
(2010) 02 CHH CK 0003
In the Chhattisgarh High Court

Dilip Kumar Rai

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 2 MPHT 75

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.

Heard.

1. By this petition, filed under Article 226/227 of the Constitution of India, the petitioner challenges the legality and validity of the order dated 4-6-2008, passed by the respondent No. 3 in Revenue Case No. 08-A-89/2007-08 (Nand Kishore v. Dilip Kumar and Ors.), whereby the revision filed by the respondent No. 7, challenging the appointment of the petitioner on the post of Panchayat Karmi/Secretary, Village Panchayat - Ghutra, was allowed, holding the resolution dated 7-2-2008 was not in accordance with law.

2. Brief facts, in nutshell, are that by order dated 7/8-1-2008 (Annexure P-1) the Chief Executive Officer, Janpad Panchayat -Manendragarh directed the Sarpanch of Village Panchayat Nai Ledri/Ghutra to start proceedings for appointment of Panchayat Karmi. Accordingly the advertisement was issued on 11-1-2008 (Annexure P-2), inviting applications from eligible candidates for appointment on the post of Panchayat Karmi. Pursuant to the advertisement, total 11 candidates, including the petitioner, submitted their applications. Thereafter, the Gram Panchayat in its meeting dated 7-2-2008 (Annexure P-3) passed the resolution to appoint the petitioner on the post of Panchayat Karmi. By letter dated 12-2-2008 (Annexure P-4) the Sarpanch informed the Chief Executive Officer about

selection of the petitioner and requested for permission to call the meeting of the Gram Sabha, for approval of the resolution. On 28-2-2008 (Annexure P-5) the Chief Executive Officer directed the Sarpanch to call meeting of the Gram Sabha in accordance with the provisions of Section 6 (1) of the Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short "the Act, 1993").

3. On 4-3-2008 (Annexure P-6) the Sarpanch requested the Sub Divisional Officer (Revenue), Manendragarh to appoint Presiding Officer for the Special Gram Sabha, which was to be held on 9-3-2008. Subsequently, the Sarpanch informed the Chief Executive Officer, Janpad Panchayat, Manendragarh that the meeting of the Gram Sabha was to be called on 6-4-2008 and also requested for arrangement of security measures and deputation of an Observer of the proceedings. On 31-3-2008 (Annexure P-8) the Sub Divisional Officer (Revenue), Manendragarh, District Korla directed not to take further proceedings in regard to appointment of Panchayat Karmi, until further orders, as some proceeding arising out of the complaint made in regard to appointment of Panchayat Karmi was pending consideration. Accordingly, the Sarpanch issued a notice on 1 -4-2008 (Annexure P-9) that the meeting of the Gram Sabha which was to be held on 6-4-2008 was postponed, until further orders.

4. It is evident that the respondent No. 7 filed a revision, bearing Revenue Case No. 08-A-89/2007-2008, challenging the resolution dated 7-2-2008, passed by the Gram Panchayat Ghutra for appointment of Panchayat Karmi on the ground that earlier the meeting of the Gram Panchayat held on 1 -2-2008 was postponed for 7-2-2008 in absence of coram. Since the information for the first meeting dated 1-2-2008 was given on 24-1-2008 to only six Panchas, including the Sarpanch, the subsequent meeting dated 7-2-2008, in sequence of the earlier meeting dated 1-2-2008 was also illegal for want of coram. No proper intimation of the meeting was given to all the Panchas and the signature of the Panchas on the resolution was taken by adopting ill measures.

5. The Additional Collector, Manendragarh, District Korla by impugned order dated 4-6-2008 (Annexure P-10) allowed the revision, finding that the proceedings undertaken by the Gram Panchayat for appointment of Panchayat Karmi was contrary to the provisions of Clause 4.4 of the Panchayat Karmi Scheme dated 12th September, 1995 (Annexure R-6/1) (for short "the Scheme, 1995"), which reads as under:

4-4- leLr vkosnu i= xzke iapk;r dh lkekU; lHkk ds le{k fopkj gsrq izLrqr fd, tk;saxs A xzke iapk;r dh lkekU; lHkk izkIr vkosnu i=ksa ij fopkj dj mEehnokj dk p;u djsxk A ,d mEehnokj dk uke izrh{k lwpk esa j[ksxA

6. It was further observed in the order dated 4-6-2008 that the petitioner had produced two certificates of Higher Secondary School Certificate Examination (10 + 2), i.e., one from the Govt. Raghuraj Higher Secondary School, Shahdol for the year 1997 and another from the Govt. Multipurpose School, Bilaspur for the year 2007, which creates suspicion. Accordingly, the resolution dated 7-2-2008 was

rejected by the impugned order, finding the same as contrary to law and the Gram Panchayat - Ghutra was directed to initiate selection process in accordance with Clause 4.4 of the Scheme, 1995.

7. Learned Counsel appearing for the petitioner submits that the order dated 4-6-2008 (Annexure P-10), passed by the Additional Collector, Manendragarh, District Korla, is without jurisdiction as no revision is maintainable against resolution passed by Gram Panchayat. To substantiate his submission learned Counsel rely on a decision of a Division Bench of High Court of Madhya Pradesh in Sagar Machhua Sahakari Samiti Vs. Chief Executive Officer, Janpad Panchayat and Another, The impugned order suffers from perversity so far as recording the finding that the petitioner had submitted two mark-sheets. The respondent No. 7 had no locus to challenge the resolution on the ground that no proper notice was served upon the respective Panchas. Moreover, none of the Panchas have raised objection that they were not properly noticed of the meeting.

8. Learned Counsel appearing for the respondent Nos. 1 to 4 and 5 have submitted that the respondent Nos. 1 to 5 are formal party. The relief claimed by the petitioner is against the respondent No. 6.

9. Learned Counsel appearing for the respondent No. 6 submits that the meeting of the Gram Panchayat was called on 1-2-2008 but for want of coram it was postponed to 7-2-2008. On 7-2-2008 the resolution was passed in accordance with law and the petitioner was selected for appointment on the post of Panchayat Karmi. None of the Panchas had raised any objection in respect of service of notice of the meeting. The petitioner had furnished only one mark-sheet along with his application.

10. Learned Counsel appearing for the respondent No. 6/Gram Panchayat further submits that out of 21 members, 17 members were present in the meeting, who have signed the minutes of the meeting and approved the appointment of the petitioner.

11. I have heard learned Counsel appearing for the parties and perused the pleadings and documents appended thereto.

12. This Court in Bholaram Verma v. State of Chhattisgarh and Ors. W.P. No. 3772 of 2005, which was decided on 23rd March, 2007, reported in 2007(3) M.P.H.T. 25 (CG), has held that it is trite that the resolution or a decision in a meeting is not the order which can be given effect to. There should be a proper order pursuant to the resolution for appointment to the post of Panchayat Karmi. After resolution of Gram Panchayat and Gram Sabha to appoint Panchayat Karmi, the Sarpanch has to pass an appropriate appointment order for appointment of Panchayat Karmi.

13. In the present case, it is evident that after passing of the resolution dated 7-2-2008, no meeting of Gram Sabha could be convened, thus no approval could be obtained. The Revisional Authority has not recorded any finding in regard to

the validity of the meeting. However, on perusal of the pleadings it is found that the meeting was validly held as out of 21 members, 17 members had participated in the meeting, without any demur.

14. The finding recorded in the impugned order that the petitioner has filed two mark-sheets, is contrary to the records. It appears that the authority below has drawn the inference without examining the facts. It is a case of the Panchayat and on verification also it is found that there was only one mark-sheet, which was received by the Gram Panchayat and accepted for consideration.

15. In view of the foregoing, this Court is of the considered opinion that the impugned order dated 4-6-2008 (Annexure P-10) is unsustainable, so far as the proceedings of the Gram Panchayat dated 7-2-2008 is concerned. Since no flaw was found by the authority below in the proceedings of the Gram Panchayat, rejection of the resolution dated 7-2-2008, finding the same as illegal, was not just and proper.

16. For the reasons stated herein above, the writ petition is allowed. The impugned order dated 4-6-2008 (Annexure P-10) is set aside. No order as to costs.