

(1999) 08 MP CK 0061

In the Madhya Pradesh High Court

Case No : Writ Petition No. 597 of 1999

Kamal Kishore

APPELLANT

Vs

Janpad Panchayat, Nalkheda and Others

RESPONDENT

Date of Decision : 18-08-1999

Acts Referred:

Madhya Pradesh Panchayat Raj Adhiniyam, 1993 — Section 40

Citation : AIR 2000 MP 225 : (1999) 2 JLJ 370 : (2000) 1 MPHT 212 : (2000) 1 MPLJ 309 : (1999) 2 MPLJ 471 : (1999) 2 MPLJ 470

Hon'ble Judges : Jayant Govind Chitre, J

Bench : Single Bench

Advocate : G.M. Chaphekar and Samvatsar, for the Appellant; Prakash Verma, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.

Shri Chaphekar counsel appearing for the petitioner submitted that the action taken by the respondents against the petitioner is not only inconsistent with the provisions of law but destructive to the benevolent object of "INDIRA AVAS YOJNA". He further submitted that the action which is being assailed by this petition is inconsistent with the procedure laid down for taking such action in view of the provisions of Section 40 of Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as Panchayat Raj Adhiniyam, for convenience). He pointed out that an inquiry has been contemplated which has to be made properly, lawfully by the officers taking action in view of the provisions of Section 40 of Panchayat Raj Adhiniyam.

Shri Chaphekar further submitted that in the present case there has been absolutely no grievance from any corner of the society or the beneficiaries of Indira Avas Yojna. He submitted that the petitioner happened to be an executive person elected to the Panchayat from village Chapakheda and being so he was

requested by the office bearers of Janpad Panchayat Chapakheda to guide them for constructing the houses in view of the said Avas Yojna. He further submitted that the said huts have been constructed well within time, satisfactorily and there is absolutely nothing with the opponents to point out that there has been loss either to Government, administration, beneficiaries under the Avas Yojna or any member of the public at large. He further submitted that the order and the action which is being assailed by this petition is thus against the spirit of the Avas Yojna, law and violative of the principles of natural justice.

Shri Prakash Verma, learned Dy. GA appearing for the respondents tried to justify the order under challenge by submitting that the role which was to be played by the petitioner was of the President. Janpad Panchayat, Nalkheda, district Shajapur and as such he was not expected to accept the role in the committee which was constituted by Gram Panchayat Chapakheda. He submitted that this deviation from the duty assigned to the President of abovementioned Janpad Panchayat has been disturbed by the role played by the petitioner as the Chairman of the said Committee and therefore, It amounted to misconduct. He further submitted that if the President of Janpad Panchayat starts functioning otherwise than indicated by the post they hold, there would be indiscipline in the functioning of the said Janpad Panchayat.

Answering the queries made by the Court Shri Verma had to submit that there was no complaint whatsoever from the concerned beneficiaries, any member of concerned Panchayat Samiti or any member of the Public. He further had to submit that no loss was caused financially or otherwise to the Janpad Parishad or the duties to be performed by the petitioner as President of Janpad Panchayat. He further submitted that the work of constructing such huts has been completed well within time and there is no ground whatsoever to have a complaint in the context. He had also to submit that no loss has been caused to the government, administration or to said Janpad Panchayat by the act which has been a subject matter of the action taken against the petitioner.

Section 40 of the Panchayat Raj Adhiniyam provides that;

(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.

EXPLANATION: For the purpose of this sub-section "Misconduct" shall include :--

(a) any action adversely affecting -

(i) the sovereignty, unity and integrity of India:

(ii) the harmony and the spirit of common brotherhood amongst all the people of State transcending, religious, linguistic, regional, caste or sectional diversities; or

(iii) the dignity of women; or

(b) gross negligence in the discharge of the duties under this Act.

So if at all any action has to be taken in view of the provisions of Section 40 of the Panchayat Raj Adhiniyam for the purpose of removal of office bearer of Panchayat, the prescribed authority will have to hold firstly an inquiry for the purpose of finding out whether the delinquent happens to be guilty of things described by the provisions of Sub-clause (a) (b) or the proviso to Section 40, Sub-section (1). Further, the prescribed authority will have to point out that the conduct of the delinquent is falling under the category of "misconduct" as indicated by the explanation provided to Sub-section (1) of Section 40 of the Panchayat Raj Adhiniyam.

In the present case the opponents do not have any ground to show that the petitioner's conduct was in any way coming under the category prescribed by word "misconduct". If the action has to be taken on another counts, the prescribed authority is obliged to find out whether the act committed by the such delinquent is falling under the category indicated by Sub-clause (b) of the explanation i.e. "gross negligence" in the discharge of the duty under this Act. The opponents are also not in a position to show any such act on the part of the petitioner which would bring him under the category of Sub-clause (b) of the explanation provided to Sub-section (1) of Section 40 of the Panchayat Raj Adhiniyam.

The proposed actions which are to be taken in view of the provisions of Section 40 of the Panchayat Raj Adhiniyam, have to be taken with all seriousness. The officer working as prescribed authority has to keep in mind that proposed action is likely to dislodge a person who has been duly elected by members of the public and that too for the purpose of holding the office as indicated by the said Panchayat Raj Adhiniyam for performance of the duties indicated by the post or various posts of such Panchayats. When a person duly elected by members of the public in accordance with the enactment so made is to be punished legally there should be compliance of the necessary provisions of the relevant enactment. Such authority has to keep in mind that the clogs provided in such proposed action, by the legislature by means of sections, sub-sections, clauses, and the sub-clauses of such enactments, have been provided with some specific intention of securing the assurance that no such actions are taken unwarrantedly, without good reasons and baselessly. When the word "after such enquiry" has been used, it always means that there has to be a systematic proper and reasonable inquiry consistent with the settled principles of law and rule of natural justice. A person against whom such action has to be taken has to be given sufficient opportunity of showing cause as to why such action should not be taken against him. Thereafter, the prescribed authority has to record its opinion

which be well supported by good reasons so as to indicate that the prescribed authority has acted consistently with the provisions of law and rule of natural justice. While doing so, the prescribed authority has to keep in mind that this enactment is nothing but a step taken by the duly constituted government for the purpose of acquiring the welfare of its citizens, as a welfare State. The purpose for which this enactment has been made and various schemes, which have been prepared for the purpose of implementation, has to be understood properly, if a person takes a lead for the purpose of leading uneducated members of Panchayat or village for the purpose of achieving the object sought to be achieved by schemes of Awas Yojna, for the benefit of members of public at large, that has not to be discouraged unless the person doing such an act is acting for the purpose of gaining unwarranted gain or advantage for him which is detrimental to the purpose for which the enactment has been made and the scheme has been prepared, if there is nothing prejudicial to the purpose or scheme of Awas Yojna, if there is no loss caused or likely to be caused to the government exchequer or to the public interest, guidance provided by office bearers of Janpad Panchayat or Gram Panchayat, to poor villagers should not be looked with contempt and with a look of disdain. Such attitude should totally be avoided which is basically detrimental to the concept of "welfare of State" which has been commonly accepted by thinkers of jurisprudence of this era.

The Act which is challenged by this petition an Act guided by misinterpretation of the provisions of the Act. Therefore, this Court does not find any propriety of criticising it more.

Thus, the petition is decided finally at this stage and the order, act which is being challenged by this petition is set aside. Petitioners be restored to his own post, status, dignity and powers which he was possessing before passing of impugned order and all consequential disqualifications are hereby removed. Petition is thus allowed but with no order as to cost.