

(1999) 01 MP CK 0033

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5301 of 1998

Kandhilal Patel and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 07-01-1999

Acts Referred:

Madhya Pradesh Panchayat Raj Adhiniyam, 1994 — Section 21(4), 91

Citation : AIR 1999 MP 137 : (2000) ILR (MP) 49 : (1999) 2 JLJ 109

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : G.S. Baghel, for the Appellant; J.P. Agarwal and A.K. Gupta, for the Respondent

Judgement

R.S. Garg, J.—By this petition under Article 227 of the Constitution of India, the petitioners seek to challenge the correctness, validity and propriety of the Order dated 28-10-98 passed in Revision Case No. 460/A-89/97-98 by the learned Addl. Commissioner, Jabalpur, reversing the Order dated 29-6-98 passed in Case No. 8B-121-97-98 by the learned Addl. Collector, Jabalpur.

2. Brief facts necessary for disposal (if the present petition are that the respondent No. 4, elected Sarpanch had faced a no-confidence motion; a meeting for consideration of said no-confidence motion was convened on 13-2-98. Proper notices were issued to all the 12 Panchas, including Sarpanch constituting the Panchayat. On 13-2-98, in presence of all the members constituting the Panchayat, the motion was considered. 9 Panchas voted in favour of the motion, while the respondent No. 4, 5 and 6 voted against the motion. It is noteworthy that instead of going for the secret ballot, the Panchas were asked to show their opinion by raising hands. As 9 Panchas favoured the motion by raising their hands in favour of the motion, the authority declared the motion to be carried. Being aggrieved by the said order, the respondent No. 4 moved a petition u/s 21(4) of M. P. Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as the Act) to the Collector. The Collector finding that the procedure

adopted by the Presiding Officer was illegal quashed the proceedings, remitted the matter back to the Panchayat with a further direction that within a period of fifteen days from the date of the order, the meeting for consideration of the no confidence motion be convened. It was also directed that notices afresh be issued to all the Panchas/Sarpanch constituting the Panchayat. In compliance of the order passed by the Addl. Collector, the Naib Tahsildar was made the Presiding Officer, who in his turn issued fresh notices to all the Panchas/Sarpanch directing that the meeting would be held on 25-5-98. The respondent No. 4 (Sarpanch), respondent No. 5 and respondent No. 6 did not attend the meeting. This time the secret ballot procedure was adopted and as all the 9 Panchas present in the meeting supported the motion, it was declared carried. Being aggrieved by the said resolution, the respondent No. 4 filed a petition u/s 21(4) of the Act and raised various points. The Addl. Collector instead of deciding the matter as a dispute treated the same as an appeal, without recording any evidence only after hearing the arguments of the parties, dismissed the said petition. Being aggrieved by the said order, the respondent No. 4 took up the matter before the Addl. Commissioner, Jabalpur u/s 91 of the Act read with Rule 5 of the Appeal & Revision Rules, 1995 (hereinafter referred to as the Rules).

3. The learned Addl. Commissioner allowed the said revision petition holding that as the first resolution was set aside by the Addl. Collector, a meeting within one year of the first rejection was not competent u/s 21 (3) of the Act. He also observed that as notices were not properly offered for service or were not served on the respondent No. 4 to 6, the meeting held was bad and no resolution could be carried in the said meeting. It is noteworthy that the present petitioners raised an objection before the learned Addl. Commissioner that the revision u/s 91 of the Act read with Rule 5 of the Rules was not competent. The said objection was overruled. Being dissatisfied by the order passed by the learned Addl. Commissioner, the petitioners have filed this petition.

4. Learned counsel for petitioners submits that the revision petition before the learned Addl. Commissioner was not competent in view of the language of Sub-section (4) of Section 21 of the Act. According to him, as finality is attached to the order passed by the learned Addl. Collector, neither an appeal nor a revision would be against such an order which otherwise is final in the Act.

5. Shri Gupta, learned counsel for respondent No. 4, supported by Shri J. P. Agarwal, learned counsel for respondent No. 1 to 3, submits that the very language of Section 21(4) if is interpreted in its true sense and is understood in its true perspective looking to the legislative intent behind it, it would only appear that an appeal against such an order was not maintainable but the revisional jurisdiction of the Addl. Commissioner, etc. were not taken away. Placing reliance upon certain judgments, he submits that the revision u/s 91 of the Act was maintainable.

6. For proper appreciation of the controversies which are raised, it would be necessary to read the very language of Section 21. Section 21 of the Act reads

as under :--

No-confidence motion against Sarpanch and Up-Sarpanch:--

(1) On a motion of no-confidence being passed by the Gram Panchayat by a resolution passed by majority of not less than three fourth of the panchas present and voting and such majority is more than two third of the total number of Panchas constituting the Gram Panchayat for the time being, the Sarpanch or Up-Sarpanch against whom such motion is passed, shall cease to hold office forthwith.

(2) Notwithstanding anything contained in this Act or the Rules made thereunder a Sarpanch or an Up-Sarpanch shall not preside over a meeting in which a motion of no-confidence is discussed against him. Such meeting shall be convened in such manner as may be prescribed and shall be presided over by an officer of the Government as the Prescribed Authority may appoint. The Sarpanch or the Up-Sarpanch, as the case may be, shall have a right to speak at, or otherwise to take part in, the proceeding of the meeting.

(3) No-confidence motion shall not lie against the Sarpanch or Up-Sarpanch within a period of -

(i) one year from the date on which the Sarpanch or Up-Sarpanch enter their respective office;

(ii) six months preceding the date on which the term of office of Sarpanch or Up-Sarpanch, as the case may be, expires;

(iii) one year from the date on which previous motion of no-confidence was rejected.

(4) If the Sarpanch or the Up-Sarpanch as the case may be desires to challenge the validity of the motion carried out under Sub-section (1), he shall within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible within thirty days from the date on which it was received by him, and his decision shall be final."

7. Section 21 (4) says that the Sarpanch or the Up-Sarpanch if proposes to challenge the validity of the motion carried out against them/him, then within seven days from the date of the motion, they may refer the dispute to the Collector, who shall decide it possibly within thirty days from the date the dispute is received by him. The; law further provides that the decision on the said dispute shall be final.

8. According to language of Section 21(4) a dispute is to be decided by the Collector and his decision on the said subject shall be final. Sub-section (4) of Section 21 does nowhere provide that the finality cannot be challenged before the revisional Court or the revisional authority stands restrained from interfering with the finality of an order passed u/s 21(4).

9. In the matter of Naumal Bros, through Gopaldas of Mandsaur v. Alihussain Kamarali, 1961 JLJ 450, this Court while dealing with the provisions Section 12 of M. P. Accommodation Control Act (23 of 1955) and provisions of Section 115 CPC observed that though the order passed by the District Judge hearing appeals u/s 12 of M. P. Accommodation Control Act (23 of 1955) is final, but as the is subordinate to the High Court in the heirarchy, therefore, a revision u/s 115, CPC would be maintainable before the High Court. The said judgment came up for consideration before a Division Bench of this Court in the matter of Kailashchandra and Others Vs. District Judge and Others, . The Division Bench observed that the order made by the District Judge u/s 12 was revisable u/s 115 of the Code of Civil Procedure. The Division Bench, therefore, approved the order of the Single Judge in the matter of Naumal Bros (supra). The question considered in the said cases was little different from the question raised and posed for consideration in this case. While considering the provisions of Section 31 and 37 of Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (1952), this Court in the matter of Surya Prasad v. Mohanlal 1965 M&P LJ 26 has observed that though finality was given by Section 31 of the said Act to the order of the Collector, but that provision would only mean that the order passed by the Collector would be final and, no appeal against such an order would lie. The High Court further observed that the provisions of Section 31 did not mean that it was not open to revision. Appreciating the provisions of the said Act, the High Court further observed that if the Act did not provide any bar against filing of a revision petition, then a revision petition against the order of the Collector, which otherwise was final, was competent and the revisional authority could certainly exercise its powers as vested in it as a revisional Court. This very question again came up for consideration before the High Court in the matter of than Singh v. Board of Revenue, 1967 RN 396. The High Court following the decision in the matter of Suryaprasad (supra) observed that the provision that the decision of the Collector shall be final only meant that it would not be appealable and that it did not imply that the order was not open to revision. The High Court further observed that attachment of finality to an order of a competent authority would only mean that no appeal shall lie against such an order but if the law did not provide that a revision petition shall not lie against such an order, then the revisional Court shall be entitled to exercise its jurisdiction. In the matter of Indian Homeopathic Medical Association and Others Vs. Kanai Lal Pal and Another, the High Court observed that the word "final" means not appealable but open to revision or review. While so observing, the High Court relied upon number of the judgments of Madras, Calcutta and Bombay Courts.

10. In the matter of Commissioner of Sales Tax, U.P., Lucknow Vs. Super Cotton Bowl Refilling Works, the question posed for consideration before the Supreme Court was that even after the amendment of the U. P. Sales Tax Act whether a revision would be tenable before the High Court u/s 115, CPC. The Supreme Court observed that the expression "final" prima-facie means that an order passed under the Act was conclusive and no further appeal lay. Following the

observations made, by the Supreme Court in the matter of Jetha Bai and Sons, Jew Town, Cochin and Others Vs. Sunderdas Rathenai and Others, it was further observed that a right to revision under the Act is a right given by the Act. From these authorities, it would clearly appear that when finality is attached to an order, judgment or decision, then the said finality is in relation to an appeal only and against such an order, no appeal shall lie under the Act, but such finality shall not affect the powers of the revisional authority which it enjoys under the Act.

11. Section 91 which relates to appeal and revisions provides that an appeal or revision against the order or proceedings of a Panchayat and other authorities under the Act shall lie to such authority and in such manner as may be prescribed. The State Govt. has framed the M. P. Panchayats (Appeal & Revision) Rules, 1995. Rule 3 provides that in case of an order passed by the S.D.O. under any provisions of the Act or Rules or Bye-laws made thereunder, an appeal shall lie to the Collector. In case of an order passed by the Collector, an appeal shall lie to the Commissioner and in case an order is passed by the Commissioner or Director of Panchayats to the State Government. Rule 5 relating to the revisions provides that the State Govt., the Commissioner, the Director of Panchayat, the Collector may on its/his own motion or on the application by any party, at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to it/him call for and examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it he may think fit. It cannot be disputed that in the hierarchy and according to Rule 3 of the Rules, the Collector is subordinate to the Commissioner. If an order is passed by the Collector, an appeal shall lie to the Commissioner, therefore, the Commissioner would also have the revisional jurisdiction to call for and examine the records of a matter where an order is made under the Act by the Collector. Reverting back to Section 21(4), it can clearly be seen that Section 21(4) does not provide for an appeal. When Section 21(4) does not provide for an appeal. When Section 21(4) provides for no remedy of appeal then provisions of Section 91 relating to the appeal would not be applicable. Any person aggrieved by the motion carried out under Sub-section (1) of Section 21, has a right to refer a dispute to the Collector who is expected to decide the same possibly within thirty days of submission of the dispute. On face of Section 21 (4), an appeal shall not lie either to the Collector or to the Commissioner or to any other authority. Section 21(4) if does not refer to an appeal then consideration of the dispute treating it to be an appeal would prima-facie be illegal and contrary to the provisions of law. In the present case, the Addl. Collector heard the matter as an appeal and disposed of the same without recording any evidence, etc. Whether the procedure adopted by the Addl. Collector was proper or not would be dealt separately but for the purposes of consideration of the maintainability of the revision petition, this Court must hold that against the order passed u/s 21 (4), a revision before the Commissioner

shall be maintainable because the order passed by the Collector is an order passed under the Act and the Commissioner being the revisional authority is certainly entitled to call for the records either suo-motu or on the application of any party for the purpose of satisfying himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of the authority subordinate to him. The Commissioner would certainly be entitled to examine the records of any case pending before or disposed of by an authority subordinate to him under the Act. The first challenge thrown to the order passed by the Addl. Commissioner deserves to and is accordingly rejected. It is held that the revision before the authority (Addl. Commissioner) was competent.

12. The second question raised by the learned counsel for the petitioner is that the Commissioner was unjustified in holding that as the first resolution was rejected by the Addl. Collector holding that it was illegally passed by show of hands, therefore, the second meeting for consideration of the motion was contrary to law. Learned counsel submits that the first motion was not rejected under the provisions of Section 21 but the resolution carrying the motion was set aside on a technical objection. Learned counsel for respondents submit that the learned Commissioner was not unjustified in observing so.

13. Sub-section (3) of Section 21 provides that no confidence motion shall not lie against the Sarpanch or Up-Sarpanch within a period of one year from the date on which such person enters his office; six months preceding the date on which the term of office of the Sarpanch or Up-Sarpanch, as the case may be, expires; one year from the date on which previous motion of no-confidence was rejected. Learned counsel for respondents submit that as the resolution carrying the motion was rejected by the Addl. Collector, therefore within one year from the date of the order of the Collector, the second motion would not lie. In the opinion of this Court, this argument is mis-conceived. Sub-section (3) of Section 21 provides that no-confidence motion shall not the against the Sarpanch or Up-Sarpanch within a period of one year from the date on which previous motion of no-confidence was rejected. The learned Addl. Collector did not reject the motion of no-confidence; the Panchayat in its meeting did not reject the no-confidence motion; in fact the motion was carried in the Panchayat meeting, but the resolution carrying the motion was rejected, rather set aside by the Addl. Collector on the ground that the meeting was not proper and the motion was carried in an illegal manner. The order passed by the Addl. Collector on the earlier occasion would not mean that he has rejected the earlier no-confidence motion. The order as it stands would only mean that the manner in which the motion was carried was contrary to law and could not be approved. The learned Addl. Commissioner was certainly wrong in holding that after rejection of the first motion of no-confidence, the meeting could not be held or the motion could not be considered within one year. The learned Addl. Commissioner has not tried to appreciate the law in its true perspective and on its cursory reading has recorded the wrong findings. Even for the sake of repetition it is again observed that if a motion of no-confidence is rejected in the meeting or the motion of no-

confidence is rejected by the Collector u/s 21 (4), then alone a second motion would not lie within one year from the date of rejection of the first motion, but if the resolution carrying the motion is set aside or quashed because of the procedural defects or non-observance of the mandatory provisions of law, then in such a situation such a motion can be re-considered in accordance with law because setting aside of the resolution carrying the motion would not mean that the motion itself was rejected.

14. In the matter of Ramcharan Ahirwar y. Sub-Divisional Officer, Jatara (1998 Vol. 2267) (sic), this Court has observed that when no-confidence motion passed against the officer is quashed on the ground of infraction of rule, it cannot be said that the motion has been rejected and the bar of time to consider fresh no-confidence motion shall not arise. I have ruled the same that setting aside of the resolution carrying the no-confidence motion was set aside or quashed on the ground of infraction of rule as the Addl. Collector on an earlier occasion found that the motion was carried by show of hands and not by secret ballot. The said finding recorded by the Addl. Commissioner deserves to and is accordingly set aside.

15. The question for consideration still is whether the dispute submitted u/s 21 (4) is to be decided as an appeal or is to be decided as original proceedings. One can straight way say that if the intention of the legislature was to treat the dispute at par with an appeal, then instead of using the word "dispute" in Section 21 (4), the legislature could use the word appeal in Section 21 (4). Section 21 (4) reads "he shall within seven days from the date on which such motion was carried, refer the dispute to the Collector". The language employed in Sub-section (4) of Section 21 of the Act clearly shows the intention of the legislature. It never wanted to treat the dispute at par with an appeal u/s 91. It appears that the legislature was alive to the situation that in an appeal, a fact finding enquiry may not be made by the appellate forum, and in a case where the motion is carried, sometimes factual allegations may be made or factual disputes can be raised. The word "dispute" in its ordinary sense would mean that the person aggrieved by an order is challenging its correctness, validity and propriety not only on the legal aspects, but even on the factual aspects as he is dissatisfied with the resolution carrying the motion. When a dispute u/s 21 (4) is raised, it cannot be decided as an appeal. The party aggrieved by the resolution can challenge its correctness, as observed, on legal grounds so also on the factual aspects. On the legal aspects, the aggrieved party can always say that because of the infraction or breach of the mandatory provisions or rules, the resolution was bad. While challenging the resolution on facts, the aggrieved party can always say that the manner in which the resolution was carried was bad or there were certain factual disputes or the facts as projected by the aggrieved party if stand proved after recording the evidence and hearing the parties, would certainly affect the validity of the resolution. When such allegations are made, then the authority cannot decide the dispute simply hearing the arguments of the parties. Where the parties agree before the authority hearing the dispute that

they do not wish to lead any evidence, then certainly the authority would be competent to decide the dispute after hearing the parties, but where prima-facie it appears to the authority that there are certain factual disputes or allegations against the other side, then it is duty bound to call for the reply of the other side. It is obliged to give opportunity to the parties to substantiate their allegations/ counter allegations by producing oral and documentary evidence. The authority would also be obliged to give proper opportunity of hearing to the parties and shall also be obliged to decide the matter in accordance with law.

16. The manner in which the competent authority has decided the dispute referred to it u/s 21 (4) of the Act would clearly show that it had not applied its mind to the legal provisions and simply proceeded to decide the matter as if it was an appeal either u/s 21 (4) of the Act or u/s 91 of the Act read with Rule 3 of the Rules. When the allegations relating to service of the summons were made, then the authority on face of the allegations was duty bound to enquire into the allegations. On one side the learned Addl. Collector was holding that the Summons were served as there was endorsement by the Bailiff, and on the other hand the learned Addl. Commissioner was holding that as the service report did not bear the date, it was not possible to hold whether the notices were offered for service. Each of the authority did not try to appreciate that it was a factual dispute relating to offering of the notices to the noticees. Whether the notices were offered or not could be well said by the persons to whom the notices were offered. The report on the said notices may lead to some inference or presumption, but such inference and presumption would always be rebuttable. A noticee could always show that the notices were not offered to him for service or on the date when the report was written he was not available for offering the notices or for some reasons akin to it, the notices could not be offered to him for effecting the service. Neither on basis of the endorsement nor on basis of nonavailability of the date, it could be held that the summons were offered for service or were not offered. The Addl. Commissioner was unjustified in observing that as there was no date under the signatures of the panch or the Bailiff, it was not proper to hold that the summons were in fact offered for service. Similarly the Addl. Collector was also not justified in observing that in view of the report submitted by the Bailiff, the summons would be deemed to be properly served. If the party having opportunity to rebut the presumption does not exploit the opportunity, then alone reliance could be placed on the report made on the notice.

17. The procedure adopted by the Addl. Collector is contrary to law. He could not decide the matter as in appeal. As he has acted contrary to the provisions of law and adopted a procedure which was not available to him under the law or the Act, his order cannot be sustained. The order passed by the Addl. Commissioner setting aside the order passed by the Addl. Collector is maintained, but for different reasons. The order passed by the Addl. Commissioner setting aside the resolution carrying the no-confidence motion deserves to and is accordingly quashed. Instead it is directed that the learned Addl. Collector shall restore the

matter back to its file; shall give proper opportunity to the named respondents before it to file their replies; shall give the parties proper opportunity to lead evidence and shall after hearing the parties decide the matter in accordance with law. The parties present in the Court are directed to remain present before the Addl. Collector, Jabalpur on 14th January, 1999. It is expected of the Addl. Collector that within thirty days from the date of appearance of the parties, if possible, he shall decide the dispute in accordance with law. Let a copy of this order be sent to the learned Addl, Collector Jabalpur immediately so as to reach him before 14th January, 1999. Certified copy be supplied to the parties within four days, if applied on urgent charges.