
(2017) 04 RAJ CK 0203
In the Rajasthan High Court
Case No : 5652 of 2016

Om Prakash

APPELLANT

Vs

State of Rajasthan & Ors.

RESPONDENT

Date of Decision : 11-04-2017

Acts Referred:

Citation : (2017) 04 RAJ CK 0203

Hon'ble Judges : Dinesh Mehta

Bench : SINGLE BENCH

Advocate : Sandeep Shah, Manish Patel

Judgement

1. By way of present writ petition, the petitioner has challenged an order dated 08.03.2016 passed by Ombudsman, Mahatma Gandhi NAREGA, District Jodhpur.
2. Shorn of the unnecessary details, concise facts necessary for the purpose of decision of present petition for writ are that the petitioner has been working as Junior Technical Assistant, Mahatma Gandhi NAREGA, Panchayat Samiti Baap of District Jodhpur. The said Panchayat Samiti in its meeting resolved to construct a gravel road from Panna Phata to Pukhtali, at the request of local residents. After following due procedure, the Gram Panchayat sanctioned a sum of Rs.19,41,000/- for construction of the gravel road as aforesaid, which was duly approved by the District Collector, Jodhpur by office order dated 24.12.2014.
3. In pursuance of a complaint, lodged by one Poona Ram Jhanwar, the Ombudsman, constituted under the Mahatma Gandhi NAREGA Grievance Redressal Rules, 2010, taken up proceedings in relation to the construction of the above referred road and framed two issues: "VERNACULAR MATTER OMITTED"
4. The Ombudsman, conducted an inquiry and found with respect to issue No.1 that there is no misappropriation of the funds and the payment has been made as shown in the musterrolls. However, while deciding the issue No.2, he observed that the road in question constructed on "katani raasta" was not useful for the public. In the wake of the finding given for issue No.2, the Ombudsman issued

various directions, out of which the directions No.2 & 3 concerning the petitioner, are reproduced hereinfra: "VERNACULAR MATTER OMITTED"

5. Mr Sandeep Shah, learned counsel for the petitioner, attacking the order dated 08.03.2016 contended that the Ombudsman by way of the impugned order directed to conduct disciplinary inquiry, besides inflicting penalty under section 25 of the Act upon the petitioner, which is wholly void, without jurisdiction and against the principles of natural justice. He further contended that before passing of the order impugned, the Ombudsman has not issued any notice to the petitioner and as such, the same deserves to be quashed, being violative of the principles of natural justice.

6. Mr Shah further contended that the Ombudsman may have jurisdiction to adjudicate the matter, to the extent it relates to malpractice or misappropriation of funds; however, as far as technical feasibility of a project is concerned, he can not pass any order, particularly when the project has been duly approved by the Gram Panchayat and the Collector concerned.

7. Per contra, Mr Manish Patel, learned counsel for the respondents submitted that the order passed by the Ombudsman is in consonance with law. The Ombudsman has conducted thorough inquiry and recorded an infallible finding that the road in question was not at all useful for the public at large and substantial money to the tune of Rs.19 Lacs has gone in vain on account of the construction in question, which does not serve the public purpose. According to him, such irrational act of constructing the road also falls within the ambit of misappropriation or corruption and as such, the findings recorded by the Ombudsman and the punishment proposed is in accordance with law.

8. I have heard learned counsel for the parties and perused the material available on record.

9. The undisputed position, which emerges from the record is that prior to passing of the order impugned against the petitioner, the Ombudsman has not solicited the view point of the petitioner, much less issuing a notice to him. The order impugned proposing disciplinary action against the petitioner and levying of penalty, under section 25 of the Ombudsman Act 2005, definitely leads to adverse civil consequences to the petitioner. Hence, passing such order, without affording an opportunity of hearing, is in flagrant violation of the principles of natural justice and the same is violative of Article 14 of the Constitution of India. On this count alone, the writ petition deserves to be allowed.

10. In view of the extant facts, the order impugned dated 08.03.2016 is quashed and set aside, having been passed behind the back of the petitioner and without providing any opportunity of hearing to the petitioner, which is fundamental to the rule of law.

11. Mr Shah has raised other arguments also, impeaching the findings and jurisdiction of the Ombudsman, however, this Court does not deem it appropriate

to delve upon them at this stage. The petitioner will be at liberty to raise all just objections, including objections regarding jurisdiction, before the Ombudsman, if occasion so arises.

12. With these observations, the writ petition is allowed.