
(1985) 04 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 589 of 1984

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APPELLANT

Vs

Collector, Distt. Dhar and Others

RESPONDENT

Date of Decision : 04-04-1985

Acts Referred:

Madhya Pradesh Panchayat Act, 1981 — Section 39, 79, 79(1)

Citation : AIR 1985 MP 233

Hon'ble Judges : U.N. Bhachawat, J;K.K. Verma, J

Bench : Division Bench

Advocate : V.S. Kokje, for the Appellant; A.H. Khan, Government Advocate and K.L. Sethi, for the Respondent

Final Decision : Allowed

Judgement

U.N. Bhachawat, J.—This is a petition under Article 226 of the Constitution of India for issuance of a writ of mandamus so as to quash the order (Annexure C) of the Collector, Dhar.

2. The short facts giving rise to the petition are these : The petitioner No. 1 is the Sarpancha of the Gram Panchayat, Kothada, which is the petitioner No. 2 herein. The Collector, Dhar within whose territorial jurisdiction the Gram Panchayat, Kothada is located, vide Annexure-C dt. 15-2-1984, constituted a committee for construction work to be carried out by the Gram Panchayat, Kothada. The contention of the petitioner is that the Collector who is, of course, the prescribed authority u/s 79 of the Madhya Pradesh Panchayat Act, 1981 (hereinafter for short referred to as the Act), had no authority either under that Section or under any other Section of the Act to constitute the said Committee and, therefore, the constitution of the said Committee is invalid.

3. The learned counsel for the respondent has in counter submitted that Section 39 of the Act provides for the constitution of a Gram Samiti which has to carry out the construction work on behalf of the Gram Panchayat. The Gram Panchayat

had constituted a Committee styled as "Nirman Karya Samiti" vide Annexure B, but the constitution of that Committee was invalid inasmuch as it was not constituted in accordance with R. 3 of the Madhya Pradesh Gram Panchayat (Gram Samiti) Rules, 1983 (for short hereinafter referred to as the rules) and thereafter the Gram Panchayat failed to constitute a Gram Samiti under S, 39 of the Act for carrying out its construction work and, therefore, the Collector, the Prescribed Authority u/s 79 of the Act was competent to constitute the Gram Samiti u/s 79 of the Act, more so when he was so directed by the Government vide its order No. 483/108/ M/22/Pan/84 dt. 1st Feb. 1984 (Annexure R6) of which a reference has been given in the Annexure C. As such the constitution of the Gram Samiti vide Annexure C is valid.

4. It was also argued that the petition is not maintainable inasmuch as Section 86 of the Act provides an alternative remedy of appeal against the impugned order (Annexure C) of the Collector, to the Commissioner. But the argument, ultimately, was abandoned by the learned Government Advocate, who alone had raised it.

5. It was not disputed before us by the learned counsel for the parties that the constitution of the Committee by the Gram Panchayat vide Annexure-B was not in conformity with the rules and as such, the constitution of that Committee is invalid. We are, therefore, concerned with the validity of the constitution of the Gram Samiti vide Annexure-C.

6. In the light of the argument advanced by the learned counsel for the parties, the decision of the point in controversy, that is, about the validity of the constitution of the Committee vide Annexure-C revolves around the interpretation of Section 79 of the Act. At this stage, it would be pertinent to set out hereinbelow Section 39, Rule 17 of the Rules so far relevant and Section 79 of the Act:

"39. Gram Samiti. -- If the Gram Panchayat area comprises of more than one village the gram panchayat shall constitute a gram samiti for every village. The manner of constituting the gram samiti and its functions shall be such as may be prescribed."

"17. Powers and duties of the Gram Samiti -

The Gram Samiti shall -

X X X X X X X (d) Supervise and guide the construction of public work as sanctioned or approved for the village."

"79. Power of State Government to issue orders directing the 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 execute any such work as is not being executed by it and the 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 directions 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 work executed at the expenses of the panchayat and in exercising such powers it shall be entitled to the same protection and to the same extent under this Act as the panchayat or its officers or servants whose powers are exercised."

Section 39 of the Act on its plain reading casts an obligation on the Gram Panchayat to constitute a Gram Samiti for every village if the area of the Gram Panchayat comprises of more than one village. The Rules provide the manner for the constitution of the Gram Samiti and also the functions of the Samiti. One of the functions, as indicated by the Rule 17 of the Rules extracted hereinabove, relates to construction work.

6A. We now turn to Section 79 of the Act. The very rubric of this Section indicates that it empowers the State Government to issue orders directing the Panchayat for execution of works in certain cases. Then, on the dichotomization of this section it is obtainable that the power of the State Government or the Prescribed Authority under Sub-section (2) of this Section is dependent upon the exercise of the power by the State Government or the Prescribed Authority in directing a Panchayat to execute any work which is not being executed by the Panchayat and which, in the opinion of the State Government or the Prescribed Authority, is necessary to be executed in public interest. In the instant case, the order Annexure R-6-2 of the State Government reads thus :

"Upayukta Vishayantargat Prapta Avedan Patra ki Sanlagna kar Adeshanusar nivedan kiya jata hain ki Gram Panchayat Konda Vikas Khanda Umarvan Jila Dhar ke Nirman karya Hetu Samiti ka Gathan kiya Javen."

The aforesaid order does not fulfill the ingredients of Sub-section (1) of Section 79 extracted hereinabove. The ingredients of Section 79(1) are :

(a) the State Government or the Prescribed Authority should pass an order in writing, directing the Panchayat to execute any such work as is not being executed by it and

(b) the execution of that work by the Panchayat should be such which, in the opinion of the State Government or the Prescribed Authority is necessary to be executed in public interest.

7. The fore-extracted order of the Government is straightway a direction to the Collector to constitute a committee for construction work. According to Sub-section (2) of Section 79 as already stated hereinabove, the State Government or the Prescribed Authority has all necessary powers to get that work executed for which a direction was given to the Panchayat as contemplated in Sub-section (1) of Section 79 and the Panchayat has failed to comply with that direction, at the expense of the Panchayat. It may be reasonably interpreted that the expression "shall have all necessary powers to get the work executed" in Sub-

section (2) of Section 79 gives the power to the State Government or the Prescribed Authority to constitute a committee for getting the work done but it relates only to that particular work or works for which a specific direction was given to the Panchayat under Sub-section (1) of Section 79 of the Act and the Panchayat has failed to comply with that direction. In the instant case, neither the order Annexure R-6/II nor Annexure-C. The relevant part whereof, reads as under :

"Madhya Pradesh Shasan Gyapan 483/108/M/22-Pan/84 Bhopal Dinank 1-2-84 ke Adesh Evam Madhya Pradesh Panchayat Adhiniyam 1981 ki Dhara 39 Lagu Nirasti Adhiniyam 1959 ke Adhin Bane Niyam Gram Panchayat Samiti ke Adhin Gram Panchayat Kothada Vikas Khanda Umarban ke Ninnan Karya hetu samiti ka Gathan kiya jata Hain....."

reflects that preceding these orders, any direction was given to the Panchayat to execute a particular work or works and there was a failure to comply with that direction on the part of the Panchayat. Nor is there any independent material to show that preceding these orders, any direction contemplated under Sub-section (1) of Section 79 was given which the Panchayat failed to comply with. In the above view of the matter, the order Annexure-C, which, as it indicates, has been passed in obedience to the order of the Government Annexure R-6/II cannot be held to be valid u/s 79 of the Act.

8. It may also be stated here as it is of significant relevance that the order Annexure C, relevant part whereof has already been extracted hereinabove mentions that the Committee constituted vide that order, is constituted in exercise of the powers u/s 39 of the Act. But, u/s 39 already extracted hereinabove, it is only the Gram Panchayat which is competent to constitute a Gram Samiti and that too in accordance with the rules. Rule 3 of the Rules, the rubric whereof is constitution of Gram Samiti, provides about the constitution of the Gram Samiti. It cannot be gainsaid that the Committee constituted vide Annexure C is not in accordance with this rule.

9. In the light of the foregoing discussion, the petition deserve to be allowed, is accordingly allowed and the order Annexure C as also the order Annexure R-6/II are set aside. No order as to costs. Outstanding amount of security be refunded to the petitioner.