
(2007) 07 MP CK 0020
In the Madhya Pradesh High Court

Pyare Fukki

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 03-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2007) 4 MPHT 60

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.—By filing this petition under Article 226/227 of the Constitution of India the petitioner has challenged the order dated 31-10-2006 (Annexure P-1) passed by the District Magistrate, Bhopal externing him from Bhopal and its contiguous districts for a period of one year with effect from 2-11-2006 and the order dated 5-2-2007 (Annexure P-2) passed by the Appellate Authority, Commissioner, Bhopal whereby his appeal has been dismissed.

2. Briefly stated, the first respondent District Magistrate, Bhopal exercising the powers u/s 8 of the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 (for short "Adhiniyam") issued a notice dated 4-9-2006 (Annexure R-2) to the petitioner informing him the general nature of material allegations against him in regard to his removal u/s 5(a) and (b) of the Adhiniyam. As the petitioner did not submit reply and also after appearing through his Counsel on few dates remained absent the exparte impugned order of externment was passed.

3. Though various grounds have been raised to impugne the orders however, in order to ascertain the grounds raised by the petitioner that he has not been granted opportunity of hearing and that the impugned order has been passed in violation of Section 8(1) of the Adhiniyam the original record from the Office of District Magistrate was directed to be produced. In compliance the original

records from the office of the District Magistrate has been produced and a perusal of the same indicates that after receipt of the report from the Superintendent of Police, Bhopal on 19-5-2006, proceedings were registered and notices were issued to the In-charge Police Station, Tallaiya, Bhopal to record his statement and the statement of witnesses in respect of the report of the Superintendent of Police. On 10-7-2006 statement of two witnesses were recorded and the case was adjourned for recording statement of other witnesses. On 4-9-2006 statement of two more witnesses produced by the In-charge Police Station, Tallaiya, Bhopal were recorded and a notice u/s 8(1) of the Adhinyam was issued to the petitioner and he was directed to appear on 18-9-2006 and file reply. On 18-9-2006 the petitioner's Counsel appeared and sought time. Thereafter, the case was adjourned from time to time and on 31-10-2006 the impugned ex parte order has been passed on the ground that the petitioner has not appeared in spite of opportunities being granted to him.

4. On a close scrutiny of the record, I find that on receipt of the information from the Superintendent of Police the matter was taken up and the statements of the witnesses were recorded. Thereafter, a show-cause notice u/s 8(1) of the Adhinyam was issued to the petitioner. I find that along with the show-cause notice other material on the basis of which the said show-cause notice was issued, i.e., statement of witnesses were not supplied to the petitioner. The record indicates that before issuing show-cause notice the statement of four witnesses including the Police Personnels were recorded and it is on the basis of these statements the show-cause notice was directed to be issued. Having not supplied copies of the statements, in my considered view, the petitioner has been denied proper and effective opportunity of submitting reply to the show-cause notice. From the record, I find that the statements of in all four witnesses were recorded and on the basis of the aforesaid statements the case was registered against the petitioner and he was issued a show-cause notice. The non-supply of these vital documents to the petitioner vitiates the entire proceedings. Even after the petitioner appeared through his Counsel the aforesaid documents were not supplied to him and therefore, passing of the ex parte order of externment without supplying all these documents to the petitioner is not proper. [See Dinnu @ Dinesh v. State of M.P. 2005 (11) MPJR 36].

5. In view of the aforesaid the impugned order by which the petitioner has been externed having been passed without affording him proper opportunity of hearing and without supplying him all the relevant documents deserves to be and is hereby quashed on this ground alone. Since the order has been quashed on the ground of non-supply of relevant documents, in my view, it is not necessary to go into the merits of this case and decide other question raised by the petitioner.

6. Accordingly, the petition succeeds and is allowed. The impugned order Annexure P-1 passed by the District Magistrate and the Appellate Order

Annexure P-2 passed by the Commissioner, Bhopal are quashed. No order as to costs.