
(2011) 08 MP CK 0029

In the Madhya Pradesh High Court

Case No : Writ Petition No. 14704 of 2007

Satyendra Pratap Singh Bundela

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 85,
86(1)(2)

Citation : (2011) ILR (MP) 2390 : (2011) 4 MPLJ 207

Hon'ble Judges : Keshav Kumar Trivedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.K. Trivedi, J.

By this writ petition under Article 226 of the Constitution of India, the petitioner has called in question the order dated 6-10-2007 (Annexure P-5) issued by the respondent No. 2 stating that an advertisement was issued by the Gram Panchayat;. Latagaon, Janpad Panchayat, Maihar, District Satna, pursuant to the instructions issued by the competent authority to make appointment on the post of Panchayat Karmi. The eligibility conditions were mentioned in the said advertisement, copy of which is placed on record as Annexure P-1.

It is contended that vide order dated 26-8-2007, the petitioner was appointed on the post of Panchayat Karmi and he joined on the post on 29-8-2007. He started working and when the matter was referred for notifying him as Secretary of the aforesaid Gram Panchayat, impugned order was passed by the respondent No. 2 referring the matter to the Chief Executive Officer of Janpad Panchayat, Maihar, District Satna, to take action in respect of appointment of Panchayat Karmi in the said Gram Panchayat so that action may be initiated for notifying the said person as Secretary of the Gram Panchayat. It is contended that such an action on the part of respondent No. 2 was bad in law inasmuch as the direction issued by the

competent authority was complied with by the Gram Panchayat and the provisions of sub-section (2) of section 86 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as Act) were arrested and not applicable. No power for issuance of such direction could have been exercised by the respondent No. 2 since the direction of the competent authority given under sub-section (1) of section 86 of the Act was already complied with by the Gram Panchayat. It is, thus, contended that the action on the part of respondent No. 2 was bad in law and such order was liable to be quashed. Therefore, the writ petition was required to be filed. The relief is claimed to this effect in the writ petition with a direction to the respondent authorities to allow the petitioner to continue on the post of Panchayat Karmi.

Writ petition was entertained and notices were issued. An interim stay was granted by this Court on 12-12-2007.

The respondents, after service of notice, have filed the return along with which they have produced the record to show that there was no resolution passed in favour of the petitioner for his appointment as Panchayat Karmi. It is categorically contended in the return of respondents No. 1 and 2 that the petitioner has not given the proof of his selection as Panchayat Karmi by the Gram Panchayat in his petition and in fact he has not come with the clean hands before this Court. Undisputedly, after issuing the advertisement, receiving the applications for appointment on the post of Panchayat Karmi, pursuant to the said advertisement, the meeting of the Gram Panchayat was held on 26-8-2007. However, while considering the applications filed by various persons, as many as 25 including the present petitioner, the Gram Panchayat reached to the conclusion that because of difference of the opinion expressed by the Panchas, selection of any candidate could not be done. It is categorically stated in the return that the resolution on that day was passed to refer the matter to the Chief Executive Officer of Janpad Panchayat, Maihar and the meeting was closed. It is contended that on drawing of the merit list, one Anupam Gupta was put at S. No. 1 and four Panchas have expressed that looking to the merit of the said person, he should be appointed on the post of Panchayat Karmi. However, out of the present Panchas, 14 Panchas were in the favour that the appointment of present petitioner be made. Since the resolution was not required to be passed on the basis of voting, ultimately the Gram Panchayat resolved to refer the matter to the Chief Executive Officer of Janpad Panchayat without making any selection. Thus, it is contended that there was no wrong committed by the competent authority in case the matter was directed to be decided by the competent authority. It is, thus, stated in the return that the petition being misconceived, is liable to be dismissed.

The respondent No. 4 has filed separate return but has simply said that despite the resolution dated 26-8-2007 and despite the fact that present petitioner was not appointed, yet the then Sarpanch of the Gram Panchayat issued the order of appointment in favour of the petitioner which could not have been done. It is

further contended that the said earlier Sarpanch of the Gram Panchayat was required to be impleaded as a party by name but this was not done, therefore, present petition was liable to be dismissed. Nothing more has been stated in the return of respondent No. 4 except that one Satsan Bharti was earlier working as Secretary of the Gram Panchayat, Latagaon, district Satna, who was transferred and in his place one Premlal Choudhary was posted, who has taken over charge and is working with effect from 12-6-2008.

One Anupam Gupta has filed an application for intervening in the writ petition to oppose the same stating that he was one of the candidates for appointment on the post of Panchayat Karmi and his application was considered by the Gram Panchayat. According to the merit order, the name of said Anupam Gupta was put at S. No. 1 of the merit list but since other Panchas were not accepting the merit of Anupam Gupta, the matter was referred to the Chief Executive Officer of Janpad Panchayat. As no action was being taken, the said person came before this Court by filing W.P. No. 1656/2008, which was disposed of by this Court vide order dated 15-2-2008. The matter was directed to be referred to the Sub Divisional Officer under the provisions of section 85 of the Act for conducting an enquiry. The Sub Divisional Officer is required to pass an order but because of interim stay granted in this writ petition, the said proceedings are not being completed. The intervener has contended that writ petition is, thus, liable to be dismissed.

Heard the Counsel of parties at length and perused the records.

In the considered opinion of this Court, the writ petition filed by the petitioner is liable to be dismissed straightway for the simple reason that there was no selection of petitioner for appointment on the post of Panchayat Karmi, The scheme made by the State Government specifically provides that a resolution is required to be passed by the Gram Panchayat selecting a candidate for appointment on the post of Panchayat Karmi. One more person is required to be put in the waiting list, after examining the merit of each candidate. After selection is completed by Gram Panchayat, necessary orders are required to be passed by the Sarpanch of the Gram Panchayat. The Sarpanch on his own cannot issue any order of appointment in favour of any person appointing him as Panchayat Karmi. From a perusal of the resolution dated 26-8-2007 it is clear that because of the dispute raised in the meeting of the Gram Panchayat with respect to the selection of a candidate and because of the difference of opinion amongst the Panchas, the matter was referred to the Chief Executive Officer of Janpad Panchayat, Maihar. This indicate that the instructions issued under sub-section (1) of section 86 of the Act were not fully complied with by the Gram Panchayat, Latagaon. In such circumstances, the only option left was to direct the competent authority to pass the order exercising the power of the Gram Panchayat as per the provisions of sub-section (2) of section 86 of the Act. This being so, it cannot be said that the order issued by the respondent No. 2 on 6-10-2007 was beyond his jurisdiction. In fact it was the duty on the part of the

petitioner to place on record the resolution to indicate that he was duly selected by the Gram Panchayat on the date when the meeting was held. Instead he suppressed this material fact that the resolution was not passed with respect to any such person, who had made the application for appointment on the post of Panchayat Karmi in the meeting of the Gram Panchayat held on 26-8-2007. For the aforesaid reason, the petition is liable to be dismissed.

For the reasons and the findings recorded hereinabove, this writ petition is hereby dismissed but with no order as to cost. The interim order of stay granted by this Court is hereby vacated.