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**(2008) 04 MP CK 0070**  
**In the Madhya Pradesh High Court**

Leelawati and Another

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision :** 30-04-2008

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2008) ILR (MP) 2817 : (2008) 4 MPHT 470

**Hon'ble Judges :** A.K. Patnaik, C.J.; Sanjay Yadav, J

**Bench :** Division Bench

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## Judgement

A.K. Patnaik, C.J.—The petitioners are permanent residents of Gram Panchayat, Baroli in Tehsil Ajaygarh. The Gram Panchayat, Baroli failed to appoint a Panchayat Karmi within the specified period and, therefore, the Collector in exercise of power u/s 86(2) of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short "the Adhiniyam") authorised the Chief Executive Officer, Janpad Panchayat, Ajaygarh to appoint a Panchayat Karmi of Gram Panchayat, Baroli. The Chief Executive Officer, Janpad Panchayat, Ajaygarh issued an advertisement inviting applications for appointment of Panchayat Karmi in Gram Panchayat, Baroli. Petitioners and other candidates applied in pursuance to the advertisement to the Chief Executive Officer, Janpad Panchayat, Ajaygarh. Thereafter, the Chief Executive Officer, Janpad Panchayat, Ajaygarh appointed the respondent No. 6 as Panchayat Karmi of Gram Panchayat, Baroli. Aggrieved, the petitioners have filed this writ petition under Article 226 of the Constitution.

2. Mr. Abhishekh Arjaria, learned Counsel for the petitioners submitted that u/s 70 of the Adhiniyam only the Gram Panchayat can appoint a Panchayat Karmi and hence the appointment of respondent No. 6 as Panchayat Karmi made by the Chief Executive Officer, Janpad Panchayat, Ajaygarh is without jurisdiction and is void ab initio.

3. We are unable to accept the aforesaid submission of Mr. Arjaria. Section 86 of the Adhiniyam is quoted herein below:

86. Power of State Government to issue order directing Panchayat for execution of works in certain cases.- (1) The State Government or the Prescribed Authority may, by an order in writing, direct any Panchayat to perform any duty imposed upon it, by or under this Act, or by or under any other law for the time being in force or any work as is not being performed or executed, as the case may be, by it and the performance or execution thereof by such Panchayat is, in the opinion of the State Government or Prescribed Authority, necessary in public interest.

(2) The Panchayat shall bound to comply with direction issued under Sub-section (1) and if it fails to do so (the State Government or the Prescribed Authority shall have all necessary powers to get the directions complied with at the expense, if any, of the Panchayat) and in exercising such powers it shall be entitled to the same protection and the same extent under this Act as the Panchayat or its officers or servants whose powers are exercised.

It will be clear from Sub-section (1) of Section 86 of the Adhiniyam that the State Government and the Prescribed Authority may by an order direct any panchayat to perform any duty imposed upon it by or under the Act or under any other law for the time being in force. It will be further clear from Sub-section (2) of Section 86 of the Adhiniyam that the panchayat shall be bound to comply with the direction issued under Sub-section (1) and if it fails to do, the State Government or the Prescribed Authority shall have all necessary powers to get the directions complied with at the expense, if any, of the panchayat and in exercising such powers it will be entitled to the same protection and the same extent under the Act as the panchayat or its officers or servants exercise such powers.

4. In the instant case, it is not disputed that Collector who was the Prescribed Authority issued a direction to the Gram Panchayat, Baroli to perform its duty of appointing a Panchayat Karmi u/s 70(1) of the Adhiniyam and that the Gram Panchayat, Baroli failed to comply with such directions. Hence, under Sub-section (2) of Section 86 of the Adhiniyam, the Collector as the Prescribed Authority had the power to get this direction complied with. Under Sub-section (2) of Section 86 of the Adhiniyam the State Government or the Prescribed Authority also have all necessary powers to get the directions complied with. The expression "all necessary powers" will include the power to authorise any authority to perform the duty of the panchayat such as appointment of a Panchayat Karmi under Sub-section (1) of Section 70 of the Adhiniyam. Hence the Collector as the Prescribed Authority had the power under Sub-section (2) of Section 86 of the Adhiniyam to authorise the Chief Executive Officer, Janpad Panchayat, Ajaygarh to appoint a Panchayat Karmi and the Chief Executive Officer, Janpad Panchayat, Ajaygarh by virtue of such authorisation had also the power to select and appoint a Panchayat Karmi of the Gram Panchayat. But since the order of appointment is issued pursuant to authorisation by the Prescribed Authority, the order of appointment is to be treated as an order passed by the Prescribed Authority.

5. Moreover, pursuant to the advertisement issued by the Chief Executive Officer,

Janpad Panchayat, Ajaygarh the two petitioners also submitted applications and had participated in the selection alongwith other candidates. Having participated in the selection conducted by the Chief Executive Officer, Janpad Panchayat, Ajaygarh for appointment of Panchayat Karmi, they cannot turn round at this stage and raise a contention before this Court that the Chief Executive Officer, Janpad Panchayat, Ajaygarh had no power or jurisdiction to conduct the selection and make appointment of Panchayat Karmi.

6. Mr. Abhishek Arjaria, learned Counsel for the petitioners next submitted that the Chief Executive Officer, Janpad Panchayat, Ajaygarh had not appreciated the merits of the candidates properly and that the appointment of the respondent No. 6 as Panchayat Karmi was in violation of the Scheme of 1995 made by the State Government regarding appointment of Panchayat Karmi. This is a matter which can be agitated by the petitioners by way of an appeal or a revision against the order of the Collector as the Prescribed Authority before the Commissioner under Rule 3 or 5 of the Madhya Pradesh Panchayats (Appeal and Revision) Rules, 1995, as the case may be.

7. With the aforesaid observations and directions, this writ petition is disposed of. In case, such an appeal or revision is filed by the petitioners, we hope and trust that the Commissioner will dispose of such appeal/revision as expeditiously as possible.