
(2008) 09 MP CK 0037
In the Madhya Pradesh High Court

Abdul Hasan Qureshi and Smt. Rani Chandra	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 91

Citation : (2009) ILR (MP) 165 : (2009) 1 JLJ 320 : (2009) 1 MPHT 322 :
(2009) 3 MPJR 199 : (2008) 4 MPLJ 546

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

This order disposes of W.P. No. 7007/08 and W.P. No. 7163/08. Reference to annexures is taken from Writ Petition No. 7163/08 unless otherwise mentioned. Petitioner of Writ Petition No. 7163/08 is hereinafter described as "A" and of Writ Petition No. 7007/08 is hereinafter described as "R".

Short facts involved in the petitions are that an advertisement marked as Annexure P-4 was issued on 5-8-2007 by Gram Panchayat Magron, Block Batiyagarh, District Damoh, inviting applications thereby for the post of Panchayat Karmi in the said Gram Panchayat. Petitioners of both the writ petitions and certain other applicants made their respective applications pursuant to the said advertisement. A meeting of the Gram Panchayat was convened and after considering the applications, "A" was selected and appointed by majority of Panchas for the post of Panchayat Karmi and a resolution to this effect was passed on 29-8-2007, vide Annexure P-5. An order of appointment was, accordingly, issued in favour of "A" on 29-8-2007, vide Annexure P-6. Pursuant thereto "A" gave his joining on 31-8-2007. Collector Damoh issued necessary Notification declaring "A" as Panchayat Karmi vide his order dated 12-10-2007, vide Annexure P-10. "R" challenged the appointment of "A" before the Sub

Divisional Officer, Hata, District Damoh, by way of filing an appeal on the ground that she was more meritorious in comparison to "A". Appeal was rejected on 8-10-2007, vide Annexure P-11.

Aggrieved by it, "R" preferred a revision wherein learned Additional Collector, Damoh granted stay on 5-10-2007 in her favour. "A" submitted an application under Order 7 Rule 11 of CPC before the Addl. Collector that no appeal was provided before the Sub Divisional Officer against the resolution and, therefore, the order passed by the Sub Divisional Officer on 8-10-2007, vide Annexure P-11 is without jurisdiction and hence not revisable. However, the learned Addl. Collector rejected this objection and maintained the stay order on 4-12-2007, vide Annexure P-12. This was further challenged by "A" before this Court in Writ Petition No. 17225/07. Learned Single Judge on 18-1-2008 directed for maintenance of status quo. From the record, it seems that ultimately this writ petition bearing W.P. No. 17225/07 was disposed of by the Division Bench of this Court on 9-4-2008 with a direction that "A" will be allowed to continue as Panchayat Karmi/Secretary of Gram Panchayat Magron subject to the result of the revision pending before the Revisional Authority. The Revisional Authority (Addl. Collector Damoh), ultimately, vide order dated 28-5-2008 marked as Annexure P-15, allowed the revision holding that "R" was the most meritorious amongst the applicants and was entitled to be appointed on the post of Panchayat Karmi of Gram Panchayat Magron. Accordingly, the appointment of "A" was held illegal and was cancelled. "R" was directed to be appointed on the said post and the Chief Executive Officer Janpad Panchayat Batiyagarh was directed to issue the appointment order in her favour. Aggrieved by the same, "A" preferred second revision before the State Minister for Panchayat and Rural Development Department, Govt. of Madhya Pradesh, who vide her order dated 9-6-2008 marked as Annexure P-18, stayed the order of the Addl. Collector dated 28-5-2008 (Annexure P-15) and remitted the matter for final adjudication to the Commissioner, Sagar Division.

Aggrieved by the aforesaid, "R" submitted Writ Petition No. 7007/08 on the ground that the order of the State Minister contained in Annexure P-18 (Annexure P-2 in Writ Petition No. 7007/08) is without jurisdiction because second revision is not maintainable in law.

Faced with the aforesaid situation, "A" preferred Writ Petition No. 7163/08 on the ground that the resolution of Gram Panchayat marked as Annexure P-5, was not appealable before the Sub Divisional Officer and, consequently, the order of the Sub Divisional Officer dated 8-10-2007 (Annexure P-11) is nullity for want of jurisdiction and further proceedings pursuant thereto are vitiated in law.

Learned Counsel Shri K.K. Trivedi, Shri Sanjay Patel and Shri Vinod Mehta, learned Govt. Advocate advanced their arguments at length which have been duly considered in the light of various provisions of law and the judgments of this Court dealing with the situation.

Following crucial questions are involved in these two writ petitions:

- (i) Whether resolution of Gram Panchayat about selection/appointment of Panchayat Karmi may be challenged by way of appeal under the provisions of Madhya Pradesh Panchayats (Appeal & Revision) Rules, 1995 ?
- (ii) Whether a resolution of Gram Panchayat in the matter of selection/appointment of Panchayat Karmi may be challenged directly in revision under Rule 5 ?
- (iii) Whether second revision in the aforesaid matter is maintainable under the said Rules ?

Section 91 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as "Panchayat Adhiniyam" for brevity) provides that an appeal or revision against the orders or proceedings of a Panchayat and other authorities under this Act shall lie to such authority and in such manner as may be prescribed. Section 95 of Panchayat Adhiniyam empowers the State Government to make rules for carrying out the purposes of the said Act. In exercise of powers conferred by Sub-section (1) of Section 95 read with Section 91 of Panchayat Adhiniyam, the Madhya Pradesh Panchayats (Appeal & Revision) Rules, 1995, have been made which were published in the Madhya Pradesh Rajpatra (Extra-ordinary), dated 29-3-1995. Rule 3 thereof provides for an appeal and further specifies the Appellate Authorities in the following manner:

3. Appeal and Appellate Authorities. - Save where it has been otherwise provided in the Act or rules or bye-laws made thereunder, an appeal shall lie,:

- (a) in the case of an order passed by the Sub Divisional Officer under any provision of the Act or Rules or Bye-laws made thereunder - to the Collector.
- (b) in the case of an order passed by the Collector under any provision of the Act or Rules or Bye-laws made thereunder -to the Commissioner.
- (c) in the case of an order passed by the Commissioner or Director of Panchayats - to the State Government.
- (d) in the case of an order passed by the Panchayat specified in Column (1) of the Table below - to the Authority specified in the corresponding entry in Column (2) thereto.

TABLE (1) (2) (a) Gram Panchayat Sub-Divisional Officer. (b) Janpad Panchayat Collector. (c) Zila Panchayat Commissioner.

A bare perusal of the aforesaid rule makes it clear that appeal under Rule 3 is provided only against an order and not against the proceedings of Panchayat. Although, Section 91 provides for an appeal or revision against the order or proceedings of a Panchayat, but the same has been qualified by the latter portion of the Section which lays down that the appeal or revision shall lie to such authority and in such manner as may be prescribed. While making prescription in

the nature of rules, the right of appeal against proceedings of the Panchayat and other authorities seems to have been not conferred or taken away. Section 91 is not couched in absolute form, but has been qualified with regard to the authority and manner as may be prescribed. Since in Rule 3, the words "proceedings of a Panchayat and other authorities" do not find place, it may be safely held that the law did not intend to provide appeal against the proceedings of a Panchayat and other authorities.

As per Collins Cobuild Dictionary, resolution is a formal decision, usually by means of a vote, taken by a group of people at a meeting.

According to Black's Law Dictionary (Sixth Edition), the word "resolution" has various meanings, which read as follows:

Resolution : A formal expression of the opinion or will of an official body or a public assembly, adopted by vote; as a legislative resolution. Such may be either a simple, joint or concurrent resolution.

The term is usually employed to denote the adoption of a motion, the subject-matter of which would not properly constitute a statute, such as a mere expression of opinion; an alteration of the rules; a vote of thanks or of censure, etc. Such is not law but merely a form in which a legislative body expresses an opinion. The chief distinction between a "resolution" and a "law" is that the former is used whenever the legislative body passing it wishes merely to express an opinion as to some given matter or thing and is only to have a temporary effect on such particular thing, while by a "law" it is intended to permanently direct and control matters applying to persons or things in general.

Concurrent resolution. An action of congress passed in the form of a resolution of one house, the other concurring, which expresses the sense of Congress on a particular subject.

Corporate resolution. Formal documentation of action taken by Board of Directors of Corporation (e.g. Declaration of stock dividend).

Joint resolution. A resolution adopted by both houses of congress or a Legislature. When such a resolution has been approved by the President or passed with his approval, it has the effect of a law.

The distinction between a joint resolution and a concurrent resolution of congress, is that the former requires the approval of the President while the latter does not.

Ordinance distinguished. "Resolution" denotes something less formal than "ordinance", generally, it is mere expression of opinion or mind of council concerning some matter of administration, within its official cognizance, and provides for disposition of particular item of administrative business of a municipality; it is not a law, and in substance there is no difference between resolution, order and motion.

(underlined by this Court)

In view of the aforesaid, a resolution in substance may amount to an order, if, it is intended to permanently direct and control the matters dealt by it. It cannot be said that a resolution in no case may amount to an order. It is a trite law that while examining a document its substance is to be seen and not merely its form. This Court is here concerned with the resolution relating to selection or appointment or both in respect of Panchayat Karmi. All the resolutions of Gram Panchayat cannot be treated uniformly, but in order to ascertain appealability nature of a particular resolution with reference to "Panchayat Karmi Yojna" is to be examined.

In the present case, this Court is required to examine the appealability of the resolution in question keeping into consideration the Panchayat Karmi Yojna under which Gram Panchayat is required to pass a resolution in the matter of selection and appointment of Panchayat Karmi. Panchayat Karmi Yojna was introduced by the Ministry of Panchayat and Rural Development Department of Government of Madhya Pradesh, vide No. F2/12/22/Pa 1/95, dated 12-9-1995 with an object to make a provision for minimum one employee who would discharge the functions of administrative work and other work entrusted to him by the Gram Panchayat. Necessary directions were issued in exercise of powers under Sub-section (1) of Section 70 read with Section 69 (1) of the Panchayat Adhiniyam. Earlier to it, Gram Sahayak were functioning as Secretary of Gram Panchayat. It was declared as dying cadre. Under this Yojna, Gram Panchayats were given power to make appointment of Panchayat Karmi in accordance with the guiding principles. Qualification's for Panchayat Karmi were prescribed. Additionally, Gram Panchayats were empowered to add other suitable/desirable qualifications by passing a resolution. Process of selection was prescribed under the Panchayat Karmi Yojna and, accordingly, the Gram Panchayat was empowered to select and appoint a Panchayat Karmi on full time/part time/contractual basis. Sarpanch of the Gram Panchayat has been empowered to issue order of appointment of Panchayat Karmi in accordance with the resolution of the Gram Panchayat. He has no independent say in the matter and is rather bound to act in accordance with the resolution. Issuance of an order of appointment by Sarpanch would be merely a formal act and will not denude the resolution of its substance regarding selecting and appointing a person as Panchayat Karmi. Panchayat Karmi has been kept under the total administrative control of the concerning Gram Panchayat. Gram Panchayat has also been empowered to initiate disciplinary proceedings against him and to remove from his post after issuing a show-cause notice. From the Panchayat Karmi Yojna, it is clear that a resolution of Gram Panchayat regarding appointment of Panchayat Karmi, does not require any kind of approval from the Prescribed Authority or any other authority. Thus, it may be safely held that a Gram Panchayat is the whole sole authority in the matter of appointment of Panchayat Karmi.

In this view of the matter, if, Gram Panchayat passes a resolution to ? select a

person on the post of Panchayat Karmi, it would amount to resolution not amounting to an order, but if it passes a resolution selecting and appointing a person thereby on the post of Panchayat Karmi such kind of resolution may amount to an order in substance and not merely a proceeding of Gram Panchayat and an appeal against it may be preferred before the Sub Divisional Officer. On the other hand, if, a resolution is passed, merely selecting a person on the post of Panchayat Karmi and not appointing thereby, it would be merely a resolution (i.e., proceedings of Gram Panchayat) under the Panchayat Adhiniyam and the rules made thereunder and no appeal may be preferred against it unless, it is followed by an order of appointment of such Panchayat Karmi. In such a situation, an appeal would lie against the order of appointment and the validity of the resolution may be examined in such appeal as held by learned Division Bench of this Court in Paragraph 16 of the order dated 8-4-2008 passed in Writ Appeal No. 360/08, Devidayal Raikwar Vs. State of M.P. and Others, . Contrary view taken by the Single Judge of this Court in Ram Lakhan Rawat v. State of Madhya Pradesh 2000 (2) MPJs 176, is not a correct law, as already held by learned Division Bench in Devi Dayal Raikwar's case (supra).

Coming to the next question that whether a resolution of Gram Panchayat in the matter of selection/appointment of Panchayat Karmi would be amenable to revisional jurisdiction under Rule 5 of the Madhya Pradesh Panchayats (Appeal & Revision) Rules, 1995, it may be seen that this Court has already held that a resolution selecting and appointing thereby a person as Panchayat Karmi would amount to an order of Gram Panchayat and would be -appealable under Rule 3. A resolution merely selecting thereby a person as Panchayat Karmi, but not appointing him would, obviously, not be an order, but would be proceedings of Gram Panchayat. Rule 5 which provides for revision reads as follows:

Revision. - (1) (a) The State Government, the Commissioner, the Director of Panchayat, the Collector may on its/his own motion or on the application by any party, at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to it/him call for and examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it/he may think fit:

(Underlined by this Court)

Provided that it/he shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard:

Provided further that no application for revision shall be entertained against an order appealable under the Act.

(b) An application for revision by any party shall only be entertained if it is on the point of law and not on facts.

(2) Notwithstanding anything contained in Sub-rule (1),:

(i) where proceedings in respect of any case have been commenced by the State Government under Sub-rule (1) no action shall be taken by other Officer mentioned in the said sub-rule in respect thereof, and

(ii) where proceedings in respect of any such case have been commenced by the Officer mentioned in Sub-rule (1), the State Government may either refrain from taking any action under this rule in respect of such case until the final disposal of such proceeding by such officer or may withdraw such proceeding and pass such order as it may deem fit.

(Underlined this Court)

Aforesaid rule empowers the State Government, the Commissioner, the Director of Panchayat, the Collector on its/his own motion or on the application by any party to call for and examine the regularity of the proceedings of the authority subordinate to it and further to pass such order in reference thereto as it/he may thinks fit. A question pertinently before this Court is whether the Gram Panchayat may be considered as an authority subordinate to the Revisional Authority in the matter of appointment of Panchayat Karmi. This Court has already considered various provisions of the Panchayat Karmi Yojna in the preceding paragraphs and has found that a Gram Panchayat has a full autonomy in the matter of appointment of Panchayat Karmi. Since the selection as well as appointment of a Panchayat Karmi by the Gram Panchayat does not need approval under law from any of the Revisional Authorities, Gram Panchayat cannot be treated as an authority subordinate to the Revisional Authority. No provision could be pointed out by the learned Govt. Advocate which may demonstrate that any of the Revisional Authorities enjoys or exercises any power over the Gram Panchayat in the matter of selection and appointment of a Panchayat Karmi.

In this view of the matter, this Court is of the considered opinion that though a Gram Panchayat is an authority within the meaning of Rule 5, it is not subordinate to any of the Revisional Authorities in the matter of appointment of Panchayat Karmi, within the meaning of this rule, and, therefore, a resolution merely selecting thereby a person as Panchayat Karmi would not be revisable under Rule 5 despite being proceedings of Gram Panchayat.

Third and last legal question before this Court is whether a second revision would lie under the provisions of Madhya Pradesh Panchayats (Appeal & Revision) Rules, 1995 ?

Rule 5 has already been quoted above. Second Proviso to Rule 5 makes it clear that no application for revision shall be entertained against an order appealable under the Act. It is thus clear that an appealable order has been excluded from the jurisdiction of revision. Sub-rule (2) is to be taken note of. Powers of revision under Rule 5 may be exercised by any of the Revisional Authorities at first instance. However, Sub-rule (2) makes it clear that, if, the revisional powers are exercised by the State Government (obviously at first instance of revision), no

interference shall be made by other officer mentioned in Sub-rule (1) of Rule 5. Sub-rule (2) begins with a non-obstante clause. It further provides that where revisional proceedings have been commenced by the officer mentioned in Sub-rule (1), the State Government may either refrain from taking any action under this rule in respect of such case until the final disposal of such proceedings by such officer or may withdraw such proceedings and pass such order as it may deem fit. It goes to suggest that if the revisional power is exercised by any of the officers out of the Commissioner, the Director of Panchayats or the Collector, the State Government may withdraw such proceedings or to wait until final disposal of such proceedings by such officer. This is clearly suggestive of the fact that after final disposal of such proceedings by any of the aforesaid officers, the State Government may entertain the matter. Any other interpretation would make the words "until the final disposal of such proceedings by such officer" redundant and meaningless. Thus, the State Government is not debarred from exercising revisional jurisdiction against the order of final disposal by the Commissioner, the Director of Panchayats or the Collector made in the exercise of revisional jurisdiction at first instance.

This Court earlier in the case of Smt. Mamta Pateria and Others Vs. State of M.P. and Others, , had taken a view that only one revision would lie. Reliance was placed on the decision of this Court in the case of Ram Lakhan Rawat (supra) which has already been held to be not a correct law by the Division Bench in the case of Devi Dayal Raikwar (supra).

This Court in the case of Smt. Mamta Pateriya (supra), was dealing with the second revision preferred before the Commissioner. To this extent, I do agree that a second revision before the Commissioner against the revisional order of Collector would not lie according to the Madhya Pradesh Panchayats (Appeal & Revision) Rules, 1995. In the case of Mamta Pateriya (supra), there was no occasion for this Court to consider the tenability of revision before the State Minister and the decision in the case of Mamta Pateriya's case (supra) is not a precedent while deciding the maintainability of second revision before the State Minister. Further, I find that words occurring in Clause (ii) of Sub-rule (2) of Rule 5 "until the final disposal of such proceedings by such officer" do not seem to have been brought into the notice of this Court. It resulted into the observations of this Court that Clause (ii) of Sub-rule (2) of Rule 5 provides that the State may refrain from taking any action or may withdraw such proceeding. Reliance in the decision of Mata Pateriya's case (supra), is placed on the decision of this Court in Writ Petition No. 1195/01 (Smt. Geeta Bai v. State of M.P. and Ors.) and on decision in the case of Ram Lakhan Rawat v. State of Madhya Pradesh (supra). In Geeta Bai's case, the second revision was preferred before the Commissioner and there was no occasion to consider the maintainability of revision before the State Minister. As regards Ram Lakhan Rawat's decision, it is no more a good law in view of the Division Bench decision of this Court in Devi Dayal Raikwar's case (supra). Words "until the final decision of proceedings by such officer" make it clear that the refrain against the exercise of powers of the

State Government is not unqualified or absolute, but is qualified during pendency of proceedings before such officer. If any of the officers (i.e., Commissioner/Director of Panchayat/Collector) finally disposes of the revision proceedings, the State Government by virtue of Clause (ii) would be empowered to exercise the powers after such final disposal. Thus, a second revision before the State Minister after final disposal of the first revision by the Commissioner/Director of Panchayat/Collector would be quite maintainable.

I am fortified in my this view by decision of this Court in the case of Dilip Kumar Suryawanshi v. State of Madhya Pradesh 2006 (3) MPLJ 38, that a second revision before the State Government would lie under the Rules.

It is not a trite law that revision against revisional order does not lie at all. Revision against revisional order is not unknown. Two relevant Full Bench judgments may be successfully cited below:

Ravishankar Dube and Ors. v. Board of Revenue and Ors. 1972 JLJ 934 and Municipal Council, Khandwa v. Santosh Kumar and Ors. 1975 JLJ 48.

Aforesaid cases do not relate to the revision under Panchayat Adhiniyam, therefore, I do not feel it necessary to dwell upon them any more. Reference has also been made to the Division Bench decision of this Court in the case of Sagar Machhua Sahakari Samiti Vs. Chief Executive Officer, Janpad Panchayat and Another, , wherein it has been held that there can be no doubt that a resolution can be challenged in an appeal or revision as per substantive provision of the Panchayat Adhiniyam. However, the case of S.M. Sahkari Samiti (supra), relates to a resolution of Janpad Panchayat granting thereby a contract for fisheries. It was not in relation to selection/appointment of Panchayat Karmi and was not governed by the provisions of Panchayat Karmi Yojna. Grant of contract for fisheries and appointment of Panchayat Karmi are distinct matters and are governed by distinct provisions. There was no occasion in the case of S.M. Sahkari Samiti (supra), to examine the scope and forum for a challenge to the resolution with reference to the provisions of Panchayat Karmi Yojna. Therefore, no further valuable assistance would be available to the parties in the present case from the decision of S.M. Sahkari Samiti (supra).

On the basis of the aforesaid discussions, it is held:

(i) Resolution of Gram Panchayat selecting and appointing thereby a Panchayat Karmi amounts to an order in substance of Gram Panchayat and would be appealable under Rule 3 of the Madhya Pradesh Panchayats (Appeal and Revision) Rules, 1995 before the Prescribed Authority.

(ii) Resolution of Gram Panchayat merely selecting thereby a Panchayat Karmi and not appointing thereby would not amount to an order, but would amount to merely a proceedings of Gram Panchayat and would not be appealable as an order under Rule 3. Such a proceeding would not be open to challenge in revision under Rule 5 because the Gram Panchayat cannot be said to be subordinate to

any of the Revisional Authorities within the meaning of provisions of Panchayat Karmi Yojna.

(iii) Second revision before the State Govt., against the revisional order of the officers mentioned in Rule 5 would lie after final disposal by such officers by virtue of Clause (ii) of Sub-rule (2) of Rule 5.

Now coming to the facts of the case, it may be seen that the resolution dated ,29-8-2007 of Gram Panchayat Magron is on record as Annexure P-5, wherein it is mentioned that the Gram Panchayat has appointed/selected the petitioner on the post of Panchayat Karmi. Thus, the resolution contained in Annexure P-5 amounts to an order of Gram Panchayat in substance and the appeal against it before the Sub Divisional Officer, Hata cum Prescribed Authority was rightly preferred by "R" Being aggrieved by the rejection of the appeal, the revision was also correctly preferred by "R" before the Court of Additional Collector, Damoh. Revisional Authority vide his order dated 28-5-2008 marked as Annexure P-15 allowed the revision holding that "R" was the most meritorious amongst the applicants and was entitled to be appointed on the post of Panchayat Karmi of Gram Panchayat Magron. Accordingly, "R" was directed to be appointed on the said post and the Chief Executive Officer of Janpad Panchayat Batiyagarh was directed to issue appointment order in her favour. Aggrieved by it, second revision was preferred before the State Minister by "A" who vide the impugned order dated 9-6-2008 (Annexure P-18) stayed the order of the Additional Collector dated 28-5-2008 (Annexure P-15) and remitted the matter for final adjudication to the Commissioner, Sagar Division. Since, it has already been held that the second revision to the Court of Commissioner against the revisional order of the Collector is not maintainable, the impugned order to the extent of remittance of second revision to the Court of Commissioner, Sagar Division is without jurisdiction and is, hereby, set aside. The State Minister is, hereby, directed to decide the revision pending before her in an expeditious manner, preferably, within a period of three months from the date of receipt of certified copy of this order. To this extent, Writ Petition No. 7007/08 is, hereby, allowed. Since, it has already been held that selection as well as appointment has been made by the resolution of Gram Panchayat Magron contained in Annexure P-5, the resolution is found to be amounting to an order and is found appealable. Accordingly, the order of Sub Divisional Officer, Hata cum Prescribed Authority is not without jurisdiction.

Accordingly, Writ Petition No. 7163/08 containing challenge to the order of Sub Divisional Officer for want of jurisdiction is, hereby, dismissed. Parties to appear before the State Minister on 6-10-2008.

No order as to costs.