

(2010) 06 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4600 of 2009

Chitrarekha Saulakhe (Ku.)

APPELLANT

Vs

Suresh Saulakhe and Others

RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 86, 86(1), 86(2)

Citation : (2010) ILR (MP) 1945 : (2010) 4 MPJR 138

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.K. Lahoti, J.

This petition is directed against an order dated 9.3.2009 Annexure P-2 by the Additional Commissioner, Jabalpur Division, Jabalpur in revision Case No. 565/A-89/07-08 by which an order passed by the Collector, Balaghat in Case No. 36/A-89/07-08 dated 21.5.2008 Annexure P-1 was affirmed.

These orders are challenged by the Petitioner on the ground that the Petitioner was duly appointed u/s 86(2) of the M.P. Panchayat Raj and Gram Swaraj Adhiniyam, 1993, so the Collector and Commissioner erred in setting aside the appointment of Petitioner. That the appointment of the Petitioner u/s 86(2) was duly confirmed by the Collector so there was an error of jurisdiction in setting aside the order. Though Respondent No. 1 selected as Panchayat Karmi by Gram Panchayat on merits but his appointment was not legal and in this regard the Collector and the Commissioner erred in not considering the factual position in proper perspective. That the Petitioner obtained higher marks in comparison to Respondent No. 1 so she was entitled for the appointment.

To appreciate the rival contention of the parties, it would be appropriate if factual position in the case is stated. In compliance of order dated 23.7.2007 by the

Collector, Balaghat. The Gram Panchayat, Naitara invited applications for the posts of Panchayat Karmi. In response to it five applications were received. Those applications were considered by the Gram Panchayat in its meeting dated 25.8.2007. A list of candidates on the basis of merit was prepared in which Mukesh s/o Dhannu Lal was first in merit. At serial No. 2 Meena Kumar d/o Tularam, at Serial No. 3 Ku. Lalita d/o Khoobchand, at serial No. 4 Suresh s/o Pendarilal, Respondent No. 1 and at Serial No. 5 Chandravati d/o Sadan, were short listed alongwith similarly other persons. Petitioner herein, Ku. Chitrarekha had not applied for the post. Mukesh s/o Dhannu was not selected as he was the son of Panch. Other two candidates in the merit list were Meena Kumar and Lalita, but their age was below 18 years, on the date of application, so these two girls were also not selected.

At serial No. 4 Suresh, and at No. 5 Chandrawati were placed. Both these persons achieved 64.24% marks. As Respondent No. 1 Suresh was elder in age in comparison to Chandrawati so the gram Panchayat passed a resolution for the appointment of Respondent No. 1 as Panchayat Karmi. The resolution of Gram Panchayat was sent for approval to the concerned officer.

Respondent No. 1 as per the resolution and appointment of Gram Panchayat submitted his joining but the Sarpanch of Gram Panchayat had not joined him so he made a complaint to the Chief Executive Officer, Janapad Panchayat and to the Collector, Balaghat.

As no appointment was made by the Gram Panchayat within the time period, so the Collector, Balaghat had directed the Chief Executive Officer, Janpad Panchayat u/s 86(2) of the Act to initiate proceedings for the appointment of Panchayat Karmi. He had invited applications in which three applications were received by him. In the merit, he had found that the Petitioner Ku. Chitrarekha was meritorious in comparison to others and he recommended her name for appointment. Her appointment order was issued on 29.1.2008. She joined on 31.1.2008.

In the meantime the Collector, Balaghat directed an enquiry into the matter and the S.D.O. Balaghat after holding enquiry submitted a report to the Collector, Annexure R-9 in which he found that in fact Respondent No. 1 was duly selected as Panchayat Karmi by Gram Panchayat as per its resolution and his appointment order was issued on 30.8.2007, but he was not permitted to join. But the Coordinator Officer submitted his incorrect note and because of it, the matter was proposed u/s 86(2) and the Chief Executive Officer was directed to appoint the Panchayat Karmi u/s 86(2) of the Act.

The Collector, Balaghat considered the entire matter vide order Annexure P-1 and found that Suresh Saulakhe was duly selected on the basis of majority. Though Respondents Suresh Sulakhe and Smt. Chandrawati were having equal marks on merit but the Panchas selected Suresh Saulakhe on the basis of majority. Suresh Saulakhe was also two years elder in comparison to Smt. Chandrawati and her

selection and appointment on the post was not illegal. Agreeing with the report of S.D.O., the Collector found that the appointment of Respondent Suresh Sulakhe was in accordance with law and cancelled the appointment of the Petitioner made by the Janpad Panchayat, Balaghat u/s 86(2) of the Act and the appointment order of Gram Panchayat, Naitra dated 30.8.2007 in respect of Respondent No. 1 was held valid. Against the said order Petitioner herein filed a revision before the Additional Commissioner, Jabalpur Division, Jabalpur who vide order Annexure P-2 affirmed the order of the Collector against which this petition has been filed.

From the perusal of the aforesaid facts, it is apparent that a due process of selection took place by the Gram Panchayat and as per the resolution Annexure R-1 dated 25.8.2007, the Gram Panchayat selected Respondent Suresh on the basis of merit and majority. The aggrieved person against the aforesaid selection could have been Ms. Chandrawati but she never challenged the appointment of Respondent Suresh Sulakhe. When an appointment u/s 86(1) of the Act was duly made by the Gram Panchayat and on 30.8.2007 an order in favour of Respondent No. 1 was issued for his appointment as is apparent from the perusal of Annexure R-2 there was no question of appointment of Panchayat Karmi u/s 86(2) of the Act.

Section 86 of the Act is reads as under:

86. Power of State Government to issue order directing Panchayat for execution of works in certain cases (1) The State Government or the prescribed authority may, by an order in writing, direct any Panchayat to perform any duty imposed upon it, by or under this Act, or by or under any other law for the time being in force or any work as is not being performed or executed, as the case may be, by it and the performance or execution thereof by such Panchayat is, in the opinion of the State Government or prescribed authority, necessary in public interest.

(2) The Panchayat shall be bound to comply with direction issued under Sub-section (1) and if it fails to do so the State Government or the prescribed authority shall have all necessary powers to get the directions complied with at the expense, if any, of the Panchayat] and in exercising such powers it shall be entitled to the same protection and the same extent under this Act as the Panchayat or its officers or servants whose powers are exercised.

Section 86(1) of the Act provide that the prescribed authority may by an order direct the Gram Panchayat to perform any duty imposed upon it. As is apparent from the perusal of the resolution of Gram Panchayat dated 25.8.2007 that the selection process in compliance of order dated 23.7.2008 by the Collector, Balaghat took place in which Respondent No. 1 was selected and appointed by the Gram Panchayat.

Section 86(2) of the Act comes into play when the directions issued under Sub-section 1 of Section 86 of the Act is not complied with then the prescribed

authority could have issued such directions. In this case it appears that Coordinator submitted a wrong report to the Collector, Balaghat on the basis of which a direction u/s 86(2) of the Act was issued to the Chief Executive Officer, Jabalpur for appointment of Panchayat Karmi. Once an appointment was already made u/s 86(1) of the Act, then there was no question of any appointment u/s 86(2) of the Act until and unless earlier appointment is set aside by a competent authority. In this case as stated hereinabove the Respondent No. 1 was selected on the basis of merit on 25.8.2007 and an appointment order was issued on 30.8.2007 then until and unless such order is cancelled or set aside, no appointment u/s 86(2) of the Act could have been made.

In view of the aforesaid position, the entire process u/s 86(2) of the Act was without any jurisdiction. The Collector and the Commissioner both have found that the Respondent No. 1 was duly appointed u/s 86(1) of the Act and rightly set aside subsequent appointment of Petitioner u/s 86(2) of the Act, in which no error of jurisdiction is found.

This petition is found without merit and is dismissed with no order as to cost.