
(2004) 10 MP CK 0038
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3706 of 2004

Faiz Mohd. Faiz

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:

Constitution of India, 1950 — Article 227

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 40

Citation : (2004) 4 MPHT 393 : (2005) 1 MPJR 67

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

Bench : Single Bench

Advocate : Riyaz Mohd, for the Appellant; Vinod Mehta, Government Advocate for the Respondent Nos. 1 and 2 and Umesh Trivedi, for the Respondent No. 3, for the Respondent

Judgement

K.K. Lahoti, J.

Petitioner was elected as Sarpanch of Gram Panchayat Pandarwani, Janpad Panchayat Lalbarra, District Balghat. The Sub-Divisional Officer- cum-Prescribed Authority, Waraseoni issued a show-cause notice dated 27-3- 2003 against the petitioner in respect of various amount collected by the petitioner with a notice why the matter be not handed over to police. Petitioner submitted reply. Thereafter, the SDO passed the order (Annexure P-4), dated 3-2-2004 by which petitioner was removed from the office of Sarpanch. The order (Annexure P-4) was challenged by the petitioner before the Additional Collector, Balaghat, in Appeal No. 32-A/89 year 2003-2004, and by order, dated 10-6-2004 (Annexure P-2), the Additional Collector remanded the case to the SDO on the ground that proper opportunity of hearing was not provided to the petitioner and petitioner was not issued a proper notice and the notice which was for specific purpose was not given effect to. The Additional Collector directed the SDO to issue a proper notice to the petitioner and thereafter to pass the order in accordance with law. This order of Additional Collector was challenged by respondent No. 3 before the Additional Commissioner, Jabalpur Division, Jabalpur, in Revision, which was

allowed by the Additional Commissioner by order, dated 11-9-2004 (Annexure P-1) and the remand order has been quashed. The said order (Annexure P-1) is challenged by the petitioner in this petition invoking power of superintendence under Article 227 of the Constitution of India.

Learned Counsel for the petitioner submits that the petitioner was elected Sarpanch and no notice u/s 40 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as "the Act") was issued to the petitioner. Petitioner was not supplied copy of inquiry report and the documents relied in the report and without affording due opportunity the order was passed. The Additional Collector rightly remanded the case to follow the procedure envisaged u/s 40 of the Act.

Respondent Nos. 1, 2 and 3, who have caused appearance, supported the order passed by the Additional Commissioner on the ground that a proper notice was issued to the petitioner by the SDO. There were serious allegations against the petitioner. The petitioner was removed from the office of Sarpanch on finding financial irregularities committed by him and considering the aforesaid, the SDO has rightly passed the order removing the petitioner from the office of Sarpanch. When the petitioner was well aware about the allegations and proper notice was issued by the SDO, there was no question of remand by the Additional Collector. All the documents were in the knowledge of the petitioner. At this stage, petitioner can not be said to be prejudiced even if a specific notice of removal of the petitioner from the office of Sarpanch was not issued.

Learned Counsel appearing for the State has also supported the impugned order passed by the Additional Commissioner. It is also submitted by the Government Advocate that in view of serious charges proved against the petitioner, the SDO has rightly passed the order removing the petitioner from the office of the Sarpanch and the Additional Commissioner's order is in accordance with law.

To appreciate the rival contentions of the parties, it is necessary to look into the statutory provision, Section 40 of the Act, which empowers the prescribed authority to remove office bearers of Panchayat which reads as under:-

"4. Removal of office bearers of Panchayat.- (1) The State Government or the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office bearer-

(a) if he has been guilty of misconduct in the discharge of his duties; or

(b) if his continuance in office is undesirable in the interest of the public:

Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office."

The aforesaid provision specifically provides for a show-cause notice to the Sarpanch why he should not be removed from the office. Admittedly, in this case, no such notice was issued to the petitioner for his removal from the office of

Sarpanch. The show-cause notice issued to the petitioner by the SDO was to the extent why the case be not handed over to the police in respect of the allegations mentioned in the notice. But he has not informed the petitioner that he is intending to remove the petitioner. Show- cause notice was to be issued with specific purpose and no action can be taken without issuing specific show-cause notice. The inquiry report and the documents which were referred to in the inquiry report have also not been supplied to the petitioner. While taking any action in pursuance of the inquiry report, he must know what are the allegations in respect of which the inquiry was conducted and what are the findings against the petitioner. In the aforesaid circumstances, the prescribed authority committed error in removing the petitioner from the office of Sarpanch and the Additional Collector rightly remanded the matter to the SDO to consider and decide the matter afresh after issuing a proper show-cause notice to the petitioner and affording due opportunity of hearing to the petitioner in this regard and the Additional Commissioner without considering the aforesaid factual position has set aside the remand order.

As there are certain allegations and finding recorded against the petitioner in respect of financial irregularities committed by him, in the circumstances, while the case is remanded back to the prescribed authority- cum-Sub-Divisional Officer, the petitioner shall not indulge himself in the financial activities of the Panchayat and Up-Sarpanch, who was previously assigned the charge of Sarpanch, is the appropriate person to deal with in respect of matter involving finance. In the circumstances, this petition is allowed and the following directions are issued:-

(a) The order (Annexure P-1), passed by the Additional Commissioner, Jabalpur Division, Jabalpur, dated 1-9- 2004 is hereby quashed.

(b) The Sub-Divisional Officer, Waraseoni shall proceed afresh as per direction of the Additional collector in the matter and shall complete the inquiry after issue of proper notice to the petitioner, expeditiously, as far as possible within 60 days from the date of communication of this order.

(c) From to day and further for a period of 60 days from the date of communication of this order to the SDO, respondent No. 3 shall take the decisions and disburse the funds of the Panchayat.

(d) After the aforesaid period, the order passed by the SDO will take place and accordingly the Panchayat funds shall be disbursed.

No order as to costs.