENT STATE

13. Sri Pradeep Singh, learned Standing Counsel submitted that huge public fund has been misappropriated by petitioner in connivance with village Panchayat Secretary concerned breaching the public trust by misusing their official position. The private complaint so submitted is not the only foundation for levying the surcharge, rather a full fledged inquiry was conducted under the orders of District Magistrate by a Committee in which even a technical member i.e. Junior Engineer (Rural Engineering), Handia, Allahabad was also associated. Out of 56 works, the Committee found 51 works were flawed and based on exhaustive inquiry after affording opportunity of submitting explanation, the impugned order of recovery has been passed, which does not require any interference in extraordinary writ jurisdiction of this Court.

14. The learned State Counsel further submitted that the impugned order of recovery in the shape of levying surcharge is appealable one, under Section 27(3) of the 'Act 1947' as such instant writ petition may be dismissed at the threshold for want of alternative remedy.

PRELIMINARY ISSUE OF MAINTAINABILITY OF WRIT PETITION

15. In response to the availability of alternative remedy against the order impugned, learned counsel for the petitioner submits that the availability of alternative remedy under sub-section 3 of Section 27 of the Act 1947 is undeniable but it would not be appropriate to non-suit writ petition after 8 years, citing bar of alternative remedy

in the background of the fact that the pleadings are complete and no serious factual dispute exists with respect to non-compliance of surcharge rule, thus the jurisdictional error in the impugned order crepted which entitles petitioner to maintain instant writ proceedings.

16. The submission of learned Standing Counsel qua availability of alternative remedy existing under Section 27(3) of the Act 1947 is to be tested on the touchstone that proceedings enumerated for imposition of surcharge is apparently not followed adhering Chapter XIII of 'Rules, 1947' (Surcharge Rules) which is a jurisdictional error. The Hon'ble Supreme Court has time and again held that writ proceedings can be entertained for enforcement of fundamental rights guaranteed under Part III of Constitution of India as well as where there is violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. **(see Whirlpool Corporation Vs. Registrar of Trade Marks[5].**

17. In the case of **Harbans Lal Sahnia v. Indian Oil Corporation[6],** the Apex Court reiterated that the rule of exclusion of writ jurisdiction is a rule of discretion and not one of compulsion. The Court is duty-bound to weigh the pros and cons of the litigation and may choose to interfere if the facts of the case demonstrate that relegating the party to an alternative remedy would be an exercise in futility or lead to a travesty of justice. The court held that:

> *"In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."*

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5. (1998) 8 SCC 1
6. (2003) 2 SCC 107

18. In **Mafatlal Industries Ltd. v. Union of India**[7]**,** B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed:

> *"77. So far as the jurisdiction of the High Court under Article 226 or for that matter, the jurisdiction of this Court under Article 32 is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment."*

19. The objection regarding alternative remedy therefore, cannot be accepted, where the impugned proceedings are ex-facie without jurisdiction. The bar of alternative remedy is not an absolute bar in exercise of prerogative writs by High Court, rather the rule is a self-restraint and not a rule of law ousting jurisdiction.

20. Instant writ petition was entertained way back in the year 2018 and the interim protection was granted, thus this writ petition remained on board for considerable period of eight years and pleadings have been exchanged.

21. Considering the rival submissions, this Court is persuaded to hold that throwing a writ petition on the ground of alternative remedy after 8 years, particularly when parties have exchanged their pleadings is not justified keeping in view of the mandate of Hon'ble Supreme Court as propounded in case of **M/s Utkal Highways, Engineering & Contractors v. Chief General Manager and others**[8]**.**

<u>ISSUES/QUESTIONS</u>

22. Instant litigation gives rise to following questions in twin fold for determination viz.

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7. (1997) 5 SCC 536
8. 2025 SCC On-Line SC 1400

(i) Whether an Ex-Pradhan who has already demitted his office can be subjected to surcharge proceedings?

(ii) Whether a private complaint can be proceeded for levying surcharge?

RELEVANT STATUTORY PRESCRIPTIONS

23. The questions referred above in twin fold requiring adjudication necessitate an examination of the statutory prescriptions pertaining to power and procedure qua surcharge.

24. Section 27 is designed to recover money occasioned on account of loss, waste or misappropriation of money or property belonging to a Gram Sabha by a Pradhan, if that loss, waste, etc. is the direct consequence of the Pradhan's neglect or misconduct, whereas section 110 confers power upon state government to frame rules laying down the procedure for imposition of surcharge for purposes of recovery.

25. In this connection it is apposite to refer to the provisions of Section 27 and section 110 of the Act, which on reproduction read as under:

> *"27. **Surcharge -** (1) Every Pradhan of a Gram Panchayat, every member of a Gram Panchayat or of a Joint Committee or any other committee constituted under this Act shall be liable to surcharge for the loss, waste or misapplication of money or property belonging to the Gram Panchayat, if such loss, waste or misapplication is direct consequence of his neglect or misconduct **while he was such Pradhan** or Member;*
> *Provided that such liability shall cease to exist after the expiration of ten years from the occurrence of such loss, waste or misapplication, or five years from the date on which the person liable ceases to hold his office, whichever is later.*
>
> *(2) The prescribed authority shall fix the amount of the surcharge according to the procedure that may be prescribed and shall certify the amount to the Collector who shall, on being satisfied that the amount is due, realize it as if it were an arrear of land revenue.*

(3) Any person aggrieved by the order of the prescribed authority fixing the amount of surcharge may, within thirty days of such order, appeal against the order to the State Government or such other appellate authority as may be prescribed.

(4) Where no proceeding for fixation and realization of surcharge as specified in sub-section (2) is taken the State Government may institute a suit for compensation for such loss, waste or misapplication, against the person liable for the same.

(emphasis added by us)

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110. Powers of State Government to make Rules - *(1) The State Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act."*

26. The State Government framed the rules in exercise of power conferred by virtue of Section 110 of the 'Act, 1947' known as U.P. Panchayat Raj Rules, 1947.

27. Thereafter, U.P. Panchayat Raj (Amendment) Rules, 1969 inserted Chapter XIII with the heading "SURCHARGE" in U.P. Panchayat Raj Rules,1947 in exercise of powers conferred under Section 110 of the 'Act, 1947' by the State Government having been notified in the Gazette on 31.05.1969.

Chapter XIII

Surcharge Rules

28. The Rules 256 to 260 of the 'Rules, 1947', relevant for the purpose on reproduction read as under :

"256 (1) ***In any case where the Chief Audit Officer, Co-operative Societies and Panchayats, considers that there has been a loss, waste or misuse of any money or other property belonging to a Gram Sabha as a direct consequence of the negligence or misconduct of a Pradhan,*** *Up-Pradhan, Member, Officer or servant of the Gram Panchayat, he may call upon the Pradhan, Up-Prahdan, Member, Officer or servant, as the case may be, to explain in writing why such Pradhan, Up-Pradhan, Member, Officer, or servant should not be required to pay the amount misused or the amount which represents the loss or waste caused to the Gram Sabha or to its property and such explanation shall be furnished within a period not exceeding two months from the date such requisition is communicated to the person concerned:*

Provided that an explanation from the Pradhan, Up-Pradhan or member of the Gram Panchayat shall be called for through the District Magistrate and from the officer or servant through the District Panchayat Raj Officer:

Provided also that no explanation shall be called for from any member who is recorded in the minutes of the Gram Panchayats or any of its committee as having been absent from the meeting at which the expenditure objected to was sanctioned or who voted against such expenditure.

(2) Without prejudice to the generality of the provisions contained in sub-rule (1) the Chief Audit Officer, Cooperative Societies and Panchayts, may call for the explanation in the following cases:

(a) where expenditure has been incurred in contravention of the provisions of the Act or of the rules or regulations made thereunder;

(b) where loss has been caused to the Gram Sabha by acceptance of a higher tender without sufficient reasons in writing.

(c) where any sum due to the Gram Sabha has been remitted in contravention of the provisions of the Act or the rules or regulations made thereunder;

(d) where the loss has been caused to the Gram Sabha by neglect in realizing its dues; or

(e) where loss has been caused to the funds or other property of the Gram Sabha on account of want of reasonable care for the custody of such money or property.

(3) On the written request of the Pradhan, Up-Pradhan, Member, Officer or servant from whom an explanation has been called for, the Gram Panchayat shall give him necessary facilities for inspection of the records connected with the requisition for surcharge. The Chief Audit Officer may, on application from the person surcharged, allow a reasonable extension of time for submission of his explanation if he is satisfied that the person charged has been unable, for reasons beyond his control, to consult the record for the purpose of furnishing his explanation.

***257** (1). After the expiry of the period prescribed in sub-rule (1) or (3) of Rule 256, as the case may be, and after examining the explanation, if any, received within time, the Chief Audit Officer shall submit the papers along with his recommendations to the District Magistrate of the district in which the Gram Sabha is situated in case of Pradhan, Up-Pradhan and Members and to the District Panchayat Raj Officer of the district in which the Gram Sabha is situated in case of Officers and servants.*

(2) The District Magistrate or the District Panchayat Raj Officer, as the case may be, after examining and after considering the explanation, if any, shall require the Pradhan, Up-Pradhan, Member, Officer or servant of the Gram Panchayat to pay the whole or part of the sum to which such Pradhan, Up-Pradhan, Member, Officer or servant is found liable:

Provided, firstly, that no Pradhan, Up-Pradhan, Member, Officer or servant of the Gram Panchayat would be required to make good the *loss, if from the explanation of the Pradhan, Up-Pradhan, Member, Officer or servant concerned or otherwise the District Magistrate or the District Panchayat Raj Officer, as the case may be, is satisfied that the loss was caused by an act of the Pradhan, Up-Pradhan, Member, Officer or servant in the bona fide discharge of his duties:*

Provided secondly, that in the case of loss, waste or misuse occurring as a result of a resolution of the Gram Panchayat or any of its committees the amount of loss to be recovered shall be divided equally among all the members including Pradhan and Up-Pradhan, who are reported in the minutes of the Gram Panchayat or any of its committee as having voted for or who remained neutral in respect of such resolution:

Provided thirdly, that no ***Pradhan, Up-Pradhan, Member, Officer or servant shall be liable for any loss, waste or misuse after the expiry of four years from the occurrence of such loss, waste or misuse or after the expiry of three years from the date of his ceasing to be Pradhan,*** *Up-Pradhan, Member, Officer or servant of the Gram Panchayat, whichever is later.*

(emphasis added by us)

258 *(1) Any Pradhan, Up-Pradhan or Member of a Gram Panchayat aggrieved with an order of surcharge passed by the District Magistrate under Rule 256 may appeal to the Commissioner of the Division within thirty days from the date on which such order is communicated to him and the Commissioner of the Division may confirm, rescind or vary the order passed by the District Magistrate or may pass such orders as he thinks fit.*

(2) Any Officer or servant of a Gram Panchayat aggrieved with an order of surcharge passed by the District Panchayat Raj Officer may appeal to the District Magistrate within thirty days from the date on which such order is communicated to him and the District Magistrate may confirm, rescind or vary the order passed by the District Panchayat Raj Officer or may pass such orders as he thinks fit.

259. *(1) A Pradhan, Up-Pradhan, Member, Officer or servant of a Gram Panchayat who has been surcharged, shall pay the amount of surcharge within three months from the date of communication to him of the order of surcharge passed by the District Magistrate or the District Panchayat Raj Officer, as the case may be:*

Provided that when an appeal has been preferred under Rule 258 against the order of surcharge passed by the District Magistrate or the District Panchayat Raj Officer, all proceedings for recovery of the surcharge from the persons who have preferred the appeal shall be stayed until the appeal has been finally decided.

(2) If the amount of surcharge is not paid within the period specified in sub-rule (1) it shall be recovered as arrears of land revenue.

260. *Where a suit is instituted in a Court to question an order of surcharge and the District Magistrate, District Panchayat Raj Officer or the Commissioner of the Division is a defendant in such a suit, all costs incurred in defending such a suit shall be paid by the Gaon Panchayat* *and it shall be the duty of the Gaon Panchayat to make such payment without undue delay."*

29. Section 27 of the Act provides that every Pradhan of a Gram Panchayat and every member of a Gram Panchayat or of a Joint Committee or any other committee constituted under this Act shall be liable to surcharge for the loss, waste or misapplication of money or property belonging to the Gram Panchayat, if such loss, waste or misapplication is direct consequence of his neglect or misconduct in discharge of his duties. The Prescribed Authority has been given power to fix the amount of surcharge according to the procedure as may be prescribed. The amount has to be certified to the Collector for realization as arrears of land revenue. Sub-section (3) thereof provides that any person aggrieved by an order of Prescribed Authority fixing the amount of surcharge may file an appeal against such order to the State Government or such other appellate authority, as may be prescribed.

30. By 73rd Amendment of Constitution with effect from 24.4.1993, the Panchayats have attained the constitutional status and in Article 243, 243-A to 243-O Constitutional provisions has been provided for Constitution of three tier Panchayat such as Gram Panchayat, Kshetra Panchayat and Zila Panchayat and Article 243-I for Constitution of Finance Commission to review financial position of the Panchayat whereas Article 243-G provide for powers, authority and responsibilities of Panchayats whereas Article 243-H empowers the Panchayats to impose taxes. The U.P. Panchayat Raj Act was amended in the year 1994 according to the Constitutional Mandate and now the huge fund is being made available by the State Government to Gram Panchayat as provided under Section 32 of the Act of 1947 and function of the Gram Panchayat is provided under Section 15 of the Panchayat Raj Act.

U.P. Panchayat Raj Rules, 1947, is an old Rule and consequently amendment in the Rule has not been made in view of the Amendment in Panchayat Raj Act according to 73rd Amendment of the Constitution of India.

ANALYSIS/REASONING

31. The record of instant writ petition clearly indicates that inquiry in the instant case has not been conducted by Chief Audit Officer, Co-operative Societies and Panchayats who is competent being designated officer under 'Rules, 1947' to submit the report with respect to loss, waste or misuse of any money or other property belonging to Gaon Sabha as a direct consequence of the negligence or misconduct of a Pradhan. Thus, the inquiry so submitted and having been made foundation for impugned order is vitiated for inherent lack of competence of inquiry officer resulting in jurisdictional error. Thus entire proceeding has stood vitiated in law.

32. It is no more res integra that as per the provisions contained in Rules 256 and 257 of the Rules 1947, an inquiry ought to have been conducted by the Chief Audit Officer which is not in the instant case, therefore the Inquiry Committee consisting of District Probation Officer along with Junior Engineer (Rural Engineering) Handia Prayagraj had no jurisdiction to hold an inquiry in terms of mandate enshrined under Rules 256 and 257 of the 'Rules, 1947'.

33. In **Ram Vilas Vs. Commissioner, Devi Patan Mandal, Gonda and others**[9], this Court held that: -

> *"13. Chapter-XIII was added in the Rules vide Notification dated May 22, 1969 published in Gazette on May 31, 1969. Rule 256 of the Rules provides different authorities for taking action in terms of Section 27 of the Act. A perusal of Rules 256 to 260 of Chapter XIII of the Rules show that complete procedure has been provided for fixation of the*

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> *surcharge to be recovered from different officers in Gram Panchayat on account of loss, waste or misuse of any money/property belonging to the Gaon Sabha which is on account of a direct consequence of negligence or misconduct of the person concerned. Chief Audit Officer, Cooperative Society and Panchayats is to consider the same and after examination of the explanation, if any, received from persons concerned, submit the papers along with recommendation to the District Magistrate of the District in which the Gaon Sabha is situated, in case of Pradhan, Up-Pradhan and Member. The report along with recommendation has to be sent by Chief Audit Officer to the District Panchayat Raj Officer of the District in which Gaon Sabha is situated, in case of Officers and servants. The District Magistrate or the the District Panchayat Raj Officer, as the case may be, is to finally fix the amount, which is recoverable from the person concerned.*
>
> *14. Rule 258 provides the appellate authority, in terms of Section 27 (3) of the Act. An order passed by the District Magistrate is appealable to the Commissioner of the Division, whereas an order passed by District Panchayat Raj Officer is appealable to the District Magistrate.*
>
> ** * **
>
> *16. The District Magistrate is the competent authority for fixation of amount of surcharge recoverable from Pradhan, Up-Pradhan and Member and the District Panchayat Raj Officer is competent authority for fixing the amount of surcharge in case of officers and servants."*

34. In the present case, Chief Audit Officer, Cooperative Societies and Panchayats has not made any consideration and has not called for any explanation from the petitioner, thus the private complaint was not placed before the authority competent, therefore in view of dictum laid down in **Ram Vilas** (supra) the impugned order of recovery is manifestly without jurisdiction.

35. The order of District Magistrate dated 06.06.2016 constituting committee comprising of District Probation Officer, Allahabad and Junior Engineer (Rural Engineering) Handia, Allahabad is dehors statutory scheme contained in Section 27 of the Act 1947, read with chapter XIII (Surcharge rules of Rule 1947) thus, is without jurisdiction and is bad in its inception. It is fairly settled law that if the basic order falls as illegal, invalid or void the consequential order cannot be given effect to as it automatically becomes inoperative.

36. It is well settled that if the basic order goes the consequential order automatically becomes inoperative. In **Badrinath v. Government of Tamil Nadu**[10], the Hon'ble Supreme Court held as under:—

> *"This flows from the general principle applicable to "consequential orders". Once the basis of a proceeding is gone, may be at a later point of time by order of a superior authority, any intermediate action taken in the meantime-like the recommendation of the State and by the UPSC and the action taken thereon-would fall to the ground. This principle of consequential orders which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders."*

37. In **Upen Chandra Gogoi v. State of Assam**[11], the Apex Court held that the writ Court should not validate an action which was not lawful at inception.

38. Having considered the rival submissions made by the parties, this Court is of the considered view that it is Section 27 of the 'Act, 1947' which provides for imposition of surcharge and fixation of liability but strictly in accordance with the procedure prescribed for such purposes contained in Chapter XIII of U.P. Panchayat Raj Rules, 1947 extensively running from Rules 256 to 260 of the 'Rules, 1947' and procedural safeguards incorporated in chapter aforesaid being mandatory leaves no room for substantial deviation.

39. In the factual backdrop as aforesaid, the legal maxim '**sublato fundamento cadit opus'** is attracted which means if foundation is removed being flawed, the superstructure would automatically collapse and this legal principle squarely applies in present case. (See **State of Punjab Vs. Davinder Pal Singh Bhullar and others.**[12]

10. (2000) 8 SCC 395
11. (1998) 3 SCC 381
12. (2011) 14 SCC 770

40. In **C. Albert Morris Vs. K.Chandrasekaran and others**[13], the Hon'ble Supreme Court held that a right in law exists only and only when it has a lawful origin. Similarly, in **Mangal Prasad Tamoli (dead) by Lr. Vs. Narvadeshwar Mishra (dead) by Lrs. And others** [14], the Supreme Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.

41. Jurisdiction is the fountainhead of every statutory proceedings, where the legislature not only creates right but simultaneously prescribes the authority competent to exercise such power and the manner in which it is to be exercised and hence the prescribed procedure becomes an indispensable condition precedent to the validity of the proceedings. Any deviation therefrom strikes at the very root of jurisdiction and renders the consequential action legally unsustainable.

42. It is trite law that where the law prescribes a procedure for doing a thing, the thing has to be done in that manner alone and other ways are necessarily forbidden. This principle has been echoing the horizon of jurisprudence since a very long time, not only in this country but virtually in whole of the world, wherever there is an establishment managed under a Constitution having theme of independent judiciary. As back as in the year 1936 in the case of **Nazir Ahmad Vs. King Emperor**[15]; the Privy Council had held that a thing required to be done in a particular way has to be done in that way or not at all. This principle consistently has been accepted and adopted by the Indian Courts including the Hon'ble

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13. (2006) 1 SCC 228
14. (2005) 3 SCC 422
15. AIR 1936 Privy Council 253

Apex Court in a catena of decisions, such as, **State of U.P. Vs. Singara Singh,**[16] and **Prabha Shanker Dubey Vs. State of M.P.**[17]

43. A larger Bench of the Hon'ble Supreme Court comprising of three Hon'ble Judges, in the case of **Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. & others,**[18] has held that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner. In this case, the Hon'ble Supreme Court in paragraph 40 has held as under:

> *"It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authority while acting under the said Act are only creator of Statute. They must act within the four-corners thereof."*

44. The precedents of constitutional Courts are consistent in this regard. (see **Taylor Vs. Taylor**[19], **Nazir Ahmed Vs. King Emperor**[20], **Deep Chand Vs. State of Rajasthan**[21], **Patna Imprevement Trust Vs. Smt. Lakshmi Devi**[22], **State of Uttar Pradesh Vs. Singhara Singh & Ors.**[23], **Nika Ram Vs. State of Himachal Pradesh**[24], **Ramchandra Keshav Adke Vs. Govind Joti Chavare & Ors.**[25], **Chettiam Veettil Ammad Vs. Taluk Land Board & ors.**[26], **State of Bihar Vs. J.A.C. Saldanna**[27], **A.K. Roy & Anr. Vs. State of Punjab & Ors**[28], **State of Mizoram Vs. Biakchhawna**[29], **J.N.Ganatra Vs. Morvi Municipality**

16. AIR 1964 SC 358
17. (2004) 2 SCC page 56, Para 11
18. (2003) 2 SCC 111
19 . (1876) 1 Ch.D.426
20. AIR 1936 PC 253
21. AIR 1961 SC 1527
22. AIR 1963 SC 1077
23. AIR 1964 SC 358
24. AIR 1972 SC 2077
25. AIR 1975 SC 915
26. AIR 1979 SC 1573
27. AIR 1980 SC 327
28. (1986) 4 SCC 326
29. (1995) 1 SCC 156

Morvi,[30] **Babu Verghese & ors. Vs. Bar Council of Kerala & ors.**[31]**,** and **Chandra Kishore Jha Vs. Mahavir Prasad, JT.**[32]

45. In **Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala**[33], a Constitution Bench of the Apex Court reiterated the above principle in by observing as under : “It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself.

46. Rule 256 of the Rules of 1947 provides that the Chief Audit Officer, Cooperative Societies and Panchayats will be the competent authority for making an inquiry, if he considers that there has been a loss, waste or misuse of any money or other property belonging to a Gram Sabha as a direct consequence of the negligence or misconduct of a Pradhan etc., he would call for an explanation from the Pradhan through the District Magistrate. In the present case, the Chief Audit Officer has not recorded any prima facie satisfaction that a loss has been occasioned because of a direct consequence of the negligence or misconduct of the petitioner while he was a Pradhan. Therefore, the entire proceedings have been initiated by an authority, which had no jurisdiction as per the provisions contained in the U.P. Panchayat Raj Rules.

47. The argument that the District Level Officer ought to have been included in inquiry team is wholly misconceived as Rules, 1997 are not applicable for the purposes of levying surcharge rather they are for removal of Pradhan who is holding the office and in the

30. AIR 1996 SC 2520
31. (1999) 3 SCC 422
32. (1999) 8 SCC 266
33. (2002) 1 SCC 633

instant case petitioner had already demitted the office before complaint could be filed.

48. The question whether ex-Pradhan can be subjected for surcharge proceedings came up for consideration before coordinate bench of this Hon'ble court in the case of **Shiv Kumar Patel vs State of U.P.**[34] being an intra court appeal against judgment of Single Judge cited by counsel for petitioner, wherein it has been held that ex-Pradhan who demitted office can be subjected to recovery. The relevant excerpts of aforesaid judgment is extracted as under:

> *"11. We find the learned Judge's reasoning based on the interpretation of Section 95(1)(g) and Section 27 to be based on strained logic, if not altogether inexplicable. We have already pointed out that the purpose of Section 95(1)(g) and Section 27 is altogether different. It is true that upon the Pradhan demitting office, proceedings under Section 95(1)(g), if not initiated, cannot continue as the entire purpose of those proceedings is to oust the incumbent Pradhan from office. These proceedings certainly cannot commence after the Pradhan has already demitted office. But, the purpose of Section 27 of the Act of 1947 is to recover money belonging to the Gram Panchayat i.e. lost, wasted or misapplied, as a direct consequence of the Pradhan's neglect or misconduct while in office. We wish to emphasize the words employed in Section 27(1), "if such loss, waste or misapplication is direct consequence of his neglect or misconduct while he was such Pradhan,". The import of the words on a plain reading is unmistakable. It is to hold the Pradhan liable for all loss or waste that he causes to the Gaon Sabha by acts of misconduct or negligence while still incumbent. The phraseology of the statute unmistakably points to loss caused by acts of negligence or misconduct of the Pradhan while he was in office. Nothing prevented the legislature to say while "he is such Pradhan,". The employment of the word "was" is a singular pointer to the fixation of liability for past actions done in office. It is an established principle of statutory construction, often called the golden rule, that if the words of a statute are clear and unmistakable in their import, they are to be given their ordinary, natural meaning. This is also called the literal rule of construction. It dictates attributing every word in the statute its plain and simple meaning, grammatically supported. In this connection, reference may be made to the decision of the Supreme Court in Prabhudas Damodar Kotecha and others v. Manahbala Jeram Damodar and another, (2013) 15 SCC 358. The golden rule or the principle of literal construction has been enunciated by their Lordships thus:*
>
> *Golden rule.*

34. (Neutral Citation-2022: AHC: 138097-DB)

31. The golden rule is that the words of a statute must prima facie be given their ordinary meaning when the language or phraseology employed by the legislature is precise and plain. This, by itself proclaims the intention of the legislature in unequivocal terms, the same must be given effect to and it is unnecessary to fall upon the legislative history, Statement of Objects and Reasons, framework of the statute, etc. Such an exercise need be carried out only when the words are unintelligible, ambiguous or vague.

*32. It is trite law that if the words of a statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The above principles have been applied by this Court in several cases, the judgments of which are reported in **Chief Justice of A.P. v. L.V.A. Dixitulu [(1979) 2 SCC 34 : 1979 SCC (L&S) 99], Kehar Singh v. State (Delhi Admn.) [(1988) 3 SCC 609 : 1988 SCC (Cri) 711 : AIR 1988 SC 1883], District Mining Officer v. Tisco [(2001) 7 SCC 358], Gurudevdatta VKSSS Maryadit v. State of Maharashtra [(2001) 4 SCC 534 : AIR 2001 SC 1980], State of H.P. v. Pawan Kumar [(2005) 4 SCC 350 : 2005 SCC (Cri) 943] and State of Rajasthan v. Babu Ram [(2007) 6 SCC 55 : (2007) 3 SCC (Cri) 52].***

12. The learned Counsel for the writ petitioner has placed reliance on a decision of a Division Bench of this Court in Indu Devi v. District Magistrate, Chitrakoot and others, 2006 (2) ADJ 552 (DB) to submit that proceedings under Section 27 of the Act of 1947 can very well continue after the Pradhan demits office and these are independent of proceedings for removal of the Pradhan under Section 95(1)(g). No doubt, there are some remarks in Paragraph No.8 of the report in Indu Devi's (supra) that seem to support the writ petitioner, but the decision may not be of much help on the point, because Indu Devi was a case where proceedings against the Pradhan commenced whilst she was in office. The decision there turned on a different point and the remarks in Paragraph No.8 of the report are not of much assistance to the writ petitioner.

13. Nevertheless, in our considered opinion, the provisions of Section 27(1) are of clear import and they clothe the Authorities under the Act of 1947, with jurisdiction to take proceedings against the Pradhan for recovery of loss, caused to the Gram Panchayat's by his/ her neglect or misconduct, after the Pradhan ceases to hold office."

(emphasis is added)

49. The observation/decision of Single Judge rendered in the case of **Shiv Kumar Patel vs State of U.P and 2 others** (Neutral Citation: 2021: AHC: 119864) has no force of law having been set aside by coordinate bench in **Shiv Kumar Patel Vs. State of U.P.** (Neutral Citation: 2022:AHC:138097-DB).

50. The contention of petitioner that private complaint alleging loss, waste, damage, misuse of any money or other property

belonging to Gaon Sabha cannot be processed, is being examined in the light of surcharge rules contained under Chapter XIII of 'Rules, 1947' read with Section 27 of 'Act, 1947', it is found that surcharge rule encompasses for audit by Chief Audit Officer Co-operative and Panchayat, thus if such complaint is received, the District Magistrate on being satisfied from gravity of allegations should trigger the procedure by referring it to Chief Audit Officer concerned subject to limitations set out in proviso appended to Rule 257 of 1947 Rules, who shall in turn must audit the accounts and report any loss, waste or misapplication of Gram Panchayat fund, and thereafter the person likely to be affected must be afforded fair and reasonable opportunity strictly in accordance with mandate of Surcharge Rules, and in this way proceedings should be reached to a logical conclusion. Any other procedure, howsoever, meticulous is alien to Surcharge Rules, thus cannot be subscribed which is in the line of latin maxim "***Expressum facit cessare, tacitum***" (which is expressed makes what is silent cease).

51. A perusal of sub-Section (2) of Section 27 of the Act makes it clear that amount of surcharge is to be fixed by the prescribed authority and thereafter is to be certified to the collector, who on being satisfied that the amount is due shall get it realized as arrears of land revenue from the Pradhan or any other person mentioned under Section 27 (1) of the Act so made liable for surcharge.

52. Admittedly no report was submitted by the Chief Audit Officer, Cooperative Societies and Panchayatas as required under the Rule 256 (1) or the Rules contained in Chapter XIII of U.P. Panchayat Raj Rules, 1947 thus, procedure prescribed under Rules 256 and 257 has not been followed before passing the impugned

order of recovery which makes the order of recovery unsustainable in the eyes of law being jurisdictionally flawed.

53. The contention of petitioner's counsel that petitioner being ex Pradhan cannot be subjected to surcharge for the loss or waste in the shape of recovery is completely misplaced as the phrase used in the statute book, occurring under proviso appended to Section 27 of act 1947, is 'was such Pradhan' which reflects intention of legislature that even after demitting office, Pradhan can be subjected to proceedings of surcharge. The doubt expressed by counsel for petitioner on the common logic that once Pradhan demits his office, he goes scot free from the clutches of law qua surcharge is also unfounded even proviso appended to Rule 257 limits time period of subjecting ex Pradhan for surcharge to the extent of expiry of three years from the date of ceasing to be Pradhan. The legislature has consciously employed the expression **'was such pradhan'** there by unmistakably extending liability beyond tenure. Thus we negate the contentions advanced by the petitioner that petitioner being ex Pradhan cannot be subjected to surcharge proceedings.

CONCLUSION

54. In the case in hand, undisputedly, there has been no notice to petitioner from the Chief Audit Officer, Cooperative Societies and Panchayats, there has been no report of the Chief Audit Officer to District Magistrate rather on the other hand there is no material on record to indicate that at any point of time petitioner was called upon by the Chief Audit Officer concerned to submit his explanation. There is no material on record to indicate that on receipt of any report along with relevant papers from the Chief

Audit Officer, the District Magistrate had called upon the petitioner to submit his explanation.

55. There is no iota of doubt that the inquiry conducted by the Committee comprising of District Probation Officer and Junior Engineer (Rural Engineering) lacked statutory competence and jurisdiction as it is only Chief Audit Officer, Cooperative Societies and Panchayats is bestowed with the power to conduct an inquiry for levying surcharge in relation to loss and damage caused to Gram Sabha due to direct negligence or misconduct of Pradhan, Member, Officer or servant of Gram Panchayat, thus order impugned is unsustainable in the eyes of law.

56. Accordingly, instant writ petition is **allowed**. The order dated 22.05.2018 passed by District Magistrate, Allahabad directing for recovery from petitioner is hereby set aside.

57. Parties shall bear their own cost.

58. The authorities shall be at liberty to initiate fresh proceedings against the petitioner but strictly in accordance with law particularly subject to the law of limitation prescribed under Chapter XIII of the ‘Rules, 1947’.

59. Before we part, we record our appreciation for the diligent efforts and valuable assistance rendered by Ms. Shreya Shukla, Research Associate. The precision and clarity reflected in the legal research and analysis submitted by her demonstrates commendable attention to details. The Court acknowledges her contribution in aiding the adjudication of this matter.

(Indrajeet Shukla,J.) **(Ajit Kumar,J.)**

Order date : 24.7.2026
Pratima