

(2020) 09 MP CK 0052

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12651 Of 2020

Adarsh Matsyaudyog Sahakari Samiti Maryadit.

APPELLANT

Vs

State Of M.P. & Others

RESPONDENT

Date of Decision : 04-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Madhya Pradesh Panchayat Raj Awam Gram Swaraj Adhiniyam, 1993 — Section 65(1), 91

Madhya Pradesh Panchayat (Appeal & Revision) Rules, 1995 — Rule 3

Citation : (2020) 09 MP CK 0052

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : A.S. Garg, Sapnesh Jain, Manu Maheshwari, Manoj Manav

Final Decision : Dismissed

Judgement

1. The petitioner has filed the present petition being aggrieved by the order dated 18.8.2020 passed by Commissioner, Ujjain Division in exercise of powers conferred u/s. 65(1) of M.P. Panchayat Raj Adhiniyam, 1993 whereby an approval for allotment of "Morwan Irrigation Reservoir" (hereinafter referred to as "the reservoir" for short) for ten years' on lease to respondent No.2 for fisheries purposes has been granted.

2. The petitioner is a society registered under the provisions of M.P. Cooperative Societies Act and all its members are fishermen. The petitioner society has 42 members and all of hereditary fishermen ("Vanshanugat Machhuare") belonging to 'Bhoi' backward class. There is a reservoir having an area of 180 Hect. situated within the territory of Jila Panchayat Neemuch. According to the petitioner, since 1998 till June 2020, the said reservoir had always been allotted on lease to the petitioner society for fishery purposes.

3. The Chief Executive Officer (CEO), Jila Panchayat, Neemuch issued an advertisement dated 17.7.2020 for allotment of the reservoir for a period of ten

years @ Rs.150/- per Hect. for fishery. In pursuant to the said advertisement, the petitioner, respondent No.7 and one Jai Modimata Matsya Sahakari Samiti, Malkheda submitted their applications. The Fisheries Officer examined all the applications and prepared a comparative chart and placed them with all the documents before the "Agricultural Standing Committee" of Jila Panchayat for consideration as per Fisheries Policy. In the meeting held on 2.11.2019, the petitioner and respondent No.7 both were found eligible. After deliberation, the Agricultural Standing Committee has decided to give the reservoir on lease jointly to the petitioner and respondent No.7 subject to their consent other it would go to other society.

4. Vide letter dated 21.11.2019, the Assistant Director, Fisheries made certain queries about the members of the petitioner society. The petitioner society submitted the reply to the notice on 23.11.2019. The Agricultural Standing Committee in its meeting held on 30.11.2019 has unanimously decided to grant the lease of the reservoir to respondent No.7 society and the petitioner society was not found eligible on various grounds. Being aggrieved by the aforesaid recommendation, the petitioner has submitted various representations to the respondents. Now, vide impugned order dated 18.8.2020, the Commissioner, Ujjain Division has granted the approval and directed the CEO, Jila Panchayat to execute the lease in favour of respondent No.7, hence the present petition before this Court.

5. I have heard Shri A.S. Garg, learned senior counsel appearing for the petitioner, Shri Manu Maheshwari, learned Panel Advocate appearing for respondents/State and Shri Manoj Manav, learned counsel appearing for respondent No.7 at length and perused the material available on record.

6. The petitioner has filed the present petition challenging the recommendation made by the Agricultural Standing Committee in favour of respondent No.7 and thereafter approval given by Commissioner, Ujjain Division. Though both the orders are not appealable, but after the order dated 18.8.2020, if the CEO passes the order in favour of respondent No.7 and the said order would be appealable under Rule 3 of M.P. Panchayat (Appeal & Revision) Rules, 1995. The petitioner is also questioning the registration of respondent No.7 society in this writ petition. There is registration of respondent No.7 society by the competent authority under the Cooperative Societies Act which cannot be challenged in this petition. So far as the respondent no 7 has a valid registration certificate same is eligible for allotment of the reservoir for fishery.

7. Shri Manav, learned counsel appearing for respondent No.7 submits that in compliance of the order dated 18.8.2020, the CEO, Jila Panchayat, Neemuch has issued the order in favour of respondent No.7 and thereafter, an agreement has also been executed.

8. The petitioner has raised various disputed questions of fact which cannot be decided in this petition under Article 226 of the Constitution of India. The

petitioner is having an alternative and efficacious remedy of appeal u/s. 91 of M.P. Gram Swaraj and Panchayat Raj Adhiniyam, 1993 and under the M.P. Panchayat (Appeal & Revision) Rules, 1995.

9. It would be preferable to quote the judgment passed by the Supreme Court of India in the case of *New Okhla Industrial Development Authority v. Kendriya Karamchari Sahkari Grih Nirman Samiti*, reported in (2006) 9 SCC 524 :

11. Though it is claimed by the respondent that there was no dispute that 292 bighas of land had been acquired by the Society, on verification of records the position appears to be entirely different. It has been all through the stand of the appellant that the Society had misrepresented to be the owner of 292 bighas of land. This is a disputed question of title which was to be established in an appropriate court of law and the writ petition was not the proper remedy. Further as rightly contended by the learned counsel for the appellant, the High Court's order practically renders the proceedings before the Board of Revenue redundant. Findings recorded about the merits of the proceedings before the Board of Revenue when the State was not a party in the writ petition is an impermissible course adopted by the High Court. Even otherwise, the finding that farmers have practised fraud is without any foundation since the farmers were not parties in the writ petition. The appellant's effort was to verify the genuineness of the members who were claimed by the Society to be its genuine members. Interestingly at the initial stage the list was verified by Shri Balbir Singh who undisputedly was the President of the respondent Society. In spite of several opportunities, the details regarding membership were not furnished. Obviously, it cannot be said that the appellant was bound to allot land, even if the membership was not established and it was established that large number of people were not genuine members. Allotment in the manner desired by the respondent Society would be against the very purpose of allotment flowing from the scheme in question. In any event highly disputed questions of fact were involved. The High Court did not examine that issue in its proper perspective. It only referred to some decisions which noted that the High Court is not deprived of its jurisdiction to entertain a petition under Article 226 of the Constitution, merely because in considering the petitioner's right to relief, questions of fact may fall to be determined. These judgments have been read out of context. It is fairly well settled that disputed questions of fact should not be gone into by the High Court in writ proceedings.

12. A High Court is not deprived of its jurisdiction to entertain a petition merely because in considering the petitioner's right to relief question of fact may fall to be determined as pointed out in *Gunwant Kaur v. Municipal Committee, Bhatinda*³. In a petition under Article 226, the High Court has jurisdiction to try issues of law and fact. Where, however, the petition raises complex question of fact, the Court should not entertain the petition. In *Mahant Moti Das v. S.P. Sahi*⁴ the High Court refused to go into the question as to whether trusts were public or private trusts as the question had involved investigation of complicated

facts and recording of evidence. The view was upheld. Thus, if there is a question on which there is a serious dispute which cannot be satisfactorily decided without taking evidence, it should not be decided in a writ proceeding (see *Union of India v. T.R. Varma*). If disputed questions of fact arise and the High Court is of the view that those may not be appropriately tried in a writ petition, the High Court has jurisdiction to refuse to try those questions and relegate the party to his normal remedy to obtain redress in a suit.

13. In a petition under Article 226, the High Court has jurisdiction to try issues both of fact and law. When the petition raises complex questions of fact which may, for their determination, require oral evidence to be taken and on that account the High Court is of the view that the disputed statement may not be appropriately tried in a writ petition, the High Court should ordinarily decline to try the petition.

14. Thus, a High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right, question of fact may fall to be determined. Ultimately, the question is one of discretion which is to be exercised in conformity with judicial principles.

15. The High Court entertained the writ petition on the ground that the present appellant by acting wholly arbitrarily and illegally had discrimination against the writ petitioner. These conclusions were based on no material. On the contrary, the factual scenario as described above goes to show that the respondent Society was not entitled to maintain a writ petition. Further there was no claim for interest made in the writ petition but the High Court granted interest. Looked at from any angle the High Court's order is clearly unsustainable and is set aside. Writ Petition (Civil) No. 39842 of 2001 filed before the High Court is dismissed.

10. Since the petitioner is having an alternative and efficacious remedy of appeal before the State Government, therefore, this petition is dismissed with liberty to take recourse available under the law.