
(1998) 12 MP CK 0023
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1320 of 1998

Asha Dwivedi

APPELLANT

Vs

Sub-Divisional Officer and Others

RESPONDENT

Date of Decision : 03-12-1998

Acts Referred:

Madhya Pradesh Panchayat Raj Adhiniyam, 1994 — Section 39(1)

Citation : (2000) ILR (MP) 1033 : (1999) 2 MPLJ 76

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Advocate : R.K. Samaiya, for the Appellant; Vivek Awasthy, Dy. G.A. and R.N. Singh and A.J. Pawar, for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.

The petitioner was elected as Sarpanch of Gram Panchayat Ogdadi, Block Deosar, District Sidhi. She was served with a show cause notice on allegations of certain financial irregularities, for her removal u/s 40 of the M. P. Panchayat Raj Adhiniyam (for short "the Act"). u/s 39(1)(b) the prescribed authority has power to place an office bearer of Panchayat under suspension if he has been served with a notice along with a charge sheet to show cause for removal u/s 40 of the Act. The relevant Section 39(I)(b) and (2) as it stood then reads as under:-

"39. Suspension of office bearer of Panchayat.- (1) The prescribed authority may suspend from office any office bearer -

(a).....

(b) who has been served with a notice along with 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."

In exercise of powers u/s 39(l)(b) by impugned order (Annex.P.5) dated 17-6-1997 the petitioner was placed under suspension pending enquiry into show cause notice issued for her removal u/s 40. The order of suspension passed u/s 39(1)(b) is required to be reported to the State Government within 10 days of its making and has to be confirmed by the State Government within 90 days from the receipt of the report, failing which the suspension order is deemed to be vacated.

According to the petitioner the order of suspension was not reported within 10 days of its making. In any case by impugned order dated 29-9-1997 (Annexure.P.10) the State Government has confirmed the same.

The petitioner preferred an appeal against the order of her suspension to the Commissioner who has dismissed the same by order dated 9-4-1998 (Annexure P.11) holding the same as not maintainable in view of the fact that State Government has confirmed the order of suspension.

The learned counsel Shri R. K. Samaiya appearing for the petitioner assails the order of the prescribed authority suspending the petitioner and the consequent orders of confirmation passed by the State Government. In the petition he has alleged mala fides as also the ground that the order of suspension could not have been confirmed by the State Government under sub-section (2) of Section 39.

On behalf of the petitioner it is also pointed out that during the suspension period of the petitioner provision contained in Section 39(1)(b) authorising the prescribed authority to suspend an office bearer pending enquiry into the charge sheet for his removal u/s 40 of the Act has been repealed by the M. P. Panchayat Raj (Dwitiya Sanshodhan) Adhiniyam, 1977 published in Government Gazette, Extraordinary on 5-12-1997.

After the repeal of the above mentioned provision Section 39(l)(b), learned counsel for the petitioner contends that in any case now after the repeal of the above provision the impugned order of suspension cannot continue and has to be quashed. It is contended on behalf of the petitioner that the provision of placing an office bearer under suspension pending an enquiry for his removal is a procedural provision and its repeal will have retrospective effect.

I have taken up for consideration first the question of the effect of repeal of Section 39(1)(b) from the statute book by Second Amendment Act mentioned above.

Shri Vivek Awasthy, learned Dy.G.A. appearing for the prescribed authority in the State relies on Section 10(e) of M. P. General Clauses Act and submits that any enquiry or legal proceedings taken under the repealing provision would be saved even after the repeal of the provision. Learned Dy.G.A. also relied on other sub-

clauses of Section 10 in support of the contention that the suspension made under the repealed provision would continue even after the repeal of the provision.

I propose to decide the petition on the last legal submission made on the basis of the repeal of the provision. Section 10 of the General Clauses Act opens with a clause stating thus :

"10. Effect of repeal. - Where any Madhya Pradesh Act repeals any enactment then, unless a different intention appears, the repeal shall not -

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability, acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, any such penalty, forfeiture or punishment may be imposed, as if the repealing Madhya Pradesh Act had not been passed."

The meaning of the expression "unless a different intention appears" is that if the repealing enactment expresses any different intention, the provision of Section 10 of the General Clauses Act can have no application. From the provision of the repealing Act, the intention of legislature is clear that it no longer feels desirable to place the office bearer under suspension only because an enquiry under a charge sheet is pending against him. The argument advanced on behalf of the State cannot be accepted that office bearer, who had already been suspended, prior to the repeal of the provision, would continue to be under suspension but those office bearers against whom charge sheets have been issued after the repeal, would not be placed under suspension. It cannot be presumed that the legislature intended such a discriminatory situation to continue after the repeal. In the opinion of this Court the repealing enactment clearly evinces an intention of the legislature that with effect from the date of repeal i.e. 5-12-1997 an office bearer against whom a charge sheet has been issued for his removal would not be placed under suspension. Without entering into the question whether the repeal would have retrospective effect or not, in the opinion of this Court the provision will have to be given a prospective effect and in view of the clear intention of the legislature expressed by the repeal, any suspension, made prior to the repeal of the provision, cannot continue after the repeal. See the following passage from Principles of Statutory Interpretation by

G. P. Singh, 6th Edition, Pg. 419 :

"General savings of rights accrued, and liabilities incurred under repealed Act by force of Section 6, General Clauses Act, are subject to a contrary intention evinced by the repealing Act. In case of bare repeal, there is hardly any room for a contrary intention, but when the repeal is accompanied by fresh legislation on the same subject, the provisions of the new Act will have to be looked into to determine whether and how far the new Act evinces a contrary intention affecting the operation of Section 6, General Clauses Act."

This Court is also impressed by the fact that although the charge sheet was issued on 17-6-1997 even after expiry of period of more than one year, the enquiry has not been completed. The suspension order having continued for unreasonably long period of time and the enquiry having been delayed unduly, that is an additional ground for this Court to quash the order of suspension.

Consequently, the petition succeeds and is hereby allowed. The impugned order of suspension dated 17-6-1997 (Annexure P.5) passed by the prescribed authority and the order dated 24-9-1997 (Annexure P.1) of confirmation passed by the State Government are quashed. The respondents are directed to allow the petitioner to assume the office of Sarpanch subject to the decision of the enquiry pending against her. In the circumstances, there shall be no orders as to costs.