

(2012) 02 MP CK 0125

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4495 of 2011

Kailash Narayan Dubey

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Penal Code, 1860 (IPC) — Section 376, 6

Citation : (2012) ILR (MP) 916 : (2013) 1 MPHT 65

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : N.K. Gupta, for the Appellant; Nidhi Patankar, G.A. for the respondents No. 1 and 2/State, V.K. Bharadwaj with Raja Sharma, for the respondent No/3, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—The petitioner, Pujari of Shri Ram janki Temple of village Rani, Tahsil Bhitwar, District Gwalior preferred this petition under Article 226 of the Constitution against the resolution passed by Gram Panchayat (Annexure P/3, whereby it was unanimously decided to discontinue him as Pujari. On the strength of said resolution of Gram Panchayat, after giving show cause notice to the petitioner, the Sub-Divisional Officer passed the order dated 27.8.2010(Annexure P/2). The petitioner filed an appeal against the order dated 27.8.2010 (Annexure P/2) before the Collector. The said authority by order dated 21.2.2011 (Annexure P/9) quashed the order of Sub-Divisional Officer dated 27.8.2010 on the ground that the matter was fixed by the Sub-Divisional Officer on 6.8.2010. On the said date no further date was fixed but on 19.8.2010 the Sub-Divisional Officer fixed the matter for orders on 27.8.2010 and passed the order which cannot be said to be in accordance with law. It is further held that the allegations made against the petitioner were required to be proved by the respondents and in absence of recording evidence by the Sub-Divisional Officer, the charges cannot be said to be proved. The appeal was allowed by the

Collector with a direction that the petitioner shall provide the entire account statement (Income & Expenditure) to the authorities and the same shall be audited. The Collector directed a limited enquiry for the purpose of deciding the income and expenditure of Pujari. The petitioner assailed the order dated 2.12.2011 to the extent he was directed by the Collector to produce the income-expenditure statement to assess his income. The respondent-Panchayat preferred a revision which was registered as Case No. 22/10-11/Revision. The petitioner's appeal and respondent's revision were analogously heard and decided by common order. The Commissioner agreed with the resolution of Gram Panchayat and affirmed the orders passed by the Sub-Divisional Officer and quashed the order passed by the Collector. The main grievance of the petitioner is that he has a right to continue as Pujari and this right is infringed and taken away without following the principles of natural justice. Shri N.K. Gupta, learned counsel for the petitioner would submit that without giving a charge sheet and without providing adequate opportunity of hearing he has been discontinued. Learned counsel vehemently attacked the finding in resolution (Annexure P/3) that the petitioner is earning Rs. 5.00 lacs per year. He submits that there is no basis for such a finding. Learned counsel further submits that he was not permitted to examine the witnesses whose statements were recorded behind his back. He further submits that his sons who were accused in an offence u/s 376 IPC were acquitted and, therefore, this cannot be a reason for his discontinuance. By placing reliance on Annexure P/10 dated 27.1.2011 Shri Gupta submits that appeal lies from the order of Collector to the Commissioner and the respondents have preferred a revision and not an appeal and, therefore, the same could not have been entertained. By placing reliance on 1999 RN 392 (State of MP and others vs. Mandir Shri Khande Rao), Shri Gupta submits that this Court directed the State to frame Rules and Regulations governing the conditions of service and other rights of Pujari but the respondents have not done anything. Hence, in absence of any procedure laid down, the petitioner could not have been discontinued in the manner the respondents have done.

2. Per Contra, Shri V.K. Bharadwaj, learned senior counsel assisted by Shri Raja Sharma, would submit that the petitioner is not a "person aggrieved". To elaborate, Shri Bharadwaj submits that a litigant can be said to be a "person aggrieved" only when his any legal, constitutional, vested or statutory right is infringed or taken away. The petitioner has no legal right to continue as Pujari and, therefore, he is not a "person aggrieved". Learned senior counsel relied on Union of India (UOI) (The) Vs. Trustees of Major Maharaj Harisingh Benefit of Defence Services Personnel Charitable Trust and Others, 2010 AIR SCW 5935 (Zonal Manager, Central Bank of India vs. M/s. Devi Ispat Ltd. & ors.); State of Rajasthan and Others Vs. Daya Lal and Others, ; and, 2012 (1) M.P.H.T. 37 (Sarvesh Patel vs. State of MP and others) in this regard. Mohd. Yunus Vs. Mohd. Mustaqim and Others, is pressed into service to show that this Court should not entertain a writ petition in absence of necessary ingredients warranting interference.

3. Smt. Nidhi Patankar, learned Government Advocate supported the orders, Annexures P/1, P/2 and P/3. Learned State counsel submits that a great confidence and faith is reposed by Gram Panchayat in Pujari. The conduct of Pujari should be above board and without there being any iota of doubt regarding his conduct, performance and duty etc. She submits that the petitioner's sons were accused in an offence of rape and in such circumstances the Gram Panchayat has taken a right decision after having satisfied itself. The said unanimous decision is not liable to be interfered with by this Court.

4. I have bestowed my anxious consideration to the rival contentions of the parties.

5. A bare perusal of Annexure P/3 shows that the unanimous decision of Gram Panchayat to discontinue the petitioner is for the following reasons.

(i) Yearly earning of the temple (having 45 bighas land) is Rs. 5.00 lacs which is being used by Pujari for his own benefits;

(ii) No function/festival is being organised by the Pujari in the temple;

(iii) The temple is in a ruined condition;

(iv) The idols are in a broken condition;

(v) There is no time schedule for "Puja Aarti";

(vi) The space of temple is being used by the Pujari for his own purpose to keep paddy, agricultural equipments, tractor etc.;

(vii) The women of the village do not visit the temple because of the character of the petitioner's sons who were accused in an offence u/s. 376 of IPC.

6. The Sub-Divisional Officer upon receiving the resolution (Annexure P/3) issued a show cause notice to the petitioner. In the show cause notice (Annexure P/6) the Sub-Divisional Officer directed the petitioner to provide the entire income-expenditure statement and permitted the petitioner to even engage an Advocate. In turn, the petitioner submitted his reply (Annexure P/ 7) and admitted that from the date of his engagement he is keeping the income-expenditure account. It is relevant to mention here that Shri N.K. Gupta, learned counsel for the petitioner while arguing this matter has vehemently stated that in the appointment order or elsewhere it is not mentioned that the petitioner is required to maintain a statement of income and expenditure. He submits that the petitioner is under no obligation either to maintain the said account or produce the same before the Gram Panchayat or the State officials.

The petitioner did not produce the said accounts statement and, therefore, the Sub-Divisional Officer passed its order (Annexure P/2) and has given a specific finding that the petitioner has not produced the income-expenditure account, details of bank accounts and other documents for his perusal.

7. Pausing here for a moment, it will be relevant to note that in the petitioner's

statement which is Annexure R/4, the petitioner stated that he earns Rs. 1,26,000/- per year from the temple. Other witnesses have stated that petitioner is earning about Rs. 5.00 lacs per year. The petitioner had chosen not to produce his statement of account despite specific direction by the Sub-Divisional Officer. The Collector allowed his appeal and again directed the petitioner to produce the income-expenditure account before the authorities. In turn, the authorities were directed to examine his income-expenditure account and make an audit of it. The petitioner was not satisfied by this direction. He challenged this order to the extent he was directed to submit income-expenditure account.

8. In the opinion of this Court, the position of Pujari is very important in our society. He is custodian of a temple. The earning from a land attached to the temple is also received by him. Pujari has no right interest or title on the temple or on the land attached to it. The said property is a public property. Thus, he has a duty towards the public and money and income received by him is a public income. Thus, accountability of Pujari needs to be fixed. In other words, the income and expenditure of the temple should be maintained in a proper manner and the same is required to be examined by the competent authorities and by the Gram Panchayat under which he is working. Admittedly, the petitioner has maintained the said record as stated by him in the reply to show cause (Annexure P/7) but did not produce the same before the authorities. The Collector's direction to produce the same was also challenged by the petitioner by filing an appeal. Thus, in the considered opinion of this Court, the petitioner lacks bonafide. If the petitioner was maintaining the accounts, there should not be any hesitation for him to produce the same before the Gram Panchayat or the State Officials as the case may be.

9. Shri N.K. Gupta submits that the Collector's order was just and proper whereby the Sub-Divisional Order's order was set aside. However, a bare perusal of this order shows that the Collector presumed that the resolution of Gram Panchayat (Annexure P/3) contains charges against the petitioner. Thus, on this presumption, the Collector held that the petitioner has not been given any opportunity to put forth his case and in absence of evidence being recorded by the Sub-Divisional Officer, the decision cannot be upheld. In the considered opinion of this Court, the said finding of Collector is clearly erroneous. A plain reading of Annexure P/3 shows that the said resolution is a decision taken by the Gram Panchayat. It is not like a charge sheet or statement of allegations against the petitioner. On the contrary, the Panchayat took an unanimous decision to discontinue the petitioner as Pujari and for that reasons were assigned. It is also clear that for the satisfaction of Gram Panchayat, certain statements including the statement of petitioner were recorded. Thus, the resolution (Annexure P/3), by no stretch of imagination, can be said to be a charge. On the contrary, it is an unanimous decision of entire Gram Panchayat to discontinue the petitioner for the reasons stated in the decision. Thereafter also the petitioner was given an opportunity to put forth his defence by the Sub-Divisional Officer. The petitioner although denied the allegation but did not produce the relevant record of account

statement before the said authority. Needless to mention that the petitioner is the custodian of the entire record of the temple. He alone is aware of the income and expenditure of the temple. Thus, when he was noticed, it was obligatory for him to produce the record for scrutiny. This conduct of the petitioner is liable to be deprecated. The conduct of the petitioner should be in consonance with the holy position he was enjoying as Pujari.

10. On the basis of aforesaid analysis, it is clear that Gram Panchayat on its satisfaction came to hold that it is not desirable to continue the petitioner. The activities of Pujari are under the direct vigil of the villagers and Gram Panchayat. The Gram Panchayat was the best judge to form an opinion about the Pujari.

11. In this view of the matter, the basic question is whether the petitioner has a right to continue and whether his legal vested or constitutional right is infringed or taken away? Another question is whether the impugned orders are legal and justified?

12. Admittedly, the service conditions of Pujari are not framed by the State Government. In pre-independence era i.e., in the regime of State the law was known as 1971" (hereinafter referred to as the "Kanoon"). Initially the places of worship including temples, Masjids and Churches which were public property were regulated by aforesaid Kanoon. Subsequently powers to regulate and govern those places of worship were given to the Gram Panchayat by the State Government. However, it will be profitable to trace the history in this regard. The basic object of framing the Kanoon in the said era was to ensure that the places of worship are kept in a proper manner for which those temples/Masjids/Churches, as the case may be, were established. It is relevant to quote a portion of aim and object of the Kanoon as under:-

Even in this Kanoon, the "public temple" is defined in the definition clause (sic) which reads as under:-

Section 6 (sic) of the Kanoon reads as under:-

(Emphasis Supplied)

13. A bare perusal of Section 6 (sic) aforesaid shows that the caretaker/ Pujari of the place of worship was under a legal obligation to disclose his annual income & expenditure. Thus, even during State time it was ensured that such temples are organized in a proper manner and there is a transparency in handling and dealing with the financial matters. Thus, the vehement and repeated argument of Shri N.K. Gupta that Pujari is under no obligation to maintain the account and disclose it is without any basis.

14. In post independence era also, whether or not it is defined, Pujari is :ustodian of temple, which is meant/established for the public and, therefore, such Pujari is bound to maintain the financial record and disclose it to the concerned authorities. The argument of petitioner that he will not disclose the account status is un becoming of a Pujari.

15. The herculean effort of Shri N.K. Gupta, learned counsel for the petitioner is to equate the Pujari with a civil post holder. Civil post holders are given certain protections in the matter of disciplinary action against them in the Constitution and in Statutory Rules framed for that purpose by the Government. For example, Article 311 gives a constitutional protection to the civil post holders and the principles of natural justice for them have taken a statutory shape when translated into conduct and discipline rules like M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. In various departments, different kinds of statutory rules with different nomenclature are made which regulate the disciplinary action against civil post holders. However, in absence of any such express constitutional provisions or rules with regard to Pujari, in the considered opinion of this Court, the petitioner cannot equate himself with civil post holders/Government servants. Thus, neither the constitutional protection aforesaid is applicable to the petitioner nor any statutory rule is in vogue which gives any kind of procedural protection to the petitioner.

16. The petitioner is appointed for a holy purpose. In Indian Society the Pujari enjoys a very high position in the mind of people. The said position is because of the nature of work which is being entrusted to him by religion and in cases of public temple by the State or its agencies. The Pujari cannot enjoy the trust and that position unless his conduct is fair, transparent and in consonance with the religious values and traditions of the society. The Pujari must have a saintly conduct. In absence thereof the people may lose faith, trust and respect for him. If the custodian of a public temple reduces it to a money making machine for himself or converts the temple for his own welfare, the very purpose of his appointment is defeated. Dharma" of Pujari is to ensure purity, transparency and holiness in his entire conduct and in maintaining the temple. "Kautilya" said as under in this regard:-

17. It is profitable to quote Saint Kabir as under

18. In "Mahabharata" (Shanti Parva) it is mentioned that Raja should not excuse a Pujari, whose conduct is improper, rather should punish him for not acting in consonance with "dharma". If despite providing a source of livelihood Pujari's conduct remains improper, such Pujari shall be expelled from "Rajya". The relevant portion reads as under:-

19. In view of these examples, it is clear like noon day that position of Pujari in Indian Society cannot be equated with a public employment. The kind of and degree of confidence and trust reposed on him, in turn, expects a holy conduct from Pujari. In other words, it can be said by using the old adage that the ceaser's wife should be above suspicion and this principle is equally true to a Pujari in Indian Society and set up.

20. It will not be out of place to remember a classical passage by Judge Learned Hand, which reads as under:-

I often wonder whether we do not rest our hopes too much upon our

Constitution, upon laws and upon false hopes. Liberty lies in the hearts of men and women; do much to help it. While it lies there it needs no constitution, no law, no court to save it.

Justice H.R. Khanna in his famous book "Neither Roses Nor Thorns " has written that said passage holds equally true of purity in public life and administration (page 59).

21. In aforesaid backdrop it is clear that the Gram Panchayat took an unanimous decision that petitioner should be removed/discontinued. For that they satisfied themselves and then only passed an unanimous resolution. There is neither a written contract of service defining terms and conditions of such employment with petitioner and the State nor there are any statutory recruitment rules or constitutional protection available to the petitioner. Gram Panchayat is consisting of elected representatives of the villagers. When such elected representatives have taken an unanimous decision, in the considered opinion of this Court, it will be treated to be a general public opinion against the petitioner. Considering the seriousness of reasons mentioned in the resolution (Annexure P/3), in the opinion of this Court, the Gram Panchayat has not committed any error of law in discontinuing the petitioner. Another objection of Shri N.K. Gupta regarding maintainability of revision also deserves to be and is accordingly rejected because as per settled legal position mere wrong quoting of provision will not denude the authority to exercise jurisdiction, so long as same is traceable elsewhere in the provision. (See, (2003) 4 SCC 712 (High Court of Gujarat and another vs. Gujarat Kishan Mazdoor Panchayat and others).

22. Although Shri N.K. Gupta vehemently submitted that petitioner's sons were ultimately acquitted by the criminal court, it cannot be lost sight that they were accused in a heinous offence u/s 376 IPC. A bare perusal of the judgment (Annexure P/8) in Case No. 121/2003 shows that the complaint regarding offence of section 376 IPC was registered by Madhu Sharma (prosecutrix), who is a family member/relative of the petitioner. The prosecutrix is none else but the wife of real younger brother of petitioner. Despite the fact that she turned hostile before the criminal court, the kind of allegations were made, it causes loss of faith, trust and confidence of the people on Pujari and his family, who are residing in the temple premises.

23. Apart from this, the reasons assigned in Annexure P/3 shows that temple is not kept in proper condition, the "daily Puja" is also not performed as per any fixed time and the premises of the temple is being used by the petitioner for his own benefit. If the Gram Panchayat is satisfied and has taken an unanimous decision, no fault can be found in such decision. More so, when the petitioner was given an opportunity by Annexure P/6 to submit his accounts and he did not deliberately submit the same. This kind of engagement is not governed by any constitutional provision or statutory rules or any contract. Lord Reid in *Malloch v. Abardeen Corpn.* (1971 1 WLR at 1581) held as under:-

At Common law a master is not bound to hear his servant before he dismisses him. He can act unreasonably or capriciously if he so chooses but dismissal is valid. The servant has no remedy unless the dismissal is in breach of contract and then servant's only remedy is damages for breach of contract.

24. On the basis of aforesaid discussion and analysis, the petitioner has no legal vested or constitutional right to continue as Pujari. Hence, none of those rights are infringed or violated.

25. The petitioner, who is custodian of the entire income-expenditure record has not submitted the same before the Sub-Divisional Officer. The said authority in page 3 of its order has directed the Revenue Officer/Naib Tahsildar to assess the income of the petitioner and then proceed further to recover the amount. In the opinion of this Court, there is no flaw in the said order. Thus, the petitioner is directed to submit the entire record regarding his income-expenditure and financial status before the Sub-Divisional Officer within seven days from the date of receipt of certified copy of this order. The said authority shall peruse the said record and then decide the question of recovery (if any). The decision of discontinuing the petitioner by Annexures P/3, P/2 and P/1 are affirmed. The respondents are directed to implement the said decision forthwith. In nutshell, no case is made out by the petitioner for exercising discretionary jurisdiction by this Court under Article 226 of Constitution. Petition is dismissed. No costs.