

(2012) 09 MP CK 0177
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5762 of 2006

Raj Kumar Kushwaha

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 69,
69(1), 70, 85, 91

Citation : (2013) ILR (MP) 53 : (2012) 5 MPHT 371 : (2013) 1 MPLJ 238

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : A.D. Mishra, for the Appellant; Samdarshi Tiwari, Learned Govt. Advocate, for the Respondents No. 1 to 4 and Shri Pradeep Naveria, Learned Counsel for Respondent No. 11, for the Respondent

Judgement

Hon"ble Shri Justice K.K. Trivedi

1. Aggrieved by the order dated 13.04.2006 passed in Case No. 23/ Appeal/2005-2006 by the respondent No. 6, the Sub Divisional Officer and Prescribed Authority, Niwadi, District Tikamgarh, this writ petition has been filed by the petitioner. It is contended that a process of recruitment of Panchayat Karmi was initiated by the concerned Gram Panchayat by issuing the advertisement. The applications were made by the petitioner and five other persons. It was found that out of six in total, four candidates were related to the then Sarpanch of the Gram Panchayat and, therefore their applications were not to be considered. Out of the two candidates, the petitioner was selected and the order of his appointment as Panchayat Karmi was issued, pursuant to which he gave his joining and thereafter was declared as the Secretary of the said Gram Panchayat by the Collector, Tikamgarh, in exercise of powers u/s 69(1) of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (herein after referred to as "Act"). The appeal was preferred by respondents No. 8 to 11 against the said appointment of the petitioner before the Sub Divisional Officer

and in fact instead of challenging the order of appointment of the petitioner, the resolution of the Gram Panchayat was sought to be challenged. The said resolution was not to be challenged in such a manner and, therefore, such an appeal was not maintainable. The appeal was liable to be dismissed but instead of dismissing the appeal, the same was allowed and the order of appointment of the petitioner was sought to be cancelled by setting aside the resolution of the Gram Panchayat. It is contended that such power was not conferred on the Sub Divisional Officer and as such the order was nonest in the eye of law. Only on the basis of such an order, the petitioner was not to be terminated and, therefore, the writ petition was required to be filed.

2. This Court has entertained the writ petition and has granted an interim stay to the petitioner on 10.05.2006 and notices were issued to the respondents. After service of the notice, the respondents have filed return. Specific return has been filed by the respondents No. 1, 2, 3, 4 and 6 supporting the action of the Sub Divisional Officer. Respondent No. 5 has also filed a return adopting the return of respondents No. 1, 2, 3, 4 and 6. Respondent No. 7 has also filed a reply contending that selection was not rightly done and the candidature of other candidates was not considered. It is contended that since fair selection was not done, therefore, it was rightly set aside.

3. Heard learned Counsel for the parties at length and examined the records.

4. True it is that a resolution of the Gram Panchayat is not to be challenged before the Appellate Authority as the same is not treated as an order. The Division Bench of this Court in various cases has held that only an order consequent upon the resolution of the Gram Panchayat, appointing any person as Panchayat Karmi, is appealable u/s 91 of the Act as also under the rules known as Madhya Pradesh Panchayats (Appeal and Revision) Rules, 1995 (herein after referred to as the "Rules"). However, there is a power conferred on the Prescribed Authority, i.e. the Sub Divisional Officer u/s 85 of the Act to suspend the execution of the orders etc. and a resolution of the Gram Panchayat is also to be suspended by the competent authority. The said suspension of the execution of the resolution is to be affirmed by the next higher authority as per the provisions of sub-section (2) of Section 85 of the Act. At any rate there is no power conferred on a Prescribed Authority or the affirming authority to set aside the resolution. If once the resolution is suspended and the said order of suspension of resolution is affirmed by the competent authority, the resolution is to be pocketed for all time to come and is not required to be implemented at all. No action whatsoever can be taken on the strength of such a resolution, if the same is suspended and such suspension order is affirmed in terms of the provisions of Section 85 of the Act. This was not done by the Prescribed Authority, i.e. the Sub Divisional Officer. He was not required to look into the claim made in the appeal filed by the private respondents, if the appeal was directed against the resolution of the Gram Panchayat. On the other hand, it was to be treated as a complaint u/s 85 of the Act or the concerned appellants were

to be directed to file the appeal against the order of appointment and not against the resolution. Thus, as a whole the order passed by the appellate authority, the respondent No. 6, cannot be said to be in terms of the provisions of the Act. Such an order cannot be affirmed by this Court by grant of stamp of approval.

5. However, this Court cannot shut its eyes to the gross irregularities committed in the matter of appointment in case the same is brought to the notice of this Court even in a writ petition filed against such an order passed by the Sub Divisional Officer. The record indicates that the advertisement was never issued. On the other hand, a public notice was given for initiation of the recruitment process of Panchayat Karmi. The State Government in exercise of powers u/s 70 and 69 of the Act has formulated a scheme commonly known as Panchayat Karmi Yojna. By issuing the circular on 12.09.1995 it is specifically prescribed by the State Government that every Gram Panchayat is required to make appointment of a Panchayat Karmi for the purpose of his notification as Secretary of the Gram Panchayat. In case such a recruitment is to be done, an advertisement is required to be issued not only indicating the vacancy but also indicating the qualification prescribed for such appointment. In case it is required by the Gram Panchayat that any other qualification be added in the advertisement, a resolution is required to be passed in that respect. Only when such a resolution is passed, the Sarpanch of the Gram Panchayat is required to issue the advertisement. The public notice as issued by the concerned Gram Panchayat in the present case, as available on record as Annexure P-4, indicates that the notice was issued on 01.05.2005 by the Secretary of the Gram Panchayat. He was not authorized to do so. Secondly, the same, as has been found by the Sub Divisional Officer, was never placed on the notice board of the Janpad Panchayat, Tahsil or District Collectorate. The public at large was not informed about such an intention of filling the post of Panchayat Karmi. Only few applications were received and most of the applicants were closely related to the then Sarpanch of the concerned Gram Panchayat. This further indicates that some sort of improper proceedings were done for making appointment as Panchayat Karmi. The scheme of the State Government specifically prescribes that Panchayat Karmi is to be appointed only for his notification as Secretary of the Gram Panchayat. Secretary of the Gram Panchayat is required to perform certain statutory duties. For the said purposes, specific rules have been made by the State Government. This being so, the recruitment process should have been done in appropriate manner.

6. From the entire perusal of the record, it is clear that such a process was not initiated by the concerned Gram Panchayat in appropriate manner and improperly the resolution was passed by the Gram Panchayat for making appointment of the Panchayat Karmi. Such an act of the Gram Panchayat cannot be approved. This Court in various cases has found that improper procedure has been adopted by the Gram Panchayats for making appointments of Panchayat Karmis so that such persons after their notification as Secretary of the Gram Panchayat, may act according to the choice of the concerned Sarpanch. This is not the object of making such a scheme and, therefore, this Court will not

hesitate in quashing such proceedings, even though this Court is not approving the order of the Sub Divisional Officer. This Court has ample power under Article 226 of the Constitution of India to quash such a resolution of the Gram Panchayat.

7. Consequently, the resolution dated 12.05.2005 (Annexure P-6) passed by the Gram Panchayat, Devendrapura, Janpad Panchayat, Niwari, District Tikamgarh, is hereby quashed. The order of appointment of the petitioner is also quashed. The Gram Panchayat concerned is directed to initiate the fresh and proper procedure of appointment of Panchayat Karmi strictly in terms of the scheme made by the State Government on 12.09.1995 as also under the subsequent instructions issued by the State Government and to make selection and appointment of a Panchayat Karmi for the purposes of his notification as Secretary of the Gram Panchayat. The Collector, Tikamgarh and the Chief Executive Officer, Janpad Panchayat, Niwari, District Tikamgarh, are directed to ensure proper compliance of this order and to see that proper selection of a person is done for appointment on the post of Panchayat Karmi. The aforesaid exercise be completed within a period of one month from the date of receipt of certified copy of the order passed today. Till the said exercise is completed, Collector, Tikamgarh, will make arrangement for giving current charge of the post of Secretary of the concerned Gram Panchayat to any suitable employee. With the aforesaid, the writ petition is finally disposed of. There shall be no order as to cost.