
(1987) 03 MP CK 0010
In the Madhya Pradesh High Court
Case No : M. P. No. 2705 of 1983

Hukumchand Jain

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 13-03-1987

Acts Referred:

Madhya Pradesh Panchayat Act, 1962 — Section 117, 31(2)

Citation : (1987) JLJ 536 : (1987) MPLJ 577

Hon'ble Judges : Y.B. Swyawanshi, J;C.P. Sen, J

Bench : Division Bench

Advocate : S.C. Jain with R. K. Samaiya, for the Appellant; R.C. Khare, For respondent No. 4, R.K. Thakur, Govt. Advocate For respondents Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

Y.B. Suryavanshi, J.

This is a petition under Article 226 of the Constitution of India challenging the impugned orders, dated 17th November 1983 (Annexure R-2), passed by the State Government (Respondent No. 1) under sub-section (2) of section 31 of M. P. Panchayats Act (hereinafter, called, Act) cancelling the election of the petitioner as Panch and also as Sarpanch of Gram Panchayat, Mohangarh.

The material facts leading to this petition are as follows :

In the election for Gram Panchayat Mohangad the petitioner was elected as Panch from ward No. 4. The petitioner and Respondent No. 4, both contested the election and the latter lost. Respondent No. 4 filed election petition against the petitioner before S. D. O. Jatara as provided by Section 117 of the Act, which was pending when impugned orders were passed.

According to the petitioner, after his election as Sarpanch, the Respondent No. 4 started bearing grudge and ill-will. That as they belonged to rival political parties,

Respondent No. 4 tried to invent ways and means to dislodge the petitioner as Sarpanch and sought assistance of respondents Nos. 1 and 2 for reasons otherwise than legal. It is stated that respondent No. 4 having realised that there was no possibility of success in the election petition managed and manipulated the passing of the impugned orders dated 17th November 1983 by respondent No. 1 cancelling petitioner's election as Panch and Sarpanch. The petitioner learnt about those orders only when a copy of a memo dated 24-11-1983 sent by Collector (Respondent No. 2) to Vikas Khand Adhikari (Respondent No. 3) requiring him to seize charge of the office of Sarpanch from the petitioner forthwith and to hand over to Up-sarpanch, was received. The petitioner has challenged the impugned orders on the grounds of being mala fide, arbitrary, based on political considerations, illegal and without jurisdiction and sanction of law and also being violative of the principles of natural justice.

According to the joint return by respondents Nos. 1 to 3, the Respondent No. 4 besides filing a petition u/s 117 of the Act challenging the election of the Petitioner as Sarpanch, during the pendency of petition also moved the State vide an application dated 1-8-1983 (Annexure R-1) stating inter alia that a sum of Rs. 3,000/- was due on petitioner and to misappropriate it he may tamper with the records of Panchayat. That on that application, after due enquiry and in exercise of powers vested u/s 31(2) of the Act, the State Government passed the impugned orders which are quite proper and also legally justified being in public interest. The powers u/s 31(2) are said to be quite independent of the procedure laid down u/s 117 for challenging election. They denied that the orders have been passed mala fide and on political considerations.

The Respondent No. 4 in his reply to the application for grant of Ad Interim Writ stated that the election of the Petitioner was cancelled on account of grave irregularities during the conduct of election.

In the Rejoinder the petitioner stated that he had no notice or intimation of the alleged application by Respondent No. 4 to the State Government; that there has never been any enquiry into the various allegations made in the said application and that he was never given any opportunity of being heard. While denying liability for alleged dues he stated that for the first time on 31-5-1983 a false Notice (Annexure P-5) was issued alleging dues of Rs. 2835/- which he replied (Annexure P-6); and alongwith his nomination paper he also filed "No Dues Certificate", issued by Gram Panchayat (Annexure P-7) and that is why the objection raised by Respondent No. 4 was rejected by Returning Officer which is also one of the grounds in the election petition filed u/s 117. Moreover, the demand notice dated 31-5-1983 was not in accordance with the requirement of section 30(Ta) of the Act, because nomination paper was filed on 3-6-1983 and its scrutiny was made on 5-6-1983. He denied that the impugned orders were passed in "Public Interest" and contended that section 31 of the Act does not contemplate or empower the State Government to pass such orders on a matter which is subject matter of an election petition.

Respondents 1 to 3 in the Additional Return to the Rejoinder stated that notices for dues were sent even earlier on 30-12-1970, 3-4-1983, 1-5-1983 and 13-6-1983 and the petitioner sent a reply (Annexure R-1) (of course, the contents of reply dated 1-6-1983 indicate that liability to notice dated 31-5-1983 was denied and the petitioner has further stated that it is politically motivated to deprive him from participating in the elections).

Having heard Shri Samaiya the learned counsel for the petitioner and Shri Thakur, Government Advocate appearing for Respondents Nos. 1 to 3, and Shri R. C. Khare for Respondent No. 4 we find that illegality, arbitrariness and disregard of the relevant provisions in the Act is writ large on the face of the impugned orders.

Since the pivotal controversy veers around the provisions of sections 30 and 31 of the Act, it is essential to examine those provisions closely :

Sec. 30. Disqualification for being office-bearer of Panchayat - (1) No person shall be eligible to be an office-bearer of a Panchayat who -

(a) xxxx xxxx xxxx

(i) xxxx xxxx xxxx

(ii) xxxx xxxx xxxx

(b)(b) xxxx xxxx xxxx

(c) xxxx xxxx xxxx

(d) xxxx xxxx xxxx

Provided that no person shall be deemed to have incurred disqualification under this clause by reason of being appointed as a Patel under the Madhya Pradesh Land Revenue Code, 1959 (20 of 1959); or

(e) xxxx xxxx xxxx

(f) xxxx xxxx xxxx

(g) xxxx xxxx xxxx

(h) xxxx xxxx xxxx

(i) xxxx xxxx xxxx

(j) xxxx xxxx xxxx

(k) has not paid all amount due by him to panchayat on account of arrears of any kind or on account of any advance or on any other account what-so-ever in spite of a demand notice of not less than thirty days, made therefor, and has failed to file a declaration alongwith the nomination paper to the effect that no amount on any account whatsoever is due by him to the panchayat:

Provided xxxx xxxx xxxx

(i) xxxx xxxx xxxx

(ii) xxxx xxxx xxxx

(iii) xxxx xxxx xxxx

(2) If any person having been elected, appointed or co-opted as an officebearer of a panchayat -

(a) subsequently becomes subject to any of the disqualifications mentioned in sub-section (1) and such disqualification is not removable or being removable is not removed;

(b) xxxx xxxx xxxx

(c) xxxx xxxx xxxx

(d) fails to pay any arrears of any land due by him to the panchayat in spite of the demand-notice of not less than thirty days made therefor he shall subject to the provisions of sub-section (3), cease to be such office-bearer and his office shall become vacant:

Provided xxxx xxxx xxxx

(3) In every case, the authority competent to decide whether a vacancy has occurred under sub-section (2) shall be the Collector, who may give his decision either on an application made to him by any person, or on his own motion. Until the Collector decides that the vacancy has arisen the person shall not cease to be an office-bearer :

Provided that no order shall be passed under this sub-section by the Collector against any office-bearer without giving him a reasonable opportunity of being heard.

(4) Any person aggrieved by the decision of the collector under sub-section (3) may within a period of 30 days from the date of such decision, appeal to the Commissioner and the order of the Commissioner in such appeal shall be final.

(5) xxxx xxxx xxxx

(a) xxxx xxxx

(b) xxxx xxxx

Sec. 31. Power of State Government to stay or cancel election or election proceeding of Panchayat:

(1) In this Section -

(a) "Election"-

(i) in relation to agram panchayat means election or co-option of any panch u/s

11 of Election of Sarpanch and Up-sarpanch u/s 15 as the case may be;

(ii) xxxx xxxx xxxx

(iii) xxxx xxxx xxxx

(b) "Election Proceedings" means the proceedings for elections commencing from the nomination of a candidate for election and ending with the declaration of the elected candidate at such election.

(2) Notwithstanding anything to the contrary contained in this Act or the rules made thereunder, if the State Government is of the opinion that it is necessary in the public interest to stay or cancel the election or election proceedings, of any panchayat, it may by an order and for reasons to be recorded in writing, stay or cancel such election or election proceedings, as the case may be, and may resume the same :

Provided that no action under this sub-section shall be taken except -

(a) where the State Government on report from the Collector of the revenue district concerned, or otherwise, is of the opinion that a situation has arisen which may render the conduct of free and impartial election not practicable; or

(b) xxxx xxxx xxxx

(i) xxxx xxxx xxxx

(ii) xxxx xxxx xxxx

(iii) xxxx xxxx xxxx

(3) (A) On issuance of an order to cancel an election or an election proceeding under sub-section (2), the following consequences shall ensue, namely :-

(i) the election of all office bearers of the Panchayat declared as elected shall stand cancelled;

(ii) xxxx xxxx xxxx

(iii) xxxx xxxx xxxx

(B) On issuance of an order to stay an election or an election proceedings such election or election proceedings at whatever stage, it or they may be, shall be stayed.

(C) The State Government may, upon its satisfaction that it is no longer necessary to stay an election or, as the case may be, an election proceeding, by notification, vacate the stay and thereupon, the election of, as the case may be, the election proceedings shall be resumed from the stage at which such election or election proceedings stood at the time of stay.

The impugned orders (Annexure R-2) purport to be u/s 31(2) of the Act. The court will be slow to disturb the decision of the government where the authorities

have acted fairly even if it may have faltered in its wisdom. But in view of the contentions canvassed before us we have to see and satisfy whether or not administrative action has been fair and reasonable and within the four corners of law. Absence of these may render the action arbitrary and capricious.

Firstly, learned counsel for petitioner urged that Respondent No. 4 was from rival political party whose objection initially at the stage of nomination was overruled. Subsequent election as Sarpanch simply fanned the fire. Besides the election petition he moved an application in which the ground of disqualification (under Section 30(1)-(K)) was reiterated. On his initiative and instance further action by Govt. originated. Annexure R-2 is based only on twin grounds viz. first that the petitioner even after notice did not pay dues. Second; during election of sarpanch, some illiterate panchas could not signify their real intent. Since learned Govt. Advocate did not suggest to show the report of the Collector forming the materials and opinion for the State Government's decision, these orders apparently appear to be very vague and cryptic. The disqualification referred in section 30(1)(k) and 30(T)(a) envisaged two situations: the disqualification which existed at the time of election and the disqualification if any incurred subsequently. The Collector u/s 30(3) could decide that vacancy arising in such event. But then for such action, reasonable opportunity of being heard was mandatory. The Govt. took a decision to cancel petitioner's election on the ground of disqualification existing at the time of election which was already pending before the election petition.

Respondent No. 4 had prayed (Annexure R-1 dated 1-8-1983) that he had not handed over charge because of the Panchayat records likely to be tampered and, therefore, these may be entrusted in proper custody. But the penultimate action was decision to cancel petitioner's election as panch and Sarpanch. The learned counsel urged that in election petition (Annexure P-III) one out of twelve grounds taken related to this disqualification. Though we are not inclined to go into the disputed fact whether any dues existed or not, we equally cannot, ignore that alongwith the nomination form "No Dues Certificate", dated 31-5-1983 (Annexure P-5) was undisputedly filed. We are surprised to find that petitioner in response to dues demand-notice dated 31-5-1983, filed an application before Collector denying his liability and the endorsement orders show that Collector ordered that on the ground of that demand-notice he may not be stopped from participating in the election. Yet, demand-notice and non-payment is foundational consideration in passing the impugned orders. The respondent No. 4 could have been left to pursue his remedies as available in action already taken u/s 117 of the Act. Incidentally we may refer to a few other provisions such as 77 to 80, 82, 84 and 35 of the Act and under the last mentioned section there is provision for "Removal of office bearer", for misconduct or if his continuance in office is undesirable in public interest. On a consideration of this overall picture we are constrained to take the view that the impugned orders smack of unfairness and unreasonableness.

Secondly, it was contended and rightly, that under sub-section 3-A of section 31 of the Act, the election of not only the petitioner/Sarpanch but that of ALL OFFICE BEARERS stood cancelled. Expression "Office-bearer", in section 2(xiii), means, a Panch, Sarpanch and Up-sarpanch of Gram Panchayat. The order is also bad because the statutory consequences in sub-section (3)(A)(i) of section 31 have been lost sight of. Gram Panchayat consisting of elected members constitute an important unit in the democratic infrastructure and such powers to "stay or cancel the election or election proceeding" in public interest are extraordinary powers conferred to meet extraordinary situations and are to be exercised sparingly and are not meant to further individual interests. For all these reasons, the impugned orders are illegal.

Thirdly it was contended that though section 31 of the Act does not expressly speak of show cause notice or hearing, there is considerable authority to indicate that where serious civil consequences follow principles of natural justice may be read in the statute and held to be obligatory. (Referred Ram and Shyam vs. Hariyana P. AIR 1985 SC 1187, State of Orissa vs. Dr. (Miss) Binapani, AIR 1967 SC 1267, A.K. Kraipak and Others Vs. Union of India (UOI) and Others, . The learned Govt. Advocate referred Malak Singh vs. State of P.&H., AIR 1981 SC 420, which was a case of history-sheeters and it was held that rule of audi alteram partem may be dispensed with though court called the relevant records and satisfied about the grounds.

In conclusion we find that impugned orders dated 17th November 1983 (Annexure R-2) passed by section 31(2) cancelling the election of the petitioner as panch and sarpanch are arbitrary and illegal. The petition is therefore, allowed and the impugned orders are quashed. The election petition pending u/s 117 of the M. P. Panchayats Act, which had become infructuous because of impugned orders will proceed according to law. Respondents Nos. 1 to 4 shall bear their own costs and equally pay that of the petitioner. Counsel's fees Rs. 100/-. Amount of security as due be refunded.