(2000) 03 MP CK 0043

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1010/97

Smt. Johara Dayal APPELLANT

Vs

State of M.P. and others RESPONDENT

Date of Decision : 31-03-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh (Appeal and Revision) Rules, 1995 — Rule 3, 5
Madhya Pradesh General Clauses Act, 1957 — Section 17
Madhya Pradesh Land Revenue Code, 1959 — Section 17, 17(3)
Madhya Pradesh Panchayat Raj Adhiniyam, 1993 — Section 40, 40(1), 91, 93
Madhya Pradesh Panchayat Raj Adhiniyam, 1994 — Section 39(2), 40(1)

Citation : (2001) 1 MPHT 154

Hon'ble Judges : Mr. S.C. Pandey, J

Bench : Single Bench

Advocate : Shri N.S. Kale, for the Appellant; Shri Riyaz Mohd., Government Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

S.C. Pandey, J.—This petition under Articles 226 and 227 of the Constitution of India is directed against the order dated 13-1-1997 (Annexure P-18) passed by respondent No. 4. Additional Collector, Raipur and the order dated 24-7-1996 (Annexure P-11) passed by respondent No. 2, Sub-Divisional Officer (Revenue) and Prescribed Authority, Saraipali, District Raipur so far as it relates to direction of recovery of the amount mentioned in that order.

2. The petitioner Smt. Johara Dayal was elected as the Sarpanch of Gram Panchayat, Basna, Block Basna, Tahsil Saraipali, District Raipur. It appears that the respondent No. 2, Sub- Divisional Officer received complaint against the petitioner regarding the certain illegalities and irregularities performed by her in her capacity as Sarpanch. It appears that respondent Nos. 5 to 9, the Panchas were also complainants against the petitioner. Accordingly, a show-cause notice u/s 40 (1) of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (henceforth

''the Adhiniyam'') was issued against the petitioner. There were eight charges levelled against the petitioner. It is not necessary to reproduce the charge Nos. 2, 4 and 6, as they have not been found to be proved against the petitioner ultimately. The charge Nos. 1, 3 and 7 have been held to be partly proved and the charge Nos. 5 and 8 have been held to be fully proved by the respondent No. 2, Sub-Divisional Officer by order dated 24-7-1996 (Annexure P-11). The following summary of the relevant charges, as given in the memo of petition, is hereby reproduced :

Charge No, 1: The respondent No. 2, while dealing with charge No. 1, has himself arrived at the finding that if for any reason the Sarpanch is unable to call the meeting of the Gram Panchayat then in that event u/s 44 (4) of the Adhiniyam it is the responsibility of the Secretary to issue a notice of the meeting of the Panchayat concerned as soon as twenty five days elapse after the date of the last meeting. Further, the petitioner has also assigned the reason for not calling the meeting in the month of September, 1994, November, 1994 and February, 1995 as she was not keeping well and was at Raipur for her treatment and therefore, she instructed the Secretary to hold the meeting of the Gram Panchayat. It was further submitted that the meeting for the said period was called by the Secretary and the proceedings were separately recorded as the proceedings register was with the Panchayat Inspector. The petitioner has also stated that the separate register on which the proceedings of the meeting was recorded has been misplaced from the office by the erstwhile Secretary and Panchayat Inspector under political influence. Thus, the finding arrived by the respondent No. 2 is erroneous so far as it relates to the petitioner. Firstly, the meeting was called and secondly, even otherwise only the Secretary could be held responsible for the same.

Charge No. 3: As regard charge No. 3, it is submitted that no finding is given by the respondent No, 2 and simply in the concluding para of the order he has held this charge to be partly proved. The petitioner has even otherwise explained that the quotation from M/s. Parekh Electricals was not called and the same has been obtained by the enquiry officer on his own and thus no reliance could have been placed on it.

Charge No. 5 : The construction of the shops were done by the Panchas and it is the responsibility of the Secretary to guide the petitioner who is uneducated. Further, the loss which was assessed on verification and as alleged in the show-cause notice itself was found to be incorrect and thus it could not have been held to be proved against the petitioner. The respondent No. 2 has directed for reassessment of the construction cost and for recovery of the excess amount from the Secretary and the petitioner. It is surprising that on one hand the respondent No. 2 has directed for reassessment and on the other hand he has held the charge to be proved. Without there being reassessment, no finding on this charge could have been given.

Charge No. 7: As regards charge No. 7, the petitioner has specifically stated that the work under the Jawahar Rojgar Yojna was verified and valued by the Sub-Engineer of the Block. Even otherwise, it is only a procedural lapse for which the Secretary alone is responsible.

Charge No. 8: As regards charge No. 8, nothing could be attributed to the petitioner and it is the responsibility of the Secretary to deposit the money in the account. For such procedural lapses, the petitioner could not have been held responsible. Further, no loss has been caused to the Gram Panchayat.

3. The respondent No. 2, having held that the aforesaid charges have been proved, did not pass any order regarding the removal of the petitioner as per provisions of Section 40 of the Adhiniyam. All he did by the order dated 24-7-1996, is that he declared that the petitioner was found responsible alongwith the Secretary for the financial illegalities and irregularities proved under the aforesaid charges reproduced above and, therefore, he warned her requiring her to deposit the fine to the extent she had caused loss to the Panchayat by her illegal activities. This view was taken by the SDO presumably on the ground that the petitioner was a lady who was not properly guided by the Secretary of the Panchayat and, therefore, the SDO thought that the recovery of the amount from the petitioner whereby the petitioner caused loss to the Panchayat would be sufficient punishment to her alongwith a warning to take care in future.

4. It appears that the respondent Nos. 5 to 9 filed an appeal before the Additional Collector, Raipur. The Additional Collector, Raipur confirmed the findings passed by the SDO, who was the prescribed authority under the Adhiniyam for passing an order u/s 40 of the Adhiniyam. However, the Additional Collector passed an order u/s 40 (1) of the Adhiniyam to the effect that the suspension of the petitioner by order of the SDO dated 24-7-1996 shall be maintained.

5. Learned counsel for the petitioner, interalia, argued as follows :

(i) that the appeal filed by the respondent Nos. 5 to 9 was not maintainable against the order dated 24-7-1996 (Annexure P-ll)passed by the SDO, therefore, the order dated 13-1-1997 (Annexure P-18) passed by the Additional Collector, Raipur is liable to be quashed as such.

(ii) the ground No. 2 that has been raised before this Court, was that the Additional Collector, Raipur could not have exercised power u/s 40 (1) of the Adhiniyam because he had not disagreed with the finding recorded by the SDO who had not found the petitioner liable to be punished u/s 40 (1) of the Adhiniyam.

(iii) the third ground, that has been raised was that the impugned order passed by the Additional Collector, Raipur maintaining the suspension prior to passing of the order dated 24-7-1996 (Annexure P-11) was without jurisdiction. The Additional Collector, Raipur could not have maintained the order of suspension prior to passing of the order dated 24-7-96 (Annexure P-11) pending enquiry.

(iv) the fourth ground raised by learned counsel for the petitioner was that the appeal could not be heard by the Additional Collector, Raipur as the Additional Collector, Raipur was not authorised to hear the appeal as the authority authorised under the M.P. Panchayats (Appeal and Revision) Rules, 1995 (henceforth ''the Rules'') was Collector and not the Additional Collector. It has been argued that under Rule 3 (a) of the Rules, an order passed by the SDO is appealable to Collector and not to Additional Collector.

6. The arguments of Shri N.S. Kale, learned counsel for the petitioner were countered by Shri Riaz Mohammad, Government Advocate for the respondent-State who supported the order passed by the Additional Collector, Raipur. It was argued that there was no merit in the contention of learned counsel for the petitioner that no appeal lay at the instance of respondent Nos. 5 to 9 who were the Panchas. It was argued that these Panchas were complainants against the illegal activities of the Sarpanch and they were entitled to file an appeal as they were aggrieved by the order of the SDO. It was further argued that the word ''Collector'' in the Rule 3 (a) of the Rules, includes Additional Collector and, therefore, the Additional Collector was entitled to hear that case. It was further argued that the respondent No. 2, SDO had abdicated his exercise of power u/s 40 (1) of the Adhiniyam and, therefore, the Additional Collector was well within his power to pass the order u/s 40 (1) of the Adhiniyam. It was further argued that the argument advanced by the counsel for the petitioner is not that the order of the Additional Collector is not liable to be sustained as the order of suspension of the petitioner was covered by Section 40 (1) of the Adhiniyam.

7. The argument of learned counsel for the petitioner that the Additional Collector had no jurisdiction to hear the appeal as Collector, Raipur alone was authorised to hear the appeal, is liable to be rejected in view of the recent decision of this Court rendered by D.M. Dharmadhikari, J., in the case of Kaushal Prasad Kashyap Vs. State of M.P. and Others, In that decision, similar provisions were considered. The State Government had delegated its power of confirmation of suspension u/s 39 (2) of the Adhiniyam by a notification issued u/s 93 of the Adhiniyam to the Collector. This power was exercised by the Additional Collector, Bilaspur. The argument advanced therein was that the State had delegated this power to Collector and not to the Additional Collector and, therefore, the Additional Collector was not authorised to pass the order u/s 39 (2) of the Adhiniyam. The Court rejected the argument holding that Section 17 of the M.P. Land Revenue Code read with Section 17 of the M.P. General Clauses Act empowered the Additional Collector to perform the functions of the Collector conferred upon him by any enactment for the time being in force. Therefore, the delegation by the State Government u/s 93 of the Adhiniyam to Collector included the delegation to the Additional Collector subject to condition that the Collector authorised the Additional Collector to perform his functions as per order u/s 17 (2) of the M.P. Land Revenue Code. It appears from reading of Section 17

(2) of the M.P. Land Revenue Code that the Additional Collector can inter alia exercise powers of Collector conferred by an enactment or a rule framed thereunder subject to restriction, if any, made in the general order notified by the State in respect of cases or class of cases. Section 17 (3) of the M.P. Land Revenue Code inter alia says that any other enactment for the time being in force or rule made thereunder shall apply to the Additional Collector except where expressly directed otherwise. This Court does not find any restriction made in the general order or in the Adhiniyam debarring the Additional Collector from hearing the appeal.

8. The next contention that has to be considered by this Court is, whether an appeal lay against the order passed by the SDO on 24-7-1996 (Annexure P-l1) before the Additional Collector, Raipur. In this connection, it would not be out of place to point out that Section 91 of the Adhiniyam provides for an appeal or revision against the orders of proceedings of Panchayat and other authorities. The rules framed therein confer the power of appeal as per Rule 3 of the Rules and power of revision is as per Rule 5 of the Rules. It appears from Rule 5 of the Rules that revisional authority has power to hear a revision suo motu or an application by any party. The Collector has been given power to hear revision against his subordinate authorities. Thus, revisional power could have been exercised in this case for examining the legality or propriety of its order passed by the SDO. The Additional Collector could exercise the power of Collector under this rule. That apart, it cannot be disputed that the respondent Nos. 5 to 9 were initially involved in making a complaint against the petitioner and, therefore, they had also a right to file an appeal. In view of this matter, the point that no appeal lay before the Additional Collector or the Collector cannot be sustained and it is hereby rejected. This Court is also of the view that there is no merit in the argument that the Additional Collector could not have exercised the power of suspension given u/s 40 (1) of the Adhiniyam without changing the findings given by the SDO. It would be clear from the charges reproduced above, which have been found to be proved against the petitioner so that the petitioner was guilty of misappropriation of account as per charge No. 5. She was also guilty of financial irregularities to a considerable extent as per charges proved against her. In such circumstances, the Additional Collector, Raipur could have passed an order u/s 40 (1) of the Adhiniyam removing the petitioner.

9. However, learned counsel for the petitioner appears to be right in his argument that the Additional Collector could not have passed the order of suspension in exercise of his power u/s 40 (1) of the Adhiniyam. The Additional Collector, however, has partly set aside the order passed by the SDO who had set aside the order of suspension passed by him during the pendency of enquiry and reinstated the petitioner as Sarpanch of Gram Panchayat. The Additional Collector, instead of passing an order of removal u/s 40 (1) of the Adhiniyam, has maintained the suspension order prior to passing of the final order dated 24-7-19% (Annexure P-11). It is clear from Annexure P-2, the order dated 30-12-1995 that the SDO had suspended the petitioner pending an enquiry; This

order of suspension was to remain in force during the pendency of the enquiry and, thereafter, it would abide the result of the enquiry. The SDO has, rightly or wrongly, thought that the petitioner should not be removed and, therefore, had cancelled the order of suspension, Annexure P-2. The Additional Collector, therefore, was required to pass an order u/s 40 (1) of the Adhiniyam regarding the petitioner rather than suspending the petitioner as he appears to have done. Therefore, the order dated 13-1-1997 (Annexure P-18) suspending the petitioner by restoring the suspension is hereby quashed. The Additional Collector could not have passed the order as he did. He was required to pass an order u/s 40 (1) of the Adhiniyam. This Court shall not correct the order of the Additional Collector as it is not hearing the appeal against the order of the Additional Collector.

10. The result is that the petition succeeds to the extent that the order dated 13-1-1997 (Annexure P-18) restoring the suspension of the petitioner is hereby quashed. The petition is partly allowed to the extent indicated above. The Additional Collector is directed to pass a fresh order in Panchayal Appeal Case No. 9-B/121 year 1995-19% (Annexure P-18) in accordance with Section 40 of the Adhiniyam after giving an opportunity of hearing to the petitioner and the complainant-respondent Nos. 5 to 9. No costs.

11. Writ Petition partly allowed.

