
(2004) 07 MP CK 0039

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4714 of 2003

Rajendra Singh Raghuwanshi

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 21-07-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 40

Citation : (2004) 3 MPHT 373 : (2004) 4 MPLJ 6

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

Bench : Single Bench

Advocate : A.P. Shroti, for the Appellant; Deepak Awasthy, Panel Lawyer, for the Respondent

Judgement

K.K. Lahoti, J.

Petitioner has filed this petition challenging the orders (Annexure P-5) by the Sub-Divisional Officer, Sohagpur, dated 3-10-2002, Annexure P-6 by the Collector, Hoshangabad, dated 31-3-2003 and Annexure P-7 by the Commissioner, Hoshangabad, dated 3-7-2003, by which the petitioner has been removed from the office of Sarpanch of Gram Panchayat, Baruadhana, Block Sohagpur, District Hoshangabad, because of allegations of misconduct shown in show-cause notice (Annexure P-2).

Facts of the case, in short, are as under :--

Petitioner was elected Sarpanch of Gram Panchayat, Baruadhana on 30-1-2000. Some complaint was made against the petitioner and preliminary enquiry was conducted by Chief Execution Officer, Sohagpur, who found, prima facie, misconduct established, and on the basis of this the Sub-Divisional Officer issued the petitioner show-cause notice (Annexure P-2), dated 22-5-2002. Petitioner did not accept to the allegations made in the preliminary enquiry. Thereafter, on the request of petitioner, a three member committee was constituted to enquire into

the allegations against the petitioner. This three member committee was constituted of Sub-Divisional Officer, (R.E.S.), Sohagpur, Naib Tehsildar, Sohagpur and P.S.E.O. This committee enquired into the matter and submitted its report in respect of the allegations made in show- cause notice (Annexure P-2) and also found that there are certain other irregularities in respect of the works of petitioner and submitted the report. The Sub-Divisional Officer on the basis of preliminary report and report submitted by the aforesaid three member committee found allegations against the petitioner proved and removed the petitioner from the office of Sarpanch. Against this order appeal was preferred, but was dismissed by the Collector, Hoshangabad vide order (Annexure P-6) and the revision was also dismissed by the Commissioner, Hoshangabad by order (Annexure P-7).

Learned Counsel for petitioner submitted that in this case principle of natural justice is violated. Before holding preliminary enquiry, petitioner was not noticed and the entire enquiry was conducted behind the back of petitioner. Thereafter, though on the prayer of petitioner three member committee was constituted, but the same committee conducted the enquiry without any notice to the petitioner. The petitioner was also not supplied copy of report submitted by the committee and the matter was decided without affording hearing to the petitioner. The petitioner raised this objection before the Sub-Divisional Officer, the Collector and also before the Commissioner that no proper opportunity of hearing was provided to the petitioner to meet out the allegations in the case, even the preliminary enquiry report or the report submitted by the committee was not furnished to the petitioner. The three member committee which was constituted in respect of the enquiry on three allegations has reported that there are several other irregularities and all the aforesaid acts have been taken into consideration by the Sub Divisional Officer while passing the order (Annexure P-5). In the aforesaid circumstances, petitioner has been deprived to contest the case on merit and has been removed from the office of Sarpanch with the allegation. The petitioner was holding a public office and was not afforded due opportunity of hearing. This is a serious stigma against the petitioner and petitioner deserves to be allowed opportunity to submit his case before the authority. Reliance-is placed to the law laid down by this Court in Kamal Kishore Vs. Janpad Panchayat, Nalkheda and Others, , Raja Raj Singh v. State of M.P. and Ors. [2001(4) M.P.L.J. 364] and Kailashchandra Jain Vs. State of M.P. and Others, and contended that the authorities be directed to furnish the copy of preliminary enquiry report and the report submitted by three member committee and thereafter petitioner be allowed opportunity to submit his case before the authority and only thereafter the matter be directed to be decided on merits.

Learned Counsel appearing for State opposed the aforesaid prayer and contended that preliminary enquiry report was not asked by the petitioner before the Sub Divisional Officer. A three member committee enquired into the matter in the presence of petitioner. Hence, there was no question for supply of report. The committee on the enquiry found that there are several other misconduct of

petitioner and has reported the matter accordingly, to the Sub Divisional Officer. There is nothing wrong in the aforesaid report of three member committee, which was constituted at the instance of petitioner. In the circumstances, this petition has no merit and may be dismissed.

From the perusal of show-cause notice (Annexure P-2) it is apparent that it was issued in respect of three specific allegations of construction of Baruadhana Tank, repair of well in Village Baruadhana and repairs of school building in Village Raipura and Baruadhana. There were serious allegations against the petitioner and it appears that the aforesaid show-cause notice was issued because of enquiry report of Chief Executive Officer, Janpad Panchayat, Sohagpur. It is not disputed that the aforesaid report was not supplied to the petitioner. Thereafter petitioner, who was not agreeing with the allegations pursued to the Sub Divisional Officer for constituting a three member committee. This committee enquired into and submitted its report on 1-10-2002. It appears that on 1-10-2002 the Sub Divisional officer found that the enquiry was conducted in the presence of petitioner and the case was fixed for orders. Thereafter the matter was decided by the Sub Divisional Officer vide order (Annexure P-5), dated 3-10-2002, considering the report submitted by the three member committee, the petitioner was removed from the office. The petitioner thereafter filed an appeal before the Collector, Hoshangabad, in which petitioner has also submitted various objections, but the appeal was also dismissed. Before the Commissioner the petitioner also raised similar objections, which are considered by the Commissioner in Para 4 of the order. The Commissioner found that the enquiry report of Committee is available in the file, the committee was directed to enquire into the work of the petitioner. The committee has submitted its report in detail. In these circumstances, there was no necessity for supplying the report of Chief Executive Officer, Sohagpur or the material collected by him. The committee has inspected the spot and found allegations are proved against the petitioner. The committee has afforded opportunity to the petitioner to explain everything on the spot. In these circumstances, there was no necessity for seeking explanation before the Sub Divisional Officer. On these grounds the revision was also dismissed.

This Court in Kamal Kishore (supra) held :--

"Section 40 of the Panchayat Raj Adhiniyam provides that;

(i) 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--

(a) if he has been guilty of misconduct in the discharge of his duties; or

(b) if his continuance in office is undesirable in the interest of public :

Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office.

Explanation : For the purpose of this sub-section "misconduct" shall include :--

(a) any action adversely, affecting--

(i) the sovereignty, unity and integrity of India;

(ii) the harmony and the spirit of common brother hood amongst all the people: of State transcending, religious,, linguistic, regional, cast or sectional diversities; or

(iii) the dignity of women; or

(b) gross negligence in the discharge of the duties under this Act.

So if at all any action has to be taken in view of the provisions of Section 40 of the Panchayat Raj Adhiniyam for the purpose of removal of office bearer of Panchayat, the prescribed authority will have to hold firstly an inquiry for the purpose of finding out whether the delinquent happens to be guilty of things described by the provisions of Sub-clauses (a), (b) or the proviso to Section 40, Sub-section (1). Further, the prescribed authority will have to point out that the conduct of delinquent is falling under the category of "misconduct" as indicated by the explanation provided to Sub-section (1) of Section 40 of the Panchayat Raj Adhiniyam.

In the present case the opponents do not have any ground to show that the petitioner's conduct was any way coming under the category prescribed by word "misconduct". If the action has to be taken on other counts, the prescribed authority is obliged to find out whether the act committed by such delinquent is falling under the category indicated by Sub-clause (b) of the explanation, i.e., "gross negligence" in the discharge of the duty under this Act. The opponents are also not in a position to show any such act on the part of the petitioner which would bring him under the category of Sub-clause (b) of the explanation provided to Sub-section (1) of Section 40 of the Panchayat Raj Adhiniyam. The proposed actions which are to be taken in view of the provisions of Section 40 of the Panchayat Raj Adhiniyam, have to be taken with all seriousness. The officer working as prescribed authority has to keep in mind that proposed action is likely to dislodge a person who has been duly elected by members of the public and that to for the purpose of holding the office as indicated by the said Panchayat Raj Adhiniyam for performance of the duties indicated by the post or various posts of such panchayats. When a person duly elected by members of the public in accordance with the enactment so made is to be punished legally there should be compliance of the necessary provisions of the relevant enactment. Such authority has to keep in mind that the clogs provided in such proposed action, by the legislature by means of sections, sub-sections, clauses and the sub-clauses of such enactments, have been provided with some specific intention of securing the assurance that no such actions are taken unwarrantedly, without good reasons and baselessly. When the word "after such enquiry" has been used, it always means that there has to be a systematic proper and reasonable inquiry consistent with the settled principles of law and rule of natural justice. A person against whom such action has to be taken has to be given sufficient opportunity

of showing cause as to why such action should not be taken against him. Thereafter, the prescribed authority has to record its opinion which should be well supported by good reasons so as to indicate that the prescribed authority has acted consistently with the provisions of law and rule of natural justice. While doing so, the prescribed authority has to keep in mind that this enactment is nothing but a step taken by the duly constituted Government for the purpose of acquiring the welfare of its citizens, as a welfare State. The purpose for which this enactment has been made and various schemes, which have been prepared for the purpose of implementation, has to be understood properly. If a person takes a lead for the purpose of leading uneducated members of Panchayat or village for the purpose of achieving the object sought to be achieved by schemes of Avas Yojna, for the benefit of members of public at large, that has not be discouraged unless the person doing such an act is acting for the purpose of gaining unwarranted gain or advantage for him which is detrimental to the purpose for which the enactment has been made and the schemes have been prepared. If there is nothing prejudicial to be purpose or scheme of Avas Yojna, if there is no loss caused or likely to be caused to the Government, exchequer or to the public interest, guidance provided by office bearers of Janpad Panchayat or Gram Panchayat, to poor villagers should not be looked with contempt and with a look of disdain. Such attitude should be totally avoided which is basically detrimental to the concept of "welfare of state" which has been commonly accepted by thinkers of jurisprudence of this era.

The act which is challenged by this petition is an act guided by misinterpretation of the provisions of the Act. Therefore, this Court does not find any propriety of criticising it more.

Thus, the petition is decided finally at this stage and the order, act which is being challenged by this petition is set aside, petitioner be restored to his own post status, dignity and powers which he was possessing before passing of impugned order and all consequential disqualifications are hereby removed. Petition is thus allowed but with no order as to cost."

This Court in Raja Raj Singh (supra) considering similar circumstances held :--

"The present factual matrix has to be tested on the anvil of the law laid down in the aforesaid decisions. It is not disputed by the learned Counsel for the State that the inquiry was conducted by the three members of the committee behind the back of the petitioner. Such preliminary inquiry may have the sanction of law and the petitioner can not claim that the said inquiry should be held in his presence but the real inquiry has to be held by the prescribed authority and in the said inquiry where the petitioner has to be given due/adequate/sufficient opportunity. It is submitted by Mr. Bhatti, on a perusal of the impugned order passed by the prescribed authority, it is perceptible that the persons who made complaints against the petitioner were not examined by the prescribed authority and the petitioner could not have cross-examined them but, unfortunately the statements of the said witnesses have been considered by the Collector and been

utilised against the petitioner. On a perusal of the record, it is noticed that this fact is borne out on record and the learned Counsel for the State is not in a position to dispute the same. Quite apart from that, it is noticeable that the petitioner's application for supply of documents had not been properly construed by the prescribed authority, as the petitioner was supplied only the inquiry report but not the materials/other documents. An interesting feature which can not be lost sight of is that the appellate authority has called for these documents by order dated 8-4-1999 but it does not appear that the petitioner was supplied the said documents. It has been ruled in the case of Bansmani (supra), the documents which are sought to be utilised against the holder of the office, should be supplied to him so that he can have fair chance to rebut the same. As the factual matrix indicates the materials collected against the petitioner were not supplied to him and further the petitioner was not granted sufficient opportunity to produce his evidence to rebut the allegations made against him, I am of the considered view, the order passed by the prescribed authority and affirmed by the appellate authority are vulnerable being violative of principles of natural justice as well as being against the basic concept of adjudicating process and accordingly, the said contained in Annexures P-12 and P-18 are hereby quashed. As the orders being quashed on this limited ground a proper inquiry has to be held. To cut short delay, it is directed that the petitioner shall appear before the prescribed authority on 7-1-2000 and the prescribed authority shall supply him the documents within a period of two weeks therefrom and proceed with the enquiry as per law. It is hereby made clear, after receiving the relevant documents, it would be open to the petitioner to file an additional reply, if he so chooses. The prescribed authority shall conclude the proceeding by end of February, 2000."

In Kailashchandra Jain (supra) this Court held --

"Shri B.P. Sahu has submitted the preliminary enquiry report. Enquiry was conducted by Shri Sahu in December, 2000. Show-cause notice was issued on 19-2-2001 u/s 40 of the Act. The report which has been submitted by CEO in the instant case after issue of show-cause notice is in favour of the petitioner. Earlier preliminary enquiry was ex-parte enquiry though the statement of the petitioner was recorded. Thus, in my opinion, it was not open to act upon the preliminary enquiry report to remove the petitioner. Bipartite enquiry ought to have been conducted by the SDO giving petitioner opportunity of cross-examination of the witnesses. Nothing of that sort has been done. No semblance of enquiry has been held by the SDO. This Court in Kamal Kishore Krishna Gopal Khandelwal v. Janpad Panchayat, Nalkheda and Ors. 2000(1) MPLJ 309, has held that enquiry u/s 40 is not an empty formality. There should be compliance of necessary provisions and person should be punished legally. Person has to be given due opportunity of defending himself by conducting the enquiry in the presence of the Sarpanch who is proposed to be removed. The Sarpanch has to be given opportunity of cross-examination of the witnesses, that opportunity has not been given in the case, if the enquiry report submitted was to be acted upon that is in

favour of the petitioner. In case SDO was not to agree with it, further enquiry ought to have been held in presence of the petitioner proper enquiry is required subsequent to issue of show-cause notice. Thus, the order of removal of the petitioner can not be sustained."

In view of settled law by this Court in aforesaid three judgments, it is apparent that petitioner was entitled for the enquiry report submitted by three member committee before deciding the matter finally by the Sub Divisional Officer. The petitioner was not afforded due opportunity to explain before the Sub Divisional Officer and the Sub Divisional Officer relying on the report, has decided the matter finally. On the date when this report was submitted, the petitioner was entitled to submit his objection and if the Sub Divisional Officer after consideration, that the objections are having some substance, then the matter ought to have been decided in view of objection submitted by the petitioner and if the objections are found without substance, the Sub Divisional Officer after hearing the parties ought to have decided the matter finally. In this case show-cause notice was issued in respect of three allegations, while the report was submitted in respect of various other misconducts. Thus, petitioner ought to have been afforded an opportunity to submit his explanation before the Sub Divisional Officer, but such opportunity was not allowed and the petitioner was deprived with the aforesaid opportunity and principle of natural justice has been violated. Though, this point was raised in the appeal and revision, but was not considered properly.

In the aforesaid circumstances, I find merit in this petition and it is allowed. Orders (Annexure P-5, Annexure P-6 and Annexure P-7) are hereby quashed and the matter is remitted back to the Sub Divisional Officer-cum-Prescribed Authority, Sohagpur, District Hoshangabad to proceed in the matter, after supplying the copy of enquiry report submitted by the three member committee to the petitioner. The petitioner be allowed one opportunity to submit his explanation before the Sub Divisional Officer and thereafter the Sub Divisional Officer shall decide the matter, in accordance with law. The petitioner shall be reinstated as Sarpanch, Gram Panchayat, Baruadhana, till the decision by Prescribed Authority. The petitioner shall be entitled to participate in all the proceedings of Panchayat as Sarpanch of Gram Panchayat, but shall not indulge himself in any manner in any financial activities of Panchayat, till the decision of matter by the Sub Divisional Officer. All the financial matters shall be dealt with by the Chief Executive Officer, Janpad Panchayat, Sohagpur, in accordance with law and after the decision by Sub Divisional Officer, the matter will be dealt with, in accordance with the decision of the Sub Divisional Officer. No order as to costs.