
(2006) 01 MP CK 0014

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 2937 of 2004

Dilip Kumar Suryavanshi and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 06-01-2006

Acts Referred:

Madhya Pradesh Panchayat Raj Adhiniyam, 1993 — Section 91

Citation : (2006) 3 MPLJ 38

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Advocate : Prashant Singh, for the Appellant; Harish Agnihotri, Government Advocate, and D.S. Thakur, For respondents No. 7 to 17, for the Respondent

Final Decision : Allowed

Judgement

R.K. Gupta, J.

The petitioners by way of filing the present petition before this Court have challenged the order which is Annexure P-2 to the petition dated 7th March, 2003. This order has been passed by the Hon''ble Minister, Panchayat and Social Welfare Department exercising the powers of revision. By this order the Minister has set aside the order passed by the Commissioner, Jabalpur on 7-7-2001, which is Annexure P-1I to the petition. The Commissioner, Jabalpur was hearing the revision against the order passed by the Additional Collector, Chhindwada, which was passed by him on 17-11-2000, which is Annexure P-10 to the petition.

The Hon''ble Minister while passing the said order has set aside the orders passed by the Commissioner and the Collector. All the authorities have exercised their powers of revision and appeal as conferred on them u/s 91 of the M.P. Panchayat Raj Adhiniyam, 1993 and the Rules framed therein known as Rules of Business. The impugned order Annexure P-2 passed by the Hon''ble Minister was a suo motu exercise of revisional jurisdiction by him.

The question which the learned Counsel for the petitioners in the present petition

has raised is that the State Government particularly the Hon''ble Minister has no power to entertain the second revision under the provisions of the Act and the Rules, therefore, the impugned order Annexure P-2 dated 7th March 2003 is bad in law.

The learned Counsel for the respondents submitted that the order passed by the Hon''ble Minister Annexure P-2 is a valid exercise of powers therefore there is no illegality therein.

The question before this Court is whether a suo motu revisional power can be exercised by the Hon''ble Minister so that the order Annexure P-2 can be said to be a valid exercise of power by him or whether second revision shall lie?

The Counsel for the State Government brought to the notice of this Court a Notification dated 30th January, 1996. This notification has been issued by the State Government exercising the powers, conferred on the State Government under Part "5" of Rules of Business. The said notification is as under:-

On the basis of the aforesaid, it is clear that the State Government under the Supplementary Instructions No. 13 of Business Rules has conferred the power on the Hon''ble Minister to exercise the revisional jurisdiction under the M.P. Panchayatraj Adhiniyam, 1993. According to the same, the Hon''ble Minister shall exercise the powers against the orders passed in appeal/revision. Paragraph 2 of the aforesaid notification also indicates that against the orders passed by the Commissioners exercising the appellate/revisional jurisdiction, the Hon''ble Minister, Panchayat and Village Development Department shall exercise the power to hear the cases.

In view of the aforesaid notification, it is apparent that the Hon''ble Minister has been entrusted with the powers under the Rules of Business which have been conferred under Article 166 of the Constitution of India, therefore, the order passed by the Hon''ble Minister which is Annexure P-2 to the petition is proper and second revision thus would be maintainable.

The Counsel for the respondents further brought to the notice of this Court the following judgments passed by this Court in W.P. No. 1195/2001 decided on 16-3-2001 (Smt. Gita Bai vs. State of M.P. and others). There is also another judgment passed by this Court in W.P. No. 6926/2000 decided on 11-1-2002 (Smt. Mamta Pateria and Others Vs. State of M.P. and Others, . This Court in detail has considered the power of the Hon''ble Minister and also the question whether a second revision would lie to the Hon''ble Minister by answering the same that second revision lies.

In view of the aforesaid, the argument which has been submitted by the learned Counsel for the petitioners cannot be accepted, that no second revision lies. The Counsel relied upon Smt. Mamta Pateria and Others Vs. State of M.P. and Others, , Mamta Pateria and others vs. State of M.P. and others and on that basis it is submitted that no second revision would lie, as this Court has already taken

a view that only one revision lies. The judgment so passed in Smt. Mamta Pateria and Others Vs. State of M.P. and Others, has received the consideration by this Court in the judgment referred in para 9 above and while considering the same this Court has taken a view that the second revision lies to the Hon''ble Minister but held that the Hon''ble Minister cannot exercise the power of review without complying the principles of natural justice and also without issuing notices to the persons against whom revisional power is directed to be exercised.

There does not seem to be any reason for this Court to differ the reasons as recorded by other two Benches i.e. in W.P. No. 1195/2001 decided on 16-3-2001 (Smt. Gita Bai vs. State of M.P. and others) and W.P. No. 6926/2000 decided on 11-1-2002 (Smt. Mamta Pateria and others vs. State of M.P. and others) (supra).

It may also be noticed that in the judgment Smt. Mamta Pateria and Others Vs. State of M.P. and Others, , the Notification of the State Government dated 30-1-1996 as referred in para 6 of this judgment was not placed before the Court.

Next question which has been raised by the Counsel for the petitioners is that the Collector has not exceeded its appellate jurisdiction by passing order dated 17-11-2000 Annexure P-10 to the petition. According to him, selection of candidates was found to be illegal as favouritism was applied, selection was made of ineligible persons and also by selecting the relatives. Similarly, the Commissioner also properly exercised his revisional jurisdiction by quashing the selection and directing for fresh selection.

The order passed by the Hon''ble Minister Annexure P-2 is perused and in para-4.2 and onwards he has considered all these alleged irregularities and thereafter came to the conclusion that no irregularities have been committed while preparing the select list. It was found by him that no material was placed by the persons who filed the appeals and revisions, therefore, in absence of any material the selection cannot be held to be bad in law. An allegation with regard to the favouritism by the select committee was also considered in the impugned order and it was found that no influence was practised by the members of the select committee. The relatives were not given marks by the private persons who were the members of the select committee but the marks were allotted to the candidates by other persons those who were the experts in the subject. The Hon''ble Minister further recorded a conclusion that the selection which was done was perfectly in accordance with the rules and thereafter the appointments were made on the basis of the marks allotted by the members and the experts of the selection committee.

In view of the findings recorded in the impugned order Annexure P-2 the selection was found to be valid and it was not an irregular selection.

The appellate authority and the first revisional authority i.e. the Collector and Commissioner have considered in detail various irregularities committed while selecting the candidates and thereafter gave ultimate direction to quash the selection and to process the fresh selections. The Hon''ble Minister in para 4.2

onwards has considered the irregularities committed by the selection committee. The learned Minister further held that the relatives of the candidates though were the members of the selection committee but they have not given the marks. Admittedly, in the present case the relatives of the candidates were members in the selection committee.

The Apex Court in a judgment as reported in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , in paras 15 and 21, considered a situation where one member of the Selection Board was also a candidate and it was held that though he was one of the members of the Selection Board but he had not taken part in the deliberations of the Board at the time of his own selection. The said situation was found to be contrary to the principles of fair play and violative of the principles of natural justice. In this reference para-20 of the said judgment would be relevant, which is quoted hereinbelow :-

20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (*Nemo debet esse iudex propria causa*), and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from the quasi-judicial inquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiries may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George Vs. University of Kerala and Others*, the rules of natural justice are not embodied rules. What particular rule of the natural justice should apply to a given case must depend to a great extent on the facts and circumstances of the case, the framework of the law under which the enquiry is held and the constitution of the tribunal or body of persons appointed for the purpose. Whenever a complaint is made before a Court that some principle of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case.

Applying the aforesaid principle, the learned Minister has not properly appreciated the legal position though while exercising the second revisional jurisdiction he was supposed to entertain the petition only when the question of law arises but by travelling beyond its authority the learned Minister interfered with questions of fact. The learned Minister further gave the reasonings that the Collector and the Commissioner i.e. appellate authority and the first revisional authority have not considered the matter in its proper perspective.

In the present case, it is found that the relatives of the candidates belonging to the selection committee participated in the process of selection. It is also found that there had been interpolations in the selection sheet by the members of the selection committee.

Considering the said aspect, the order passed by the learned Minister, Annexure P-2 is quashed and the petition is allowed. It is also directed that the respondents shall proceed with the fresh selection within three months as directed by the appellate and the first revisional authorities in their order dated 17-11-2000 (Annexure P-10) and order dated 7-7-2001 (Annexure P-1 1).