
(2003) 02 MP CK 0015
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5721 of 1998

Devendra Kumar Pandey

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 243B, 243G, 243O
Madhya Pradesh Maihar Sharda Devi Mela Adhiniyam, 1998 — Section 3
Madhya Pradesh Panchayat Raj Adhiniyam, 1993 — Section 49, 50

Citation : (2003) 2 JLJ 188 : (2003) 1 MPJR 289

Hon'ble Judges : Dipak Misra, J; A.K. Shrivastava, J

Bench : Division Bench

Advocate : A.G. Dhande, P.K. Mishra and B.K. Rawat, for the Appellant; Ajay K. Mishra, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

The order passed in W.P. No. 5721/1998 shall govern the fate of W.P. No. 4301/1999 (Bandhu Yadav v. State of M.P. and five Ors.) and W.P. No. 3975/99 (Dashrath Prasad Mishra and five Ors. v. State of M.P. and four Ors.).

By this writ petition preferred under Article 226 of the Constitution of India, the Petitioner has called in question the constitutional validity of the provisions of M.P. Maihar Sharda Devi Mela Adhiniyam, 1998 (hereinafter referred to as "the Act No. 15 of 1998") published in M.P. Rajpatra on 9.7.1998 empowering Respondent No. 3 Collector under the provisions of M.P. Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as "the Adhiniyam") to constitute Mandir Prabandh Committee as enumerated u/s 49 of the Adhiniyam and conferring power to the said Committee by infringing the rights of Petitioners and curtailing its revenue specially when the temple of Ma Sharda falls within the jurisdiction of Gram Panchyat. Arkandi (the Petitioner).

It is contended in the petition that by enacting the Act No. 15 of 1998, the provisions of the Adhiniyam have become redundant and the Act No. 15 of 1998 cannot supersede the provisions of the Adhiniyam. In this backdrop, the Petitioner has prayed for certain reliefs but we proceed to reproduce the essential one :

1. The M.P.MaiharSharda Devi Mela Adhiniyam, 1998 (Annx.P-4) be struck down as illegal, contrary and unconstitutional to the provisions of Art. 243 of the Constitution of India as also the provisions of Section 49 of the M.P. Panchayat Raj Adhiniyam and the Respondents be commanded to allow the Petitioner Panchayat to function in accordance with the statutory provisions.

The facts sans details essential for the disposal of the writ petition are that the Gram Panchayat Arkandi has been constituted in Maihar Block district Satna under the provisions of the Adhiniyam. The election of Gram Panchayat was held on 16.11.1997 and in bye-election the Petitioner was elected as Sarpanch. The said Gram Panchayat is having 12 Panchas duly elected apart from the Sarpanch and the Up-Sarpanch. Members of the Panchayat assumed charge of their office and started functioning under the provisions of the Adhiniyam. The powers are vested in the said Gram Panchayat of administration and other powers under the Adhiniyam and under the circular issued by the State Government dated 8.8.1994. Section 49 of the Adhiniyam stipulates the functions of the Gram Panchayat. To understand the said functions in proper perspective, it is apposite to reproduce the aforesaid provision :

49. Functions of Gram Panchayat - It shall be the duty of a Gram Panchayat in so far as the Gram Panchayat funds allows to perform within its areas the following functions :

- (1) Sanitation, conservancy and prevention and abatement of nuisance;
- (2) construction, repair and maintenance of public wells, ponds and tanks and supply of water for domestic use;
- (3) construction and maintenance of sources of water for bathing and washing and, supply of water for domestic animal;
- (4) construction and maintenance of village roads, culverts, bridges, bunds and other works and building of public utility;
- (5) construction, maintenance and clearing of public streets, latrines, drains, tanks, wells and other public places;
- (6) filling in of disused wells, unsanitary ponds, pools, ditches and pits and conversion of step wells into sanitary wells;
- (7) lighting of village streets and other public places;
- (8) removing of obstructions and projections in public streets or places and in sites not being property or which are open to use of public, whether such sites

are vested in the Panchayat or belong to the State Government.

(9) regulating and control over entertainment shows, shops, eating houses and vendors of drinks, sweets meats, fruits, milk and of other similar articles.

(10) regulating the construction of house, latrines, urinals drains and water closets;

(11) management of public land and management, extension and development of village site;

(12) (a) regulating places for disposal of dead bodies, carcasses and other offensive matters;

(b) disposal of unclaimed corpses and carcasses;

(13) earmarking places for dumping refuse;

(14) regulation of sale and preservation of meat;

(15) maintenance of Gram Panchayat property;

(16) establishment and management of cattle ponds and maintenance of records relating to cattle;

(17) maintenance of ancient and historical monuments other than those declared by or under law made by Parliament to be of national importance, grazing lands and other lands vesting in or under the control of the Panchayats;

(18) establishment, management and regulation of markets and melas other than public markets and public melas;

(19) maintenance of records of births, death and marriages;

(20) rendering assistance in the census operation and in the surveys conducted by the State Government or Central Government or any other local authority lawfully constituted.

(21) rendering assistance in prevention of contagious diseases;

(22) rendering assistance in inoculation and smallpox vaccination and enforcement of other preventive measures for safety of human being and cattle prescribed by Government Department concerned;

(23) rendering assistance to the disabled and destitutes;

(24) promotion of youth welfare, family welfare and sports;

(25) establishment of Raksha Samiti for :

(a) safety of life and property;

(b) prevention of fire and extinguishing fire and safety of property during outbreak of such fires;

- (26) Plantation and preservation of Panchayat forests;
- (27) removal of social evils like dowry;
- (28) granting loan for the purposes of -
- (i) providing medical assistance to or indigent persons in serious and emergency cases;
 - (ii) disposal of dead body of an indigent person or any member of his family; or
 - (iii) any other purpose for the benefit of an indigent person as may be notified by the State Government from time to time subject to such terms and conditions as may be prescribed.
- (29) (a) carrying out the directions or orders given or issued by the State Government, the Collector or any other officer authorised by the State Government in this behalf with respect to the measures for amelioration of the conditions of the Scheduled Castes and Scheduled Tribes and other backward classes and in particular in regard to the removal of untouchability.
- (b) perform such functions as may be entrusted to it by the State Government, Zila Panchayat or Janapad Panchayat by general or special orders;
- (c) with prior approval of Janapad Panchayat may also perform other functions as it may desire to perform :

Provided that where any such functions are entrusted to the Gram Panchayat it shall act as an agent of the State Government, Zila Panchayat or Janapad Panchayat, as the case may be, and necessary funds and other assistance for the purpose shall be provided to it by the State Government, Zila Panchayat or Janapad Panchayat, as the case may be.

It has been put forth by the Petitioner that the Gram Panchayat has to maintain its revenue for carrying out the statutory functions enshrined u/s 49 of the said Adhiniyam, but, the Respondents are not allowing the Petitioner-Gram Panchayat to carry out the functions and creating hurdle in discharging of the same. According to the Petitioner the Gram Panchayat has been vested with all powers to notify all revenue records including the Khasra Panchashala, Waj-ul-Ars, etc. of the relevant village within its jurisdiction and is also entitled to recover land revenue and other taxes as per the item No. 9 of Annexure P-1. The temple of "Ma Sharda Devi" is situated at Maihar and comes under the territory of the said Gram Panchayat. The Respondent No. 3, Collector, Satna issued a letter on 14.3.1991, Annexure P-3, constituting an Administrative Committee of which he shall be the President and the powers have been given to appoint the "Poojari".

The contention of the Petitioner is that under the provisions of the Adhiniyam, a Panchayat is competent and empowered to set-up the area for establishment and use any place for the purpose of market and also for organising "Mela" of the "Ma Sharda Devi Temple" located in village Arkandi. According to the Petitioner a

market has been set-up near the vicinity of the temple but the Committee which was constituted is not allowing the Petitioner and his office bearers to function in accordance with the provisions of the Adhiniyam. It has been put forth that no such other person or authority can be entrusted to manage the affairs of the "Mela".

In all the petitions, the Petitioners have challenged the constitutional validity of the Act No. 15 of 1998 on the following grounds which we summarize :

(i) that it violates the concept of self-governance as engrafted under Article 243B as well as 243 occurring in para 9 of the Constitution of India;

(ii) that the State Legislature has conferred power on the Gram Panchayat u/s 49 of the Adhiniyam and once a power has been conferred on the Gram Panchayat divesting such power from the Gram Panchayat offends the independence of the Gram Panchayat which has been conferred on it by 73rd Amendment of the Constitution;

(iii) by Entry 5 of List II of the Schedule VII the Panchayats have been given the power of taxation, and hence, the State Legislature cannot pass a fresh legislation which is detrimental for the Gram Panchayat; and

(iv) the field is occupied under the provisions of the Gram Panchayat Act, and therefore, the Legislation called M.P. Maihar Sharda Devi Mela Adhiniyam, 1998 could not have been passed/enacted and by such legislation a repugnancy is created.

The Respondents No. 1, 3 and 4 have filed a return in W.P. No. 5721/98. It has been set forth in the counter affidavit that the petition is misconceived and is based on the mis-reading of the Act and the provisions of the Constitution of India. According to the Respondents the legislative power to enact Act No. 15 of 1998 can be traced to Entry No. 28 of List-II which empowers the State Legislature to establish, regulate and maintain market and fairs. Under the State List of the 7th Schedule the State Legislature has enacted Act No. 15 of 1998. The said Act came into force w.e.f. 1.6.1999 vide notification dated 24.5.1999. The Act No. 15 of 1998 has been enacted for the proper management of "Maihar Sharda Devi Mela" and the Mela area in Maihar Tehsil, District Satna. Section 3 of the Act No. 15 of 1998 contains a non-obstante clause which exclude "Maihar Sharda Devi Mela" from the purview of the Adhiniyam. The temple of "Ma Sharda Devi" is a renowned temple and pilgrims come in large number during the Mela season so as to have "darshan" of "Ma Sharda Devi" during the auspicious days of "Navratri". The "Darshan" of Devi during Navratra has its own religious importance, therefore, devotees during Navratra season come from various parts of India and the scale of operation is beyond the competence and capacity of the Gram Panchayat to manage the affairs during the Mela season, and hence, the Act No. 15 of 1998 has been enacted to provide for better and efficient management during the mela season through the Mela Committee. This also finds in the objects and reasons. The object and reasons are reproduced as

under :

STATEMENT OF OBJECTS AND REASONS u/s 49 of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (No. 1 of 1984) establishment, management and regulation of Melas, other than public melas, are the functions of Gram Panchayats, so far as the Gram Panchayat funds allow it to perform these functions. Similar provisions exists u/s 50 of the Adhiniyam for the establishment, management and regulation by Janpad Panchayats of melas notified as public melas.

Due to its historical and religious significance Ma Sharda Devi Temple in Maihar Tahsil, District Satna, attracts a large number of devotees from all over the country. Having satisfied itself that the Maihar Sharda Devi Mela held in the vicinity of the Temple requires to be managed by financial and human resources beyond the capacity of the Gram Panchayat or the Janapad Panchayat it has been found expedient in the public interest to manage and regulate Maihar Sharda Devi Mela and the Mela Area with a special enactment.

The averments made in the petition have been denied by the Respondents that the Petitioners have been deprived of their financial resources. According to the Respondents these averments are mis-conceived and mis-leading. A fair reading of the Act No. 15 of 1998 would reveal that the Gram Panchayat is deprived of carrying out its function only during the Mela season and not otherwise. The association with the Gram Panchayat and Janpad Panchayats has been ensured by nominating Sarpanch and Chair-person respectively in the Mela Management Committee. The function of Gram Panchayat, Arkandi excluded from Mela area during the Mela season only. According to the Respondents the Act No. 15 of 1998 does not contravene any provision of part IX of the Constitution.

It is submitted by the Respondents that Article 243G of the Constitution empowers the State Legislature to devolve powers with reference to subject in the Eleventh Schedule to Panchayats with such conditions as may be provided in the State Laws and, therefore, the restrictions placed for the Mela season on the powers of village Panchayat Arkandi is within the competence of the State Legislature.

We have heard Shri A.G. Dhande, learned senior counsel with Shri P.K. Mishra for the Petitioner and Shri Ajay K. Mishra, learned Deputy Advocate General for the State.

Before dealing with the aforesaid grounds, it will be relevant to state the well settled law is that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie it does not appear to us to be any inconsistency between the above said two statutes. Before any repugnancy can arise, the following conditions must be satisfied :

(a) That there is a clear and direct inconsistency between the two Acts.

(b) That such an inconsistency is absolutely irreconcilable.

(c) That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

In Colin Howard's Australian Federal Constitutional Law, 2nd Edition the author while describing the nature of inconsistency between the two enactments observed as follows :

An obvious inconsistency arises when the two enactments produce different legal results when applied to the same facts.

Now we shall first deal with the first stand that the Act No. 15 of 1998 violates the concept of self-governance as engrafted under Article 243B as well as 243 occurring in para 9 of the Constitution. Suffice it to say it is not the case of the Petitioners that the State Legislature has legislated in respect of a field which comes under any entry in the Concurrent List-III and there is a piece of legislation by the Parliament. The concept of repugnancy is only applicable to the Concurrent list and not to the State List and, thus, the question of repugnancy which has been put forth by Mr. Dhande is sans substance. In this context, it shall be apposite to refer the decision of Apex Court in the case of The Bar Council of Uttar Pradesh Vs. The State of U.P. and Another,].

The State Legislature is entitled to legislate in respect of any of the Entry under List-II. The Panchayat comes under the Entry No. 5 List-II. The Act No. 15 of 1998 has been passed under Entry No. 28. Both the Entries occur in List No. II and when question of repugnancy is ostracised, we also perceive no conflict between the two enactments as the field of operation is quite different and does not create any dent in the powers enjoyed by the Gram Panchayat.

Section 49 of the Adhiniyam deals with the functions of the Gram Panchayat. There are provisions dealing with the notification. This has been kept out of the purview of the Gram Panchayat. Hence, the Act No. 15 of 1998 could have been brought into existence by the Legislature.

The last contention of Mr. Dhande, learned senior counsel, is that the provisions of the Act No. 15 of 1998 defeats the essence of Article 243O of the Constitution. The argument at the first instance appears to be attractive, but, on a deeper scrutiny, is found to be devoid of any substance. Suffice it to say that the said Article has clearly postulated subject to the law made by the Legislature. Article 243O only mandates that the State Legislature shall confer certain powers on the Gram Panchayat for self-governance. That part, it has nowhere specifically been stated what powers are to be given to the Gram Panchayat. Thus, judging from any angle, the conscience of Article 243O has not at all been smothered and the Act No. 15 of 1998 has not attempted to make a dent in any of the provisions of the Adhiniyam.

In fine, we find that the provisions of Act No. 15 of 1998, namely, "MP. Maihar

Sharda Devi Mela Adhinyam, 1998", are intra vires and accordingly so hold.

In the result, the petitions being devoid of any force, are dismissed without any order as to costs.