
(1986) 07 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 705 of 1985

Raja Ram

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 04-07-1986

Acts Referred:

Madhya Pradesh Panchayat Act, 1981 — Section 35, 81, 85

Citation : (1987) MPLJ 493

Hon'ble Judges : Rampal Singh, J; K.M. Agarwal, J

Bench : Division Bench

Advocate : R.D. Jain, for the Appellant; M.C. Jain, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Agarwal, J.

This is a petition under Article 226 of the Constitution challenging the Collector's order u/s 35 of the M. P. Panchayats Act, 1981, (for short, the "Act") removing the petitioner from the office of Sarpanch of Gram Panchayat at Pachera, Tehsil Mehgaon, District Bhind, (for short, the "Panchayat"), as also the order of dissolution of the Panchayat passed by the State Government in exercise of its powers u/s 81 of the Act.

The petitioner was a duly elected Sarpanch of the Panchayat, which consisted of 17 Panchas. Ten out of 17 Panchas claimed to have tendered their resignations to the Sarpanch, who refused to accept the same. The said Panchas, therefore, reported the matter to the Collector, who after notice to the petitioner passed his impugned order dated 23-9-1985, (Annexure P/I) and also recommended to the Government for dissolution of the Panchayat. The State Government, thereupon, passed its impugned order of dissolution dated 4-11-1985, during the pendency of this petition. The order of removal (Annexure P/I) passed by the Collector was initially challenged by the petitioner before the Additional Commissioner by filing

a revision u/s 85 of the Act. As stay sought for was refused by the Additional Commissioner, the petitioner filed this petition on 25-10-1985, and after obtaining an ex-parte order of stay from this court on 30-10-1985, got the revision filed before the Additional Commissioner dismissed on 15-1-1986, as evidenced by Annexure R/3. After the return was filed along with the order (Annexure R/I) of the State Government, the petitioner amended his petition and added a prayer for quashing the order of dissolution passed by State Government as well.

The teamed counsel for the petitioner submitted that the petitioner specifically denied before the Collector that any Panch tendered any resignation to him and consequently it was incumbent on the Collector to afford him an opportunity to adduce evidence in support of his contention. This opportunity, according to him, was denied to him in spite of a prayer being made in that regard on 12-9-1985.

The impugned order of the Collector (Annexure P/I) itself would show that on 8-8-1985, the counsel for the petitioner made a prayer for time to argue the case, which was granted to him till 20-8-1985. The case could not be heard on 20-8-1985, and it was adjourned to 12-9-1985. On 12-9-1985, further prayer for time to argue the case on behalf of the petitioner was made, which was refused, but the petitioner was allowed to submit written arguments by 16-9-1985. It does not appear that any prayer for time to adduce evidence was ever made by the petitioner. The contention must, therefore, fail.

It may also be mentioned that all the 10 Panchas, who had tendered their resignations to the petitioner, were personally present, before the Collector. They specifically stated to have tendered their resignations to the petitioner personally on 6-3-1985, and as they were not accepted, the resignations were again sent to him on 13-3-1985, by registered post. The registered covers were returned by the postal department with the endorsement of refusal. It would, therefore, have been a mere formality to afford the petitioner an opportunity to adduce evidence to rebut the presumption arising out of the postal endorsements even if his allegation of denial of time to adduce evidence is accepted.

It was next contended that as per rule 3(2) of the M. P. Panchayat (Resignation by Office Bearers) Rules, 1982, (for short, the "Rules"), framed u/s 32 of the Act, the Secretary, of the Panchayat is empowered to grant a receipt about the receipt of notice of resignation from a Panch. Consequently, the Panchas were bound to submit their resignations to the Secretary and not the petitioner. This contention must also fail, because rule 3(1) specifically provides giving of notice of resignation to the Sarpanch.

Section 35(1)(a) of the Act specifically provides that the State Government or the prescribed authority may, after such enquiry, as it may deem fit to make, at any time remove an office bearer, if he has been guilty of misconduct in the discharge of his duties. Section 32(1) of the Act and rule 3(1) of the Rules enjoin upon the Sarpanch a duty to receive resignations of Panchas. By not accepting

the resignations of 10 Panchas deliberately, the petitioner undisputedly committed an act of misconduct and thereby rendered himself liable for an action u/s 35(1)(a) of the Act. The impugned order of removal (Annexure P/1) passed by the Collector cannot, therefore, be called to be arbitrary, illegal or without jurisdiction.

By referring to rule 4 of the Rules, the learned counsel for the petitioner submitted that Panchayat alone had power to accept the resignation of a Panch after holding a meeting and after ascertaining the truth or otherwise of the resignation letter from the Panch concerned. Under the circumstances, the Collector had absolutely no right or authority to accept the resignations of the Panchs and thereafter to make a recommendation to the State Government for an action u/s 81 of the Act. It was also submitted that the State Government could not have passed an order of dissolution without giving notice to the petitioner, as it had an adverse effect on his office of Sarpanch. The Panchas have not come forward to challenge the legality or propriety of their resignations being accepted by the Collector. The petitioner cannot, therefore, be allowed to challenge the legality of the acceptance of resignations of Panchas by the Collector. The petitioner has been removed from his office on the ground of misconduct. The misconduct alleged against the petitioner could not have ceased to exist. Even if it is accepted that the Collector had no authority to accept the resignations of Panchas. Consequently, the petitioner cannot claim to be adversely affected by alleged illegality of acceptance of resignations of Panchas by the Collector.

The order of removal passed u/s 35 of the Act takes immediate effect. On the date of the order of dissolution (Annexure R/I) was passed by the State Government, the petitioner had ceased to be a Sarpanch of the Panchayat in view of the Collector's order u/s 35 of the Act (Annexure P/I). The petitioner cannot, therefore, claim a right of hearing before the order of dissolution (Annexure R/I) passed by the State Government in exercise of its powers u/s 81 of the Act.

The learned counsel for the petitioner cited *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*, , *A.R. Antulay Vs. Ramdas Srinivas Nayak and Another*, , and *S. L Kappor vs. Jagmohan*, AIR 1981 SC 135, in support of his contention. However we do not think it necessary to deal with the cases in detail, because the facts in the said cases are, altogether different and because they do not relate to interpretation of any provision akin to the provisions of sections 32 and 35 of the Act or of the rules hereinbefore examined.

In the result, this petition fails and is hereby dismissed. The parties are directed to bear their costs as incurred. The outstanding amount of security, if any, shall be refunded to the petitioner.