
(2008) 03 MP CK 0055
In the Madhya Pradesh High Court

Kishore and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Madhya Pradesh Panchayat Raj Adhiniyam, 1993 — Section 40, 40(1)

Citation : (2008) 3 MPHT 29 : (2008) 3 MPLJ 557

Hon'ble Judges : Prakash Shrivastava, J; Dipak Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prakash Shrivastava, J.

The present public interest petition has been filed impugning the order dated 6-12-2007 passed by the Commissioner, Jabalpur Division, allowing the revision filed by the respondent No. 6 u/s 91 of the M.P. Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as "Adhiniyam") whereby the Additional Commissioner has allowed the revision of the respondent No. 6 and set aside the order of removal passed against him u/s 40 of the Adhiniyam.

Order dated 21-3-2007 was passed by the Sub-Divisional Officer, Revenue, Sausar District Chhindwara removing respondent No. 6 from the office of the Sarpanch of Gram Panchayat, Sawanga with immediate effect and declaring him disqualified for 6 years u/s 40 (2) of the Adhiniyam)

The order of the Sub Divisional Officer was challenged by the respondent No. 6 before the Collector and the matter had travelled to the Additional Commissioner by way of revision u/s 91 of the Adhiniyam which has been allowed by the Additional Commissioner.

Section 40 of the Adhiniyam deals with the removal of office bearers of Panchayat and reads as under:

40. Removal of office bearers of Panchayat.- (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; or
 - (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.
- (c) the use of position or influence directly or indirectly to secure employment for any relative in the Panchayat or any action for extending any pecuniary benefits to any relative, such as giving out any type of lease, getting any work done through them in the Panchayat by an office bearer of Panchayat.

Explanation:- For the purpose of this clause the expression "relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law:

Provided that the final order in the inquiry shall as far as possible be passed within 90 days from the date of issue of show-cause notice to the concerned office bearer.

A perusal of the aforesaid provision shows that an office bearer of the Panchayat can be removed on two conditions, i.e., either he is found guilty of misconduct in discharge of his duties or his continuance in office is undesirable in the interest of the public. The explanation to Sub-section (1) of Section 40 gives inclusive definition of misconduct. In the present case, it is to be seen, if the case of respondent No. 6 falls in any of the two conditions mentioned in Sub-section (1) of Section 40.

The Additional Commissioner in the order dated 6-12-2007 has examined the three charges which were levelled against the respondent No. 6. The first charge was in respect of death of a cow on 6-8-2007 in the Kanji House. In respect of this charge, Revisional Authority has found that the members of the Gram Panchayat had tried to contact the doctor to save the cow but she died due to illness. The incident is of 6-8-2005 whereas after about 10 months the charge for removal of the respondent No. 6 u/s 40 for the said incident has been levelled,

which cannot be sustained. The second charge is in respect of withdrawal of Rs. 1,20,000/- from the account of the Panchayat and collection of Rs. 25,000/- as tax on the basis of the receipt and not keeping the account of the same. The Revisional Authority has found that admittedly the accounts were not kept but the respondent No. 6 had produced the bills and "vouchers available with him showing that the said amount was spent for construction of drains, repairing of roads and payment of electricity bills. The third charge is in respect of not maintaining the cash book. In respect of the said charge, the Revisional Authority was convinced that all the bills, vouchers and documents are available with the petitioner in respect of the amount mentioned in the charge. The Revisional Authority being satisfied with the explanation submitted by the respondent No. 6 and on reaching the conclusion that the case of the respondent No. 6 is not covered u/s 40 of the Adhiniyam, allowed the revision and set aside the order of removal passed against him.

Looking to the findings recorded by the Revisional Authority in the order dated 6-12-2007, we are convinced that it is neither a case of gross negligence to put the case of respondent No. 6 within the purview of misconduct nor it is a case where it can be said that his continuance in the office is undesirable in the interest of the public. Thus, the case of respondent No. 6 is not covered under any of the two conditions mentioned in Sub-section (1) of Section 40 of the Adhiniyam.

In the result, we find no illegality in the order of Revisional Authority dated 6-12-2007 and accordingly dismiss the public interest petition filed by the petitioner in limine.