

(2009) 03 MP CK 0008
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6147 of 2007

Smt. Manita Jaiwar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 19-03-2009

Acts Referred:

Constitution of India, 1950 — Article 14
Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 40, 40(1)

Citation : (2009) ILR (MP) 3067 : (2009) 2 JLJ 333 : (2009) 3 MPHT 70 : (2009) 3 MPLJ 370

Hon'ble Judges : Sushma Shrivastava, J;A.K. Mishra, J

Bench : Division Bench

Advocate : Sharad Verma, for the Appellant; Ashok Agrawal, Government Advocate for Respondent Nos. 1 to 3, Praveen Dubey and Shreyas Pandit, for Intervener, for the Respondent

Final Decision : Allowed

Judgement

Mishra, J.

The Petitioner in the instant writ petition has assailed the order (P-3) passed by SDO on 6.12.2006, order (P-4) dated 29.1.2007 passed by Collector, District Balaghat and order (P-9) dated 5.5.2007 passed by Commissioner, Jabalpur Division, Jabalpur, in the matter of removal of the Petitioner from the post of Sarpanch of Gram Panchayat Hatta, District Balaghat.

The removal of the Petitioner has been ordered from the post of Sarpanch on having been found guilty of the charges levelled against her in the show cause notice (P-1) dated 16.5.2006. A complaint dated 27.3.2006 was received which was referred for enquiry to the Chief Executive Officer, Janpad Panchayat, Balaghat, who after conducting enquiry submitted a report on 13.4.2006. In the report Petitioner was found guilty of financial irregularities. On the basis of aforesaid report, show cause notice 16.5.2006 was issued, reply thereto was

submitted before SDO who is the competent authority. During the course of the proceedings u/s 40 of M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as "the Adhiniyam of 1993"), the statement of Enquiry Officer had been recorded by the SDO, opportunity of cross-examination was afforded to the Petitioner on the Enquiry Officer. Enquiry Officer was cross-examined also. Thereafter, the impugned order (P-3) has been passed by the SDO ordering removal of the Petitioner on having been found guilty of financial irregularities. The order was unsuccessfully assailed before the Collector and the Commissioner in the appeal and the revision, respectively. Dissatisfied with the proceedings and the orders, the instant writ petition has been preferred.

Shri Sharad Verma, learned Counsel appearing for the Petitioner has assailed the orders mainly on the ground that the report submitted by the Enquiry Officer was relied upon which was not during the course of the proceedings u/s 40 of the Adhiniyam of 1993. During the course of enquiry which was conducted by the CEO, statements of certain witnesses were recorded. It was not bipartite enquiry. Opportunity of cross-examination was not afforded to the Petitioner, consequently the cross-examination of the Enquiry Officer was of no avail as the witnesses were required to be examined and thereafter opportunity of cross-examination was required to be afforded as envisaged u/s 40 of the Adhiniyam of 1993. Basic principles of natural justice has not been observed and the Petitioner has been held guilty of financial irregularities without affording opportunity to cross-examine the witnesses, thus, proceedings are liable to be quashed.

Learned Counsel appearing for Respondents have supported the orders. They have submitted that enquiry was conducted by the CEO and CEO has been examined so as to prove the documents which were collected during the course of enquiry by him, consequently there is no infirmity in the proceedings.

After hearing the learned Counsel for the parties, it is clear that in the instant case fair procedure has not been adopted. Proceedings u/s 40 of the Adhiniyam of 1993 was initiated by issuance of show cause notice dated 16.5.2006 by the SDO. No doubt about it that earlier a complaint was filed on 27.3.2006 in which the enquiry was conducted by the CEO but that was not bipartite and regular enquiry. Statements of certain witnesses were recorded, which have formed the basis of removal of the Petitioner from the post of Sarpanch. Admittedly opportunity of cross-examination was not afforded to the Petitioner on the witnesses who were examined by the CEO, Janpad Panchayat, Balaghat while conducting the enquiry into the complaint dated 27.3.2006. In the proceedings u/s 40 of the Adhiniyam, 1993 none of the witnesses whose statements were recorded by the Enquiry Officer, were examined. Opportunity of cross-examination was also not afforded to the Petitioner. Even complainant was not examined. Opportunity to adduce the evidence was also not afforded to the Petitioner.

This Court in Kailash Kumar Parmanand Dangi Vs. State of M.P. and Others,], has held that in such matters the enquiry held behind the back of Sarpanch,

cannot be relied upon. The following discussion has been made by this Court:

14. In the present case, there was not total violation of the principles of natural justice as a show cause notice was given and the reply of the Petitioner obtained. But keeping in view the facts of the case certain facets of natural justice as stated above were not complied with resulting in prejudice to the Petitioner. He was not permitted to adduce his own evidence to rebut the material collected against him. The charges were such which could be proved or disproved by evidence in the inquiry. One of the main charges was the distribution of pattas to those who were not landless and a conclusion on this point could be reached after recording evidence and after seeing the list supplied by the Tehsildar or the B.D.O. The prescribed authority in the impugned order has not dealt with this aspect. Similarly the charges regarding negligence in the maintenance of garden, supply of water, drainage and information regarding the meeting of the Gram Sabha could be decided on the basis of evidence and not merely relying upon a preliminary inquiry report. The basic fault in the impugned order is that an inquiry held by the B.D.O. behind the back of the Petitioner has been held to be a valid "inquiry" u/s 40 of the Act and he has been packed up on the basis of that inquiry without even supplying a copy of the same to the Petitioner, and without affording him an opportunity to lead his own evidence even when he repeatedly asked for the same. This was denial of fair hearing resulting in serious prejudice to the Petitioner. The action of removal and disqualification has to be struck down as there has been a failure of justice. The guilty must be punished but the finding of guilt has to be arrived after fair hearing which was denied in this case. In *Ballabhdas v. State of M.P.* 1998 (2) J.L.J. 303, it has been observed by this Court that a full fledged enquiry is provided u/s 40 of the Act. It contemplates "due enquiry". As observed in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, right to fair treatment is an essential inbuilt of natural justice which is an integral part of the guarantee of equality assured by Article 14 of the Constitution of India. The concept of reasonableness and non-arbitrariness pervades the entire constitutional spectrum and is a golden thread which runs through the whole fabric of Constitution.

In *Rajendra Singh Raghuvanshi Vs. State of M.P. and Others*, this Court has laid down that copy of the enquiry report has to be furnished. In *Mango Bai v. State of M.P. and Ors.* 2002 (2) Vidhi Bhasvar 165 : 2003 (2) MPLJ 112 this Court has laid down thus:

9. Principles of natural justice are required to be observed before ordering removal of Sarpanch u/s 40 of Act in *Kailash v. State of M.P.* 1999 (2) J.L.J. 280, esteemed brother S.P. Khare, J. considered the question and held that removal of Sarpanch u/s 40 is a serious matter when he is removed and further disqualified for six years to be elected under the Act. It is not sufficient to give a mere lip-service to the requirement of law. It is true that it is not specifically provided in Section 40 that principles of natural justice should be "followed while holding" an enquiry but it is implicit in this provision that the office-bearer who is sought to

be removed will be given a fair hearing. This Court held that the words "after such inquiry as it may deem fit to make" in the main part of Section 40(1) of the Act would mean an inquiry which is held in the presence of the office-bearer and not behind his back. He should be allowed to inspect the documents which are to be relied upon against him and he should have the right to adduce his own evidence. These are the important facets of an inquiry to be held in conformity with the principles of natural justice. It is not the subjective choice of the prescribed authority to get an inquiry held of any kind. It does not envisage a secret enquiry or a preliminary enquiry (sic). That is made only for collection of evidence and at that stage (sic) no participation of the person against whom the action is sought to be taken. The words "as it may deem fit" have to be construed objectively and would mean an inquiry depending upon the facts and circumstances of each case. Some of the facts of the inquiry may be excluded if the facts are not very much in dispute or there are other circumstances to dispense with them. But the office bearer has a right to fair hearing. "You must hear the person who is going to suffer". That is a duty which lies upon every one who decides anything. There is, however, some flexibility depending upon the subject-matter. Similar is the law laid down by this Court in *Raja Rai Singh v. State of M.P. and Ors.* 2000 (2) J.L.J. 242.

Secret enquiry or preliminary enquiry alone is not enough. Collection of evidence is required and participation of person against whom the action is sought to be taken. Order-sheets of the SDO's file indicates that byparte enquiry was not held at all nor was directed. Panchayat Inspector conducted the ex parte enquiry. Report of which not supplied. Thereafter an incompetent authority, SDM considered the report and recommended the removal and order dated 31.3.1999 mentioned that prescribed authority, i.e., SDO was in agreement with the view of the SDM and has passed the order on 31.3.1999 itself. Whereas it was incumbent upon the SDO to receive the reply and to apply independent mind after holding an enquiry. All these requirements have been flagrantly violated in the instant case. Considering the serious nature of charges levelled against the Petitioner she ought to have been given due and proper opportunity.

Considering the aforesaid decisions of this Court, the procedure adopted and on going through the file of the SDO which has been produced, it cannot be said that due and proper enquiry was conducted by the SDO before ordering the removal of the Petitioner from the post of Sarpanch including disqualification to contest the election, it carries civil consequences. Consequently, the impugned orders (P-3), (P-4) and (P-5) cannot be permitted to prevail, they are hereby quashed. Case is remitted back to the SDO to deal with the case in the light of the aforesaid discussion made by this Court. The SDO shall examine the witnesses and afford an opportunity to the Petitioner to cross-examine the witnesses. Copy of report of Enquiry Officer shall also be supplied to the Petitioner, if it is to be utilized. Petitioner shall be given opportunity of adducing the evidence as against the charges levelled against her and thereafter, a reasoned and considered decision has to be rendered by the SDO in accordance

with law. Let enquiry be conducted in accordance with law within a period of four months.

It is submitted by Shri Praveen Dubey, learned Counsel appearing for Respondent No. 5 that once the Petitioner has been found guilty of financial irregularities, at least Petitioner may be restrained from exercising the financial power. We refrain to comment on the aforesaid aspect, however, Petitioner has to continue as Sarpanch. The question whether financial power as to be exercised by the Petitioner or not during the pendency of proceedings, may be considered by the SDO, who is the competent authority.

Resultantly, the writ petition is allowed. Impugned order (P-3), (P-4), (P-5) passed by SDO, Collector and Commissioner, respectively, are hereby quashed. No costs.