

(1997) 12 MP CK 0022

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1381 of 1997

Arjunlal Gupta

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 19-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Panchayat Raj Adhiniyam, 1993 — Section 39, 39(1), 39(2)

Penal Code, 1860 (IPC) — Section 294, 302, 303, 304B, 305

Citation : (1998) 1 JLJ 128

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : Sanjay Agarwal, for the Appellant; P.D. Gupta, Government Advocate, for the Respondent

Judgement

R.S. Garg, J.—By this petition under Article 226/227 of Constitution of India, the Petitioner seeks the relief that order No. 27-B/21/95-96, dated 3.2.96, passed by Respondent No. 3 by which the Petitioner has been suspended from the office of Sarpanch, Pandatarai and all consequential orders be quashed.

2. The brief facts necessary for disposal of the petition are that the Petitioner was elected as Sarpanch of Gram Panchayat, Pandatarai in the year 1994. A police report was lodged by the Petitioner against Trilochan Singh and Manindar Singh for commission of offences u/s 394, 506 and 294 IPC. A challan was filed after due investigation in the Court of Judicial Magistrate Ist Class, Mungeli. On the report of the other party, offence u/s 395 IPC was registered against the Petitioner, matter was investigated and challan was filed in the competent Court. Later on charges u/s 395 IPC were framed against the Petitioner, he having denied the charges, the case was later on fixed on 18th and 19th March. One Panch, namely, Safar Khan moved an application to the Respondent No. 3 and made a request that in view of framing of the charge, the Petitioner be suspended from the office of Sarpanch. Pursuance to the said complaint, the Respondent No. 3, i.e. Sub-Divisional Officer, issued a show cause notice on

23.1.96 (Annexure P/2) to the Petitioner asking him to show cause that as charges u/s 395/94, 394/34 and 506 IPC have been framed against the Petitioner in Sessions Trial No. 447/95 by the IVth Additional Sessions Judge, Link Court, Mungeli, District Bilaspur, therefore, why an action u/s 39(1)(a) be not taken against the Petitioner. The Petitioner, vide Annexure P/3, dated 29.1.96, filed his reply and also made a submission that he be given some more time to file a detailed reply. The matter was again taken up on 2.2.96 for consideration. In case No. 27-B/21/95-96, the Sub-Divisional Officer holding that as the charges have already been framed against the Petitioner, u/s 39(1)(a) of M.P. Panchayat Raj Adhiniyam, 1993, the Petitioner deserves to be suspended. He accordingly suspended the Petitioner. On the same day, i.e. 2.2.96, the Sub-Divisional Officer gave the charge of the office of Sarpanch to the Up-Sarpanch. The Petitioner thereafter filed an appeal against the said order of Sub-Divisional Officer; the appeal was registered as Revenue Case No. 20/B-128/95-96. The appellate authority by its order dated 19.3.96, rejected the appeal holding that as charges u/s 395/34, 394/34 and 506 IPC have already been framed against the Petitioner, the Petitioner could not escape the consequences flowing from Section 39. Thereafter vide Annexure, dated 13.5.96, the Petitioner submitted an application to the Sub-Divisional Officer that the Petitioner was suspended from the office vide communication dated 5.2.96, but as the said suspension order has not been confirmed by the State Government within ninety days as provided u/s 39(2) of the Act, said order deemed to stand discharged, therefore, the Petitioner be permitted to occupy the office. By Annexure P/8, the Petitioner again moved an application to the Sub-Divisional Officer seeking the same relief. The Petitioner again took up the matter to the Addl. Collector. The Addl. Collector, by his order dated 7.12.96, passed in Panchayat Appeal Case No. 21-B/128-95-96, rejected the appeal holding that the order of suspension has already been confirmed by the State Government on 24.5.96, and as the Petitioner could again be suspended, therefore, and as the Petitioner was facing serious charges, it was not in the interest of all concerned that the office be restored to the Petitioner. Being dissatisfied by the order of passed by the Addl. Collector on 7.12.96 (Annexure P/9), the Petitioner has filed this petition.

3. It was vehemently contended before the Court that as the order of suspension has not been confirmed by the State Government within ninety days from the date of receipt of the information, the order of suspension stands automatically discharged and as no formal notice for removal of the Petitioner from the office of Sarpanch has been served upon the Petitioner, the order of suspension deserves to be quashed. It was contended that Section 39 (2) obliges the State Government to confirm the order within ninety days from the date of receipt of the information/order and if the State Government fails, the law has to take its own course. This Court called upon the State Government to state clearly that on what date the S.D.O.'s order was received by the State and on what date the order of S.D.O. was confirmed. The State Govt., through learned Govt. Advocate submitted a FAX MESSAGE before this Court. According to the FAX MESSAGE, the

order of the S.D.O. was received by the State Government on 8.4.96 and the same was confirmed by the State u/s 39(2) of the Act on 24.5.96, i.e. within ninety days from the date of the suspension order.

4. Facing this factual problem, learned Counsel for the Petitioner now contended that the order was not communicated within ten days in accordance with Section 39 (2) of the Act, therefore, it must be held that the first part of Section 39 (2) was not complied with and the order lost its efficacy immediately on completion often days or in any case the State Government could not confirm the order beyond ninety days from the date of issuance of the suspension order. Learned Government Advocate, in reply, submitted that Section 39 (2) cannot be interpreted in a manner as being interpreted by the Petitioner. According to him, Section 39 (2) provides that the order of suspension has to be confirmed by the State Government within ninety days from the date of receipt and non-compliance or non-observance of the mandatory provision of non-confirmation would alone lead to penal consequences. He submits that law does not provide for penal consequences if the order is not communicated to the State Government within ten days.

5. Section 39 of the Act as stood prior to the amendment, reads as under:

Suspension of office bearer of Panchayat:

(1) The prescribed authority may suspend from office any office bearer:

(a) against whom charges have been framed in any criminal proceedings under Chapter-V-A, VI, 1X-A, X, XII, Sections 302, 303, 304B, 305, 306, 312 - 318, 366A, 366B, 373 - 377 of Chapter XVI, Section 395 - 398, 408, 409, 458 - 460 of Chapter XVII and Chapter XVIII of the Indian Penal Code, 1860 (XIV of 1860) or under any Law for the time being in force for the prevention of adulteration of food stuff and drugs, suppression of immoral traffic in women and children and protection of civil rights; or

(b) who has been served with a notice alongwith a charge sheet to show cause under this Act, for his removal from the office.

(2) The order of suspension under Sub-section (1) shall be reported to the State Government within a period of ten days and shall be subject to such orders as the State Government may deem fit to pass. If the order of suspension is not confirmed by the State Government within 90 days from the date of receipt of such report, it shall be deemed to have vacated.

(3) In the event of both the Sarpanch and Up-Sarpanch of Gram Panchayat, President or Vice-president of Janapad Panchayat or Zila Panchayat being suspended under Sub-section (1), the Gram Panchayat, Janapad Panchayat or Zila Panchayat shall elect an office bearer qualified to hold the office of Sarpanch or President as the case may be, such person shall perform all the duties and exercise all the powers of Sarpanch or President or as the case may be, during the period for which such suspension continues.

(4) A person who has been suspended under Sub-section (1) shall also forthwith stand suspended from the office of member or office bearer of any other Panchayat of which he is a member or office bearer. Such person shall also be disqualified for being elected under the Act during his suspension.

6. According to Sub-section (1)(a) of Section 39, the prescribed authority may suspend from the office any office bearer against whom charges have been framed in a criminal proceeding under particular chapters/sections of Indian Penal Code or under any law for the time being in force for the prevention of adulteration of food stuff and drugs, suppression of immoral traffic in women and children and protection of civil rights. Sub-clause (b) provides that an office bearer may be suspended who has been served with a notice alongwith a charge sheet to show cause under the Act for his removal from the office. In the present petition, we are not concerned with Clause (b) of Sub-section (1) of Section 39.

7. Undisputedly charges have been framed against the Petitioner u/s 395/34 which is covered by the provisions of Clause (a) of Sub-section (1) of Section 39. It cannot now be disputed by the Petitioner nor can it be held by the Court that the prescribed authority had no powers to suspend from office the office bearer.

8. Sub-section (2) of Section 39 provides two steps. The section is couched in typical terms. According to Sub-section (2), the order of suspension issued under Sub-section (1) has to be reported to the State Government within a period of ten days and the order of suspension shall be subject to such order as the State Government may deem fit to pass. The second part of Sub-section (2) provides that the State Government, if does not confirm the order of suspension within ninety days from the date of receipt of such report, it shall be deemed to have vacated. The first part of Sub-section (2) clearly provides that suspension order has to be reported to the State Government within ten days. Non-compliance of this Court of Sub-section (2) does not lead to any penalty or revocation/cancellation/vacation of the suspension order. Non-compliance of the second part of Sub-section (2), i.e., non-confirmation of the suspension order within ninety days by the State Government leads to penal consequences. According to second part if the suspension order is not confirmed within ninety days, it shall be deemed to have vacated.

9. Learned Counsel for the Petitioner submits that the opening words of Sub-section (2) provide that the authority shall report within ten days to the State Government about passing of the suspension order, therefore, it must be held that if the order is not reported to the State Government within ten days, it shall be deemed to have vacated. The counsel submits that each part of Sub-section (2) is mandatory. According to the counsel, if there is a failure on part of the competent authority to report the matter to the State Government within ten days or there is a failure on part of the State Government to confirm the order within ninety days, then in either of the contingency the order of suspension would stand vacated. I am afraid the submission made by the learned Counsel is not in accordance with law. Sub-section (2) certainly is in two parts. The first

part provides, rather casts a duty or obliges the competent authority issuing the suspension order, to report the matter to the State Government within ten days. It also provides that such suspension order shall be subject to the order as the State Govt. may deem fit to pass. The non-compliance, that is, not reporting the matter to the State Government within ten days does not lead to any further consequences. It simply provides that the order has to be communicated to the State Govt. within ten days. Ordinarily it is expected that the officer passing the order, would communicate the order within ten days, but if the statute does not provide for any consequences for non-reporting the matter within ten days, then it would not be permissible for the Court to read something in the provision of law. If the legislature was alive to the situation and has not provided for any consequences for non-compliance of the first part in relation to reporting of the matter to the State Government within ten days, then the law has to take its own course and the Courts would not be permitted to say that non-compliance of the first part would lead to automatic vacation of the suspension order. The second part of Sub-section (2) clearly provides that the order of suspension has to be confirmed within ninety days from the date of receipt. Here again the intention of the legislature will have to be seen. The legislature was alive to the situation that there may be a case where it may not receive a communication from the competent authority regarding suspension, within reasonable period. It appears, therefore, the legislation provided that the order is required to be confirmed within ninety days from the date of receipt. The duty is cast upon the State to confirm the order or pass any other order within ninety days and failure would lead to automatic vacation of the suspension order. Clear ninety days are given to the State Government to confirm the suspension order. The law itself provides for the consequences. Where in two parts of Sub-section (2), one part provides for penal consequences and the other does not, then it has to be held that the legislature, knowing well that there are different contingencies, has provided consequences against non-compliance of one part only. If the legislature wanted to make the first part of Sub-section (2) mandatory with a consequence of automatic vacation of the suspension order, then the legislature could have provided in simple words that if the matter is not reported within ten days or the Government did not confirm the order within ninety days from the date of receipt, the order would be deemed to have vacated. The absence of the material words in the first part of Sub-section (2) of Section 39 clearly make it understandable that the statute does not provide for any consequences of non-compliance of the first part of Sub-section (2).

10. Contention of the learned Counsel has to be and is accordingly rejected. The State Government received the report on 8.4.96 and has confirmed the suspension order on 24.5.96, which is within the period prescribed under the law.

11. I do not find any force in this petition. It deserves to and is accordingly dismissed.