

(1984) 08 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 225 of 1981

Ram Singh Chauhan

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 02-08-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Panchayat Act, 1962 — Section 27

Citation : AIR 1984 MP 151

Hon'ble Judges : V.D. Gyani, J;P.D. Mulye, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; S.R. Joshi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.D. Mulye, J.—The petitioner who was elected Sarpanch of Gram Panchayat Semlya Chau in 1978, has filed this petition under Arts. 226 and 227 of the Constitution of India, which arises out of the provisions of Section 27 of the Panchayat Act, 1962, whereby the petitioner has been removed from the post of Sarpanch and a recovery of Rs. 18,383.77 p. is ordered against him.

2. The petitioner's case, in brief, may be stated thus : That the petitioner is an active worker and leader in his area of Bhartiya Janta Party and was elected as Sarpanch of Gram Panchayat Semlya Chau in 1978; that when the Congress (I) came to power in M. P. in the general elections held in 1980, it started wreaking vengeance on workers and leaders of Bhartiya Janta Party and adopted all means fair or foul to eject workers, and leaders of Bhartiya Janta Party from all positions of power and elective posts. Further according to the petitioner the respondent No. 2 Collector, Indore actively helped the Ruling Party in their efforts to remove all opposition workers from elective posts and, thus, mala fide served a notice on the petitioner u/s 27 of the M. P. Panchayats Act, 1962 dated 28-11-1980 (Annexure-A) calling upon him to show cause why he should not be removed

from the office of Sarpanch. Further according to the petitioner, in fact, this notice was not served on him in person but he had to apply for getting a copy thereof after reading in local newspapers about the Collector having issued such a notice. As the show cause notice Annexure-A was issued on the basis of the report of the Deputy Engineer, Shri Girish Borgaonkar the petitioner by Annexure-B dated 15-12-1980 requested the Collector to supply him with a copy of the said report so that he would be in a position to give a detailed reply to the show cause notice. However, admittedly no such copy was supplied to the petitioner though vide Annexure-C dated 15-1-1981. He was called upon to appear before the Collector on 2-3-1981 on which date he sought adjournment and on 13-3-1981 the petitioner again asked for a copy of the report of Shri Borgaonkar and with the said reply also submitted the valuation report which he got prepared from Shri S. S. Telang, a registered valuer. But ultimately by Annexure-F dated 29-4-1981 the Collector ordered removal of the petitioner from the office of Sarpanch and directed that a sum of Rs. 18,383.77 p. be recovered from him as arrears of land revenue.

3. Against the said order the petitioner filed appeal before the Revenue Commissioner, Indore Division, Indore u/s 303 of the said Panchayat Act Annexure-G, but without deciding the same on merits he returned the same to the petitioner on the ground that he had no jurisdiction to hear the appeal in view of the fact that no specified appellate authority has been prescribed as per clause 83 (1) of the Panchayat Ordinance. 1981. Hence this petition.

4. The respondents in their returns have asserted that it was not necessary to supply a copy of the report of Shri Borgaonkar to the petitioner. It is also stated that it is clear from the show cause notice that even though the petitioner had obtained a grant of Rs. 50,000 for sinking four wells in the area as per the valuation report of Shri Girish Borgaonkar, Sub-Engineer the total amount involved in sinking those wells was Rs. 31,616.23 p, and thus prima facie the petitioner had misappropriated a sum of Rs. 18,383.77 p. It is further stated in the return that question of giving any copy of the report of Shri Borgaonkar did not arise in view of the fact that the entire work, which was carried by the petitioner was recorded in the measurement book which was signed by the petitioner and therefore, the order of the Collector was quite proper.

5. The learned counsel for the petitioner mainly contended that the principles of natural justice demanded that as the basis on which the show cause notice was issued to the petitioner, namely the report of the Sub-Engineer Shri Borgaonkar, a copy thereof ought to have been furnished to the petitioner so that on that basis he could give a detailed reply, because it is not the case of the respondents that no work regarding the wells as such was done by the petitioner. He further submitted that though he was the Sarpanch there is nothing on record to indicate that it was his personal responsibility or liability regarding the sinking of those wells. He also submitted that the show cause notice indicates that the petitioner had misappropriated the sum of 18,383.77 P. as no such charge was

ever levelled against him. At all at any point of time and it is only for the first time in the returns that this allegation is made against the petitioner. He also submitted that in the impugned order Annexure-F the reasons given by the Collector for removing the petitioner from the post of Sarpanch are such about which there is no mention in the show cause notice as a result of which the petitioner has been deprived of giving any explanation regarding the same. It was, therefore, submitted that the impugned order is violative of the principles of natural justice and is illegal because his removal from the post of Sarpanch has been passed on such grounds about which no mention was made in the show cause notice. He therefore, submitted that the Collector was biased against the petitioner and he has committed an error in basing his conclusions on the report of the Sub-Engineer Shri Borgaonkar which could not be relied upon in absence of its copy having been supplied to the petitioner who was thus, deprived of making submission, regarding that report.

6. It was also submitted on behalf of the petitioner that he should have been given an opportunity to explain the real position regarding the construction of the wells as admittedly the accounts thereof are with the respondents. It was also submitted that after all there is bound to be some difference between the estimates initially prepared and the actual cost of construction which may vary from time to time depending upon several factors and consequently the removal of the petitioner merely on the basis of the report of the Sub-Engineer and ordering recovery of the amount of Rs. 18,383.77 p. is bad in law and thus deserves to be quashed. He also submitted that the Commissioner was bound to hear the appeal on merit in view of Section 6 of the General Clauses Act, according to which he had the jurisdiction to hear the appeal in this case.

7. The learned counsel for the respondents feebly tried to support the impugned order Annexure-F. His contention was that as there is record regarding the estimates as also the measurement book, it was not necessary to supply the petitioner with the copy of the report of the Sub-Engineer. It appears that even though calculations have not been done in the present case nor any such opportunity was also given to the petitioner to explain the same in the light of the report of the said Engineer, the Collector erroneously has presumed that the petitioner has misappropriated the amount to the tune of Rs. 18.383.77 and has thus ordered its recovery though no such specific charge was levelled against him in the show cause notice.

8. Thus, after hearing the learned counsel and after going through the Annexures we are of opinion that this petition deserves to be allowed. Ordinarily we would have remanded the case to the Collector to decide the case after giving proper and adequate opportunity to the petitioner to make his submissions in reply to the show cause notice. But a period of almost six years have elapsed since 1978 and, therefore, no useful purpose will be served in remanding the case as in our opinion the impugned order Annexure-F is patently wrong and illegal having ignored the principles of natural justice and having based his conclusions on the

allegations which the petitioner was not called upon to answer in the show cause notice. It is thus apparent that he has taken into consideration extraneous matters while passing the impugned order. In this case no evidence has also been recorded before passing the impugned order which was absolutely necessary.

9. In the result this petition succeeds and is allowed with costs. The impugned order Annexure-F is quashed and set aside. Counsel's fee Rs. 200/-. The amount of security deposit on verification be returned to the petitioner in person.