
(2016) 06 MP CK 0004

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3583 of 2013

Machhali Udyog

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 13-06-2016

Acts Referred:

Citation : (2016) AIR(MP) 166 : (2016) 3 JabLJ 378 : (2016) 3 MPLJ 327

Hon'ble Judges : Shri R.S. Jha, J.

Bench : Single Bench

Advocate : Shri Mukesh Kumar Agrawal, Advocate, for the Appellant; Shri Vaibhav Tiwari, Panel Lawyer, Shri Amit Khatri, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Shri R.S. Jha, J.—This petition has been filed by the petitioner being aggrieved by order dated 4.12.2012 passed by the Additional Collector, Chhindwara in Appeal Case No.30/A- 89/2011-12 whereby the Additional Collector, Chhindwara has quashed the resolution passed by the Janpad Panchayat, Chhindwara dated 5.5.2012 (Annexure P/6) by which it was resolved to grant the lease of Pakhadiya Water Tank, Chhindwara to the petitioner for the purposes of undertaking fishing operation for a period of 10 years.

2. The only ground on which the impugned order is challenged by the learned counsel for the petitioner before this Court during arguments is that the Additional Collector/Collector, Chhindwara had no power or authority to entertain an appeal against the resolution passed by the Janpad Panchayat in view of the decisions rendered by this Court in the case of Sagar Macchua Sahakari Samiti, Seoni v. Chief Executive Officer [2008 (2) MPLJ 194] and in the case of Devidayal Raikwar v. State of M.P. [2008 ILR Vol.2 1370] as well as the decision of the Division Bench of this Court rendered in the case of Basant Kumar v. State of M.P. Writ Appeal No. 627/2008 decided on 7.8.2008. It is submitted by the learned counsel for the petitioner that the provisions of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (herein after referred to as the "Adhiniyam")

does not provide for any statutory remedy of appeal under the provisions of Section 91 of the Adhiniyam or the rules framed thereunder against a resolution of the Panchayat and, therefore, the appeal filed by the respondents against the resolution passed by the Janpad Panchayat, Chhindwara was not maintainable and consequently the impugned order passed by the Collector being without authority of law deserves to be quashed.

3. The learned counsel appearing for the respondent no.4 and the learned Panel Lawyer appearing for the State submit that while it has been held by the Division Bench of this Court in the above mentioned cases, that admittedly and undisputedly no appeal under Section 91 or the rules framed thereunder lies against a resolution passed by the Janpad Panchayat, however, the statutory provisions of Section 85 of the Adhiniyam provide for raising a dispute against the resolution before the State Government or the prescribed authority, who in the case of Janpad Panchayat is the Collector and, therefore, no fault can be found in the impugned order or the act of the Collector in entertaining the dispute raised by the respondent under Section 85 of the Adhiniyam.

4. Before I advert to the issue raised by the rival parties, it would be proper to quote the provisions of Section 85 of the Adhiniyam of 1993 as the same is relevant for the purposes of decision of the issues raised by the parties :

"85. Power to suspend execution of orders, etc.—(1) The State Government or the prescribed authority may by an order in writing and for reasons to be stated therein suspend the execution of any resolution passed, order issued, licence or permission granted or prohibit the performance of any Adhiniyam by a Panchayat, if in his opinion, -

(a) such resolution, order, licence, permission or Adhiniyam has not been legally passed, issued, granted or authorised;

(b) such resolution, order, licence, permission or Adhiniyam is in excess of the powers conferred by this Adhiniyam or is contrary to any law; or

(c) the execution of such resolution or order, or the continuance in force of such licence or permission or the doing of such Adhiniyam is likely -

(i) to cause loss, waste or misapplication of any money or damage to any property vested in the Panchayat;

(ii). to be prejudicial to the public health, safety or convenience;

(iii). to cause injury or annoyance to the public or any class or body of persons;
or

(iv). to lead to a breach of peace.

[(2) Whenever an order is made by the prescribed authority under sub-section (1), it shall forthwith and in no case later than ten days from the date of order, forward to the State Government or the Officer nominated by the State

Government for this purpose, copy of the order with the statement of reasons for making it, and the State Government or the officer nominated by it [may confirm, set aside, revise or modify the order] or direct that it shall continue to be in force with or without modification permanently or for such period as may be deemed fit:

Provided that no order of the prescribed authority passed under sub-section (1) shall be confirmed, (set aside], revised or modified by the State Government or the officer nominated by it without giving the Panchayat concerned a reasonable opportunity of being heard against the proposed order]."

5. From a bare perusal of Section 85 of the Adhiniyam, it is apparent that the State Government or the authority prescribed by the State Government has the power to suspend the resolution passed by the Panchayat or to suspend any lease or permission, etc. issued by it. A perusal of sub-section 2 of Section 85 of the Adhiniyam, makes it further clear that the prescribed authority on taking up the issue under Section 85(1) and on passing an order of suspension is required to forward the matter to the State Government or the authority nominated by the State Government under Section 85(2) of the Adhiniyam, within 10 days for adjudication of the matter.

6. It is also pertinent to note that the State Government in exercise of its powers to delegate and notify under sub-section 3 of Section 93 of the Adhiniyam of 1993, has issued a notification on 5.3.1994 which has subsequently been modified by subsequent notifications including notification dated 12.9.1998 and at item no.40 of the said notification the State Government has notified the prescribed authority under Section 85(1) of the Adhiniyam. A perusal of item no.40 of this notification makes it clear that the Sub Divisional Officer (Revenue) has been notified as the prescribed authority for the Gram Panchayat, Collector has been notified as the prescribed authority for the Janpad Panchayat and the Divisional Commissioner has been notified as the prescribed authority for the Zila Panchayat. From a conjoint reading of Section 85(1) of the Adhiniyam, along with the aforesaid notification, it becomes luminescently apparent that a resolution of the Janpad Panchayat can be assailed under Section 85(1) of the Adhiniyam, before the Collector concerned.

7. The aforesaid statutory mandate that the proceedings against a resolution of the Panchayat can be taken up under Section 85 of the Adhiniyam of 1993 has also been stated, elucidated and has been affirmed and confirmed by the Division bench in the case of "Sagar Macchua Sahkari Samiti, Seoni v. Chief Executive Officer" [2008 (2) MPLJ 194] as well as in the case of "Basant Kumar v. State of M.P." Writ Appeal No.627/2008 decided on 7.8.2008.

8. From a perusal of the decision of the Division Bench in the case of Sagar Macchua Sahkari Samiti (supra), it is also clear that this notification dated 5.3.1994, as modified from time to time, was not brought to the notice of the Division Bench and it was in such circumstances that the Division Bench stated

that a prescribed authority has not been notified by the State Government. However, in the case of Basant Kumar (supra) the delegation of authority was taken note of and it has been held that in the case of Gram Panchayat the Sub Divisional Officer can exercise powers under Section 85(1) of the Adhiniyam of 1993.

9. In view of the aforesaid provisions of Section 85 of the Adhiniyam of 1993 and the notification dated 5.3.1994 as modified from time to time by the State Government and the above cited decisions of this Court, I am of the considered opinion that while an appeal against a resolution of the Janpad Panchayat is not maintainable and cannot be filed under Section 91 of the Adhiniyam or the rules framed thereunder, a dispute against the resolution can be and has rightly been entertained by the Collector in the present case under Section 85(1) of the Adhiniyam.

10. However, from a perusal of the provisions it is abundantly clear that the powers under Section 85(1) of the Adhiniyam conferred upon the prescribed authority is limited only to suspend the resolutions or orders and the exercise of such a power is subject to final scrutiny and decision by the State Government or the nominated officer under Section 85(2) on the matter being transmitted and referred to the State by the prescribed authority under Section 85(1) of the Adhiniyam, as the power to confirm, set-aside, revise or modify a resolution has ultimately and finally been conferred on the authority mentioned in Section 85(2) of the Adhiniyam.

11. When confronted with the aforesaid legal position the learned counsel for the respondent states that the impugned order passed by the Additional Collector be treated as an order of suspension and the State Government may be directed or he may be granted liberty to take up the issue before the State Government against the same under Section 85(2) of the Act.

12. Learned counsel for the petitioner states that in case the status-quo as it exists today is continued, i.e. the petitioner is permitted to take up fishing activities in the Pakhadiya Water Tank, Chhindwara in accordance with the interim arrangement made by this Court in the present petition, he has no objection if the proposition is accepted and the matter is taken up by the respondent no.4 under Section 85(2) of the Adhiniyam before the State Government or the nominated officer and is ultimately and finally decided.

13. In view of the aforesaid consensus between the parties, and the agreement expressed by them before this Court, while it is held that an appeal against a resolution of the Panchayat is not maintainable under section 91 of the Adhiniyam and the rules framed thereunder but the same can be statutorily assailed under section 85 of the Adhiniyam before the prescribed authority, who in the present case is the Collector, and that the power conferred on the Collector under Section 85(1) is confined and limited only to suspending the resolution and thereafter forwarding the matter to the State Government or the nominated

officer within 10 days for final adjudication under section 85(2) of the Adhiniyam, in the peculiar facts and circumstances of this case, the petition filed by the is disposed off with the following directions :-

(1). That the impugned order dated 4.12.2012 passed by the Additional Collector, Chhindwara is held to be an order passed under Section 85(1) of the Adhiniyam of 1993 as no appeal against the resolution passed by the Janpad Panchayat is maintainable under Section 91 of the Adhiniyam or the rules framed thereunder.

(2). That the impugned order passed by the Additional Collector, Chhindwara shall be treated to be an order of suspension of the resolution and not an order quashing the same in view of the fact that Section 85(1) of the Adhiniyam does not confer any power to quash a resolution on the prescribed authority under Section 85(1) of the Adhiniyam.

(3). A copy of the order passed today shall be furnished to the Additional Collector, Chhindwara by the respondent no.4 or the petitioner within two weeks from today and the Additional Collector/Collector, Chhindwara shall thereafter immediately and forthwith take steps to forward the matter along with the necessary requirements as prescribed under Section 85 (2) of the Adhiniyam to the State Government or the officer nominated by the State Government for this purpose within ten days from the date of furnishing the certified copy of the order passed by this Court.

(4) The State Government or the officer nominated by the State Government for this purpose shall thereafter immediately take up the issue and decide the same as expeditiously as possible preferably within a period of six months thereafter.

(5). As the prescribed authority under subsection 1 of Section 85 of the Adhiniyam did not forthwith or in any case within 10 days, forward the matter for final adjudication to the State Government or the officer nominated by the State Government for this purpose in accordance with the procedure prescribed under Section 85(1) of the Adhiniyam, therefore, till the matter is finally decided under section 85(2) of the Adhiniyam, the impugned order of the Collector shall be treated as inoperative and in accordance with the interim order passed by this Court, the resolution of the Janpad Panchayat shall be treated to be operative and the petitioner shall be permitted to take up fishing activities in Pakhadiya Water Tank, Chhindwara.

(6). It is further made clear that the interim arrangement made by this Court would in any case be subject to the ultimate decision taken by the State Government in this regard.

14. With the aforesaid directions and observation the petition filed by the petitioner is disposed of.