
(2010) 01 MP CK 0003
In the Madhya Pradesh High Court
Case No : Writ Petition No. 596 of 2009

Shiv Charan Bhurtiya

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 15-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 69,
69(1), 86, 86(1), 86(2)

Citation : (2010) ILR (MP) 1065 : (2010) 3 MPJR 42

Hon'ble Judges : P.K Jaiswal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Jaiswal, J.

By this writ petition under Article 226 of the Constitution of India, the Petitioner is challenging the order dated 29/12/2008 by which Respondent No. 3 - Collector, Shahdol, in exercise of powers conferred u/s 86(2) of M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (in short "the Act") terminated the Petitioner from the post of Panchayat Karmi, Gram Panchayat, Bocharo, Janpad Panchayat, Beohari and in exercise of powers conferred u/s 69 of the Act de-notified him from the post of Panchayat Secretary.

By the impugned order, Respondent No. 3 has found gross irregularities which were committed by the Petitioner while he was discharging the functions of Panchayat Secretary. Up-sarpanch, Panchas and other villagers of Gram Panchayat, Bocharo have made a complaint (Annexure-R/4-1) against the Petitioner who was then working as Panchayat Karmi of Gram Panchayat, Bocharo in which various allegations were made with respect of his working. On this complaint, Shri S.K. Shukla, Dy. Director, Panchayat and Social Justice was appointed as Enquiry Officer. The said enquiry officer conducted the enquiry and submitted his enquiry report (Annexure-R/4-2) to Respondent No. 3-Collector,

Shahdol in which the Petitioner was found to be indulging in various financial and other irregularities. Thereafter Respondent No. 3 has issued a show cause notice to the Petitioner for his explanation on the irregularities committed by him vide Annexure-R/4-3. On 14/2/2007 the Petitioner submitted his reply to the said show cause notice and admitted most of the irregularities and submitted that the said irregularities were committed because of negligence and prayed for forgiveness vide Annexure-R/4- 4 dated 19/2/2007 in which para-11 the Petitioner states as under:

The reply was not found satisfactory by Respondent No. 3 and, therefore, in exercise of powers conferred u/s 69(1) of the Act, the Petitioner was denotified from the post of Secretary vide order dated 21/2/2007 (Annexure-R/4-5). The said order was challenged by the Petitioner by filing an appeal No. 142/ 2006-07 before Respondent No. 2-Commissioner, Rewa. Respondent No. 2 vide order dated 3/3/2007 (Annexure-P/4) dismissed the said appeal at motion stage. Feeling aggrieved, the Petitioner approached to Respondent No. 1-State Minister in Revision No. F-5-15/22/P-2/07. Respondent No. 1 vide order dated 21/3/2007 stayed the order of the Collector and Commissioner. Against the aforesaid order dated 21/3/2007 (Annexure-P/5) passed by Respondent No. 1, Respondent No. 5 had filed Writ Petition No. 1147/2007. On 5/4/2007 this Court quashed the order dated 21/2/2007 (Annexure-P/4), order dated 3/3/2007 (Annexure-P/4) and order dated 21/3/2007 (Annexure-P/5) with the consent of learned Counsel for the parties, the matter was remitted to Respondent No. 3-Collector, Shahdol for passing a reasoned order, after affording opportunity of hearing to the parties. Para- 3 and 4 of the order dated 5/4/2007 passed in W.P. No. 4471/2007 read as under:

After arguing for some time, learned Counsel for the parties realising the position that the orders of the Collector and Commissioner are non-speaking orders and the order of the second Respondent/State Minister is without jurisdiction, prayed that this petition be disposed of by the quashing the order dated 21/3/2007 (Annexure-P-6) passed by the Commissioner, Rewa, the order dated 21/2/2007 (Annexure P-4) passed by the Collector, Shahdol and the Collector, Shahdol be directed to pass a reasoned order after affording opportunity of hearing to the Petitioner in regard to the show cause notice (Annexure P-3).

Having gone through the order dated 21/2/2007 (Annexure P-4) and the order dated 3/3/2007 (Annexure P-6), I am of the view that the Collector and the Commissioner has not passed reasoned order in the matter. The order of the second Respondent also being without jurisdiction is not sustainable. Thus, as agreed by the learned Counsel for the parties, the orders dated 21/2/2007 (Annexure P-4) the order dated 3.3.2007 (Annexure P-6) and the order dated 21.3.2007 passed by the second Respondent are hereby quashed. The matter is remitted to the Collector, Shahdol to take appropriate decision and pass a reasoned order after affording opportunity of hearing to the third Respondent.

Respondent No. 3-Collector, Shahdol in compliance of the order dated 5/4/2007

issued show cause notice to the Petitioner on 24/4/2007, 21/5/2007, 11/6/2007, 9/7/2007 and 16/7/2007 respectively in respect of the charges of financial irregularities levelled against him. The Petitioner in spite of the aforesaid notices failed to appear before Respondent No. 3 nor he submitted any explanation to the said show cause notices nor he produced any document to controvert the allegations made against him. Respondent No. 3 after appreciating the record, enquiry report of the Dy. Director, Panchayat and Social Justice (Annexure-R/4-2) and the reply of the Petitioner to the said show cause notice dated 14/2/2007 came to the conclusion that all the charges levelled against the Petitioner has been found proved to the extent that an amount of Rs. 4,19,669/- has been withdrawn without there being any entry in the cash book and he has been found to be guilty of financial irregularities of Rs. 4,56,869/-. The Petitioner has been found to be guilty in discharging the duties as the allegations made against him and held that he does not deserve to be continued on the post of Secretary and his continuance in the office is undesirable in the interest of public. The following charges has been found proved against the Petitioner which reads as under:

Thereafter Collector on 2/11/2007 in exercise of powers conferred u/s 86(1) of the Act has issued directions to Respondent No. 4-Gram Panchayat, Bocharo to initiate proceedings for removal of the Petitioner from the post of Panchayat Secretary as the power to remove the Panchayat Karmi is with the Gram Panchayat. Thereafter again a reminder was sent and Respondent No. 3 issued a show cause notice dated 19/2/2008 (Annexure-R/4-8) to the then Sarpanch, Gram Panchayat, Bocharo. Respondents 4 and 5 vide their reply dated 7/3/2008 intimated the Collector that they had passed a resolution not to remove the Petitioner on 18/11/2007 and if learned authority found that Petitioner has committed serious irregularities and in public interest his continuation in the office is undesirable, then appropriate action can be taken for his removal u/s 86(2) of the Act.

The State Government vide its circular dated 27/1/2006 given powers in the certain cases to the Collector to remove the Panchayat Karmi (Secretary). The State Govt., has made it clear that in case the Collector received complaint with regard to the working of Panchayat Karmi (Secretary), then in exercise of powers u/s 86(1) of the Act he can direct the concerned Gram Panchayat to remove the Panchayat Karmi within the stipulated period and if it fails then same can be done by the Collector in exercise of powers conferred u/s 86(2) of the Act. Thus, the Collector has full power to remove a Panchayat Karmi in case proof of misconduct. Para-2 of the circular dated 27/1/2006 reads as under:

Respondent No. 3 in exercise of powers conferred u/s 86(2) of the Act passed an order for removal of the Petitioner from the post of Panchayat Karmi and de-notified him from the post of Secretary vide impugned order 29/12/2008. From the above facts, the contention of learned Counsel for the Petitioner that the impugned order dated 29/12/2008 has been passed in violation of principles of natural justice is incorrect and contrary to the facts on record. After decision

from this Court on 5/4/2007, the Petitioner was summoned to be remained present before Respondent No. 3 on 24/4/2007, 21/5/2007, 11/6/2007, 9/7/2007 and 16/7/2007 respectively. Number of charges levelled against the Petitioner as reproduced herein above in the preceding paragraphs have been found proved. The Petitioner has been found to be guilty of the financial irregularities of Rs. 4,56,869/-. The act of the Petitioner has been found to be involved in gaining unwarranted gain or advantage for him which is detrimental to the purpose for which the enactment has been made and the scheme has been prepared.

The enquiry was conducted by Respondent No. 3 in pursuance to the order passed by this Court on 5/4/2007 in W.P. No. 4471/2007. Under the provisions of M.P. Panchayat Services (Discipline and Appeal) Rules, 1999 (in short "Rules of 1999") the order of major penalty cannot be passed unless an enquiry is held. In the present case the enquiry was held by the Dy. Director on 5/1/2007 and thereafter with the consent of the parties, the matter was again remitted to Respondent No. 3 to hold an enquiry and decide it in accordance with law. Respondent No. 3 after giving opportunity of hearing to the Petitioner inquired the matter and recommended the Gram Panchayat to pass a resolution for removal of the Petitioner. The then Sarpanch of Gram Panchayat contrary to the enquiry report passed a resolution not to remove him in spite of the fact that number of irregularities are found to be true and, therefore, Respondent No. 3 in exercise of powers conferred u/s 86(1) of the Act has issued a notice to the Gram Panchayat on 19/2/2008 which was duly replied by Gram Panchayat on 7/3/2008. By the circular dated 27/1/2006 the Collector has full power to remove a Panchayat Karmi. Thus, at this stage, when the Petitioner himself gave his consent for remitting the matter to the Collector and taking an appropriate decision by passing a reasoned order, cannot dispute or challenge the order on the ground that action of Respondent No. 3 is illegal and contrary to the provisions of the Act. u/s 86(2) of the Act, the Collector is the prescribed authority and shall have all the necessary powers to take appropriate action against a Panchayat Karmi. Here in the present case, action was taken by Respondent No. 3 in pursuance to the order passed by this Court on 5/4/2007 as well as the powers conferred to him by the State Government on 27/1/2006.

Section 86 confers the power on the State Government or the prescribed authority to issue order directing the Panchayat for execution of works in certain cases. However, to carry out the purpose of M.P. Rural Employment Guarantee Scheme the Government of M.P. has issued the instructions dated 27/1/2006 through the Principal Secretary of the Department concerned directing for the appointment of the Panchayat Karmi under the scheme on failure, the prescribed authority are directed to exercise the powers of Gram Panchayat as prescribed u/s 86(2) of the Act. In support of the validity attached provisions of Section 86 of the Panchayat Act is also relevant, which is being reproduced as under:

(i) Power of State Government to issue order directing Panchayat for execution of

works in certain cases. (1) The State Government or the prescribed authority may, by an order in writing, direct any Panchayat to perform any duty imposed upon it, by or under this Act, or by or under any other law for the time being in force or any work as is not being performed or executed, as the case may be, by it and the performance or execution thereof by such Panchayat is, in the opinion of the State Government or prescribed authority, necessary in public interest.

(2) The Panchayat shall be bound to comply with the direction issued under Sub-section (1) and if it fails to do so (the State Government or the prescribed authority shall have all necessary powers to get the directions complied with at the expense, if any, of the Panchayat) and in exercising such powers it shall be entitled to the same protection and the same extent under this Act as the Panchayat or its officers or servant whose powers are exercised.

Bare reading of the said provisions, it is apparent that the State Government or the prescribed authority by an order in writing may direct the Panchayat to perform any duty imposed upon it by or under this Act or under any other law for the time being in force and it may further direct to perform or execute any work which has not been done by the Panchayat. If in the opinion of the State government or of the prescribed authority it is necessary in public interest. Under Sub-section (2), on issuing the instructions by the Government or by the prescribed authority, the Panchayat is bound to comply with the directions. Otherwise, the said authority shall have all necessary power to get the directions complied with at the expense, if any, of the Panchayat, for which the Government or the prescribed authority shall be entitled to the same protection and to the extent as Panchayat or its officers have.

As per provisions of Section 69(1) of the Act, the State Government or the prescribed authority i.e. the Collector will have the power to appoint the Secretary for a Gram Panchayat or group of two or more Gram Panchayats. Therefore, if the powers vest in the Collector to appoint a Secretary then certainly under the provisions of General Clauses Act he can also remove a person from the post. Admittedly in this case a show cause notice was issued by Respondent No. 3 who is prescribed authority under the Act. The said prescribed authority after giving show cause notice to the Petitioner passed an order denotifying the Petitioner from the post of Secretary, the said action cannot be held to be illegal. This fact also find place in the impugned order dated 29/12/2008.

The Petitioner will not get any help from the decisions of this Court cited by learned Counsel for the Petitioner in the case of Neelash Dubey Vs. State of M.P. and Others, , Gram Panchayat Vs. Jagdish Singh Rawat and Others, and Kamlesh Dubey v. State of M.P. and Ors. 2009(1) MPLHJ 545, because here in the present case enquiry was held by the Dy. Director as required under the provisions of rules of 1999. In the said enquiry the Petitioner was found guilty in financial irregularities of Rs. 4,56,869/-. Thereafter, after giving opportunity of hearing by Respondent No. 3 who is prescribed authority under Sub-section (2) of Section 86 of the Act, has taken a decision for removal of the Petitioner and, therefore,

the same cannot be said to be contrary to the provisions of the Act.

For the above mentioned reasons, the petition filed by the Petitioner has no merit and is, accordingly, dismissed with cost. Counsel fee Rs. 3,000/-, if certified.