

**(2020) 09 MP CK 0021**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 7503 Of 2020**

Manoj Tiwari.

APPELLANT

Vs

Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. &  
Others

RESPONDENT

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**Date of Decision :** 02-09-2020

**Acts Referred:**

Constitution Of India, 1950 — Article 226  
Madhya Pradesh Cinema Viniyaman Adhiniyam, 1952 — Section 5(4)

**Citation :** (2020) 09 MP CK 0021

**Hon'ble Judges :** Subodh Abhyankar, J

**Bench :** Single Bench

**Advocate :** Ajay Gupta, Prashat Singh, Siddharth Sharma

**Final Decision :** Partly Allowed

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## Judgement

This petition has been filed under Article 226 of the Constitution of India by the petitioner Manoj Tiwari, Manager, MPMKVCL (STC) against the order dated 28.1.2020 (Annexure P-3), whereby the respondent No.2/Chief General Manager, Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. has issued a charge sheet to the petitioner in a departmental enquiry initiated against him. In this petition the petitioner has sought the following reliefs:-

"(i) The Hon'ble Court may kindly be pleased to issue writ of certiorari thereby quashing the impugned ante-dated charge sheet (Annexure P-3) issued by the respondent No.2, in the interest of justice.

(ii) Any other relief which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be issued in favour of the petitioner along with cost of the petition."

2. This petition has been filed by the petitioner inter-alia on the ground of malafide on the part of the respondents in initiation of the departmental enquiry, as according to the petitioner, the charge sheet is ante-dated and is liable to be

quashed on this ground only. The other ground, which has been vehemently argued before this Court by Shri Ajay Gupta, learned counsel for the petitioner is that despite there being strict restrictions imposed by the Division Bench of this Court in respect of the Government actions during the Covid- 19 times, the respondents have appointed an Enquiry Officer on 11.5.2020 in the said departmental enquiry and he has also been asked to complete the enquiry preferably within a period of three months' time.

3. Learned counsel for the petitioner has further submitted that in the said departmental enquiry the petitioner has been deprived of his valuable rights to contest the case and to defend his cause, as during the lock down period, as imposed by the State Government he is neither able to procure the relevant documents in support of his defence nor lead the proper evidence by calling the witnesses to substantiate his defence by keeping them present at Bhopal where the enquiry is being conducted but where the situation is grim on account Covid-19 pandemic as the same has been declared as 'Red' zone and the movement of public is severely restricted.

4. A reply to the writ petition has also been filed by the respondents taking a preliminary objection regarding maintainability of the petition against the initiation of the departmental enquiry.

5. Shri Prashat Singh, learned senior counsel for the respondents has submitted that the petition is liable to be dismissed on the ground of maintainability itself, as a remedy of appeal is also available to the petitioner after the departmental enquiry is concluded where the petitioner can raise all the grounds available to him. It is further submitted that even otherwise against the issuance of charge sheet, no petition lies under Article 226 of the Constitution of India as has been held by the Hon'ble Supreme Court in its various judgments. Shri Prashat Singh has further submitted that so far as the contention of the petitioner that he has been restrained from contesting the charge sheet on account of the lock down is concerned, the same is also not tenable, as even in the lock down guidelines issued by the State Government, the Electricity Companies have been relaxed from observing the conditions of lock down. It is further submitted that the respondents-Electricity Department has also issued the guidelines on its own in line with the guidelines issued by the State Government for proper functioning of its activities both in office as well as in the field.

6. Heard the learned counsel for the parties and perused the record.

7. From the record it is apparent that to challenge the departmental enquiry initiated against the petitioner various grounds have been raised by him on merits of the charge sheet itself, however, one specific ground which has been raised by the learned counsel for the petitioner is that he has not been given proper opportunity to lead his evidence during the Covid-19 situation.

8. So far as the merits of the charge sheet are concerned, this Court is not very much impressed by the submission of Shri Ajay Gupta, learned counsel

appearing for the petitioner, as this Court is of the considered that the petition against the issuance of charge sheet is premature, as the petitioner would have ample opportunity to lead his evidence to contest the charges levelled against him but, having said so, this has to be seen by this Court that whether the petitioner is being given proper opportunity to defend his case. In this context it would be relevant to refer to the Division Bench decision rendered by this Court in WP No. 6062/2020 (Sunil Kumar Jain vs. State of M.P. and others), which is in the nature of Public Interest Litigation (PIL) and vide its order dated 20.3.2020 the Division Bench of this Court while relying upon the decision rendered by the Allahabad High Court as also Mumbai High Court, has held as under:-

"The Public Interest Litigations have been presented in this Court raising concern about the current situation created by the Pandemic- Corona Virus Disease (COVID-19) affecting the community at large. Petitioners have raised issues regarding prevention, cure and steps which are taken by the various Authorities and also the Courts in this regard.

Notices have been issued.

State has filed the latest status report (I.A. No.4439/2020, which is taken on record), wherein inter-alia it is stated that the steps have been taken and advisory has been issued to the Educational Institutions to close down and postpone the exams which are scheduled upto 31.03.2020. It has further been stated that in the State of Madhya Pradesh, it is a first stage of Corona Virus Disease (COVID-19) for which suspects have been identified and put under observation and treatment in quarantined/isolated identified places is undertaken by them. There are near about 64 Quarantine Centers identified in all Districts wherein 1304 beds are available for meeting out all the possible eventualities or mishappening in this regard. Further drugs, foods and other necessary things are made available in these Quarantine Centers. There is no shortage of either drugs or any other essential articles in the Quarantine Centers. Even medical and paramedical staff has been deployed in sufficient strength in these Quarantine Centers and, therefore, all the protective measures have been put at appropriate place. Medical Bulletin dated 18.03.2020 vide Annexure D/2 has also been issued by the Directorate of Health wherein it has been reiterated that no positive case in Madhya Pradesh is found till date and only 41 samples have been sent to the Laboratory for testing, out of which 29 samples are found to be negative and reports relating to 12 samples are still awaited. Phone Number 104 has been activated for receiving the information and guidance for Novel Corona Virus Disease (COVID-19) wherein 1479 calls were attended. 11,685 passengers were screened in Indore, Bhopal Jabalpur and Gwalior Airports to ensure that there is no spread of Corona Virus disease (COVID-19) in the State of Madhya Pradesh. Ministry of Health has also issued guidelines for home isolation vide Annexure D/3. Directions have also been issued under Section 5(4) of M.P. Cinema Viniyam Adhiniyam whereby all the cinema halls, theaters and multiplexes have been directed to be closed down upto 31.03.2020 vide Annexure D/5. Necessary

instructions have also been issued to the Railway Authorities to take appropriate action for prevention of Corona Virus Disease (COVID-19).

As per the status report, it has been categorically averred that necessary directives have been issued to all other Departments within the State of Madhya Pradesh.

Learned counsel representing the Bar Association has produced a copy of the order passed by the Allahabad High Court in Writ -C No.7014/2020 dated 18.03.2020 wherein certain directives as contained in para 10 thereof have been issued. Reference was made to the following directions which reads as under:-

"10. Accordingly in our considered opinion all the concerned competent authorities both administrative and nonadministrative under the State Government be issued directions restraining them from taking any coercive measures against any person or body of persons in the society so as to force him/ them to approach the Court for the redressal of grievance and accordingly we issue following directions;

a. All the recovery proceedings at the end of the district administration, financial institution and other administrative bodies/authorities/agencies and otherwise at the end of the instrumentalities of the State shall be deferred for a period of two weeks i.e. till 6.4.2020.

b. All the auction proceeding, if any pending or initiated in the meanwhile, shall remain deferred for a period of two weeks i.e. till 6.4.2020.

c. The District Magistrates and the Administrative Authorities are also restrained from issuing any directions for presence of any person or persons in connection with any pending or any other proceeding for a period of two weeks i.e. till 6.4.2020.

d. No demolition exercise shall be carried out at the instance of District Administration or any authorities under the State Government/local bodies for a period of two weeks i.e. till 6.4.2020.

e. No eviction or dispossession exercise against anyone be undertaken for a period of two weeks i.e. till 6.4.2020."

Similar directions have been issued to the State Government and Municipal Corporation of Greater Mumbai as well as all Municipal Corporation in Maharashtra by the Bombay High Court by way of interim order in WP(L) No.900/2020. Accordingly, after hearing learned counsels representing the petitioners as well as the State of Madhya Pradesh, we issue the following directions:-

1. That the State shall ensure to defer all the recovery proceedings at the end of district administration, financial institutions and other administrative bodies/ authorities/agencies under the same terms as contained in the order passed by the Allahabad High Court in para 10 quoted above.

2. Further, it is clarified that it shall be open to the State to move appropriate courts and obtain necessary orders wherever some urgency is required during the course of these days. The State shall file the latest status report in this regard.

3. Necessary steps will be taken for ensuring the cleanliness in the State of Madhya Pradesh and that there is no accumulation or collection of Garbage at the public places.

4. Public at large is requested to help the administration and ensure that public places are not used for throwing of Garbage and littering should not be done in public places. The waste of individual house should be stored in the respective houses and disposed of through collective disposal mechanism to be provided by the Administration.

Mr. Shekhar Sharma, Additional Advocate General, Mr. Himanshu Mishra, Mr. H.K. Upadhyay, Mr. Ajay Gupta, Government Advocates for the respondents/State assure the Court that the directions issued by this Court shall be strictly complied with and the State Government shall ensure that the proper and necessary instructions are issued in this regard. It was also brought to the notice of this Court that in various places in the State of Madhya Pradesh, collection of Garbage and the cleanliness is required and also in the Court premises i.e. High Court as well as District Courts within the State of Madhya Pradesh. Necessary steps shall be taken in this regard as well expeditiously.

Let a copy of this order be sent to the Registrar General forthwith who shall forward the same to the Chief Secretary of Madhya Pradesh immediately to ensure its compliance by issuing necessary directions/circulars to all the concerned authorities in the matter throughout the State within 48 hours.

A copy of this order shall also be sent to the learned Advocate General for necessary compliance today itself." (emphasis supplied)

9. A perusal of the aforesaid order clearly reveals that while passing of the aforesaid order the intention of this Court was to discourage any unnecessarily litigation forcing any person to approach the Courts and the State Government was directed to ensure that no such action coercive or otherwise be taken against any person, which is not essential and can be postponed during the Covid-19 period. Pursuant to the aforesaid order certain guidelines have also been issued by the State Government, although the aforesaid guidelines have not been placed on record by either of the parties, however, the guidelines issued by the respondents-department have been placed on record. At the time of hearing of the petition Shri Prashant Singh, learned senior counsel for the respondents has also drawn the attention of this Court to the guidelines issued by the State Government to submit that the department of the Electricity has been dispensed with from strictly following the lock down guidelines, but in the considered opinion of this Court the aforesaid relaxation was in respect of the operational activities of the respondents-department and not each and every

official work. Even according to the guidelines issued by the respondents, unnecessary calling of all the employees of the department has also been discouraged, which is also apparent from para 5 of the aforesaid guidelines filed as Annexure R-4. This Court is also of the considered opinion that if according to the respondents the continuation of the departmental enquiry against the present petitioner was essential to keep its business afloat, they were required to take permission of the same or seek clarification from the Division Bench of this Court as has been directed in the aforesaid order passed in the case of Sunil Kumar Jain (supra). Thus in the light of the aforesaid order passed by the Division Bench of this Court as also the guidelines issued by the respondents, this Court is of the considered opinion that the initiation of the departmental enquiry against the petitioner may be correct, but its continuation in the Covid-19 situation where the movement of each and every person in the society has been restricted, cannot be countenanced as the same clearly infringes the very right of the petitioner to free and fair departmental enquiry where he is afforded adequate opportunity of hearing. It is seen that after the Enquiry Officer was appointed on 11.5.2020, the respondents have proceeded against the petitioner in a rather haphazard manner, which was not at all called for and when the petitioner knock the doors of this Court, this Court in this petition vide its interim order dated 29.5.2020 has stayed the impugned charge sheet. Hence, under the facts and circumstances of the case this Court is satisfied that the petitioner has made out a case for interference so far as continuance of the departmental enquiry is concerned during the Covid-19 lock down period as the same militates against the principles of natural justice.

10. As a result, instant petition stands partly allowed and without adverting to the merits of the charge sheet issued to the petitioner, it is directed that the continuation of the departmental enquiry or further proceeding in the departmental enquiry shall remain stayed till the Covid-19 situation continues or till an order to continue with the departmental enquiry or clarification is obtained from this Court as has been directed by the Division Bench of this Court in the case of Sunil Kumar Jain (supra). No costs.