
(2012) 10 MP CK 0041
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 311 of 2012

State of M.P.

APPELLANT

Vs

Rajesh Kumar Gupta

RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2013) 1 JLJ 341 : (2013) 2 MPLJ 130

Hon'ble Judges : K.K. Lahoti, J;G.D. Saxena, J

Bench : Division Bench

Advocate : M.P.S. Raghuvanshi, A.A.G. for state, for the Appellant; Jitendra Sharma, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against an order dated 7.2.2012 passed in Writ Petition No. 190/2011(S) by which the learned Single Judge has set aside the order of SDO (affirmed by the Collector and Commissioner in appeal and revision respectively) by which the SDO set aside the resolution of Gram Panchayat dated 17.8.2008. By this resolution, the respondent was appointed as Panchayat Karmi. This order was challenged before the learned Single Judge on the ground that the SDO was having no jurisdiction to entertain an appeal against the resolution passed by the Gram Panchayat. Learned Single Judge considered the case on merits and found that the SDO was having no jurisdiction to entertain the appeal against the resolution passed by the Gram Panchayat and quashed the order. This order is under challenge in this appeal. This appeal is also barred by limitation by 56 days for which the appellant-State has moved an application u/s 5 of the limitation for condonation of delay.

2. So far as the legal position in respect of entertaining an appeal by the SDO against the resolution is concerned, the Division Bench of this Court in Sagar Machhua Sahakari Samiti Vs. Chief Executive Officer, Janpad Panchayat and Another, has already considered the legal position and has held that against such

a resolution no appeal lies, however, against consequential order issued by the Panchayat for appointment of the Panchayat-Karmi, appeal lies. The Division Bench in Sagar Machhua Sahakari Samiti (supra), has considered the law and has held thus:

23. From the aforesaid enunciation of law it is luminescent that when the statute confers a right specifically mere absence of the procedural rules, does not abrogate the right of litigation. To elaborate when section 91 confers substantive right to prefer an appeal or revision, there has to be remedy for a person aggrieved and the same cannot be totally nullified because of the absence of forum. In view of the aforesaid it is to be seen whether in the 1993 Act there is any provision which can be taken aid of.

24. Section 85 of the 1993 Act deals with power to suspend execution of orders, etc. It reads as under:

85. Power to suspend execution of orders, etc. -- (1) The State Government or the prescribed authority may by an order in writing and for reasons to be stated therein suspend the execution of any resolution passed, order issued, licence or permission granted or prohibit the performance of any act by a Panchayat, if in his opinion-

(a) such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorized;

(b) such resolution, order licence, permission or act is in excess of the powers conferred by this Act or is contrary to any law; or

(c) the execution of such resolution or order, or the continuance in force of such licence or permission or the doing of such act is likely --

(i) to cause loss, waste or misapplication of any money or damage to any property vested in the Panchayat;

(ii) to be prejudicial to the public health, safety or convenience;

(iii) to cause injury or annoyance to the public or any class or body of persons; or

(iv) to lead to a breach of peace.

(2) Whenever an order is made by the prescribed authority under sub-section(1), it shall forthwith and in no case later than ten days from the date of order, forward to the State Government or the officer nominated by the State Government for this purpose, copy of the order with the statement of reasons for making it, and the State Government or the officer nominated by it may confirm, set aside, revise or modify the order or direct that it shall continue to be in force with or without modification permanently or for such period as may be deemed fit.

Provided that no order of the prescribed authority passed under sub-section (1) shall be confirmed, revised, or modified by the State Government or the officer

nominated by it, without giving the Panchayat concerned a reasonable opportunity of being heard against the proposed order.

25. On a keener scrutiny of section 85 it is invincible that the power has been conferred on the State Government or the prescribed authority can suspend the resolution, order etc. on the conditions precedent or such action being satisfied. That apart, the said order is subject to further scrutiny for the purpose of confirmation by the State Government.

26. The language employed u/s 91 provides an appeal or revision against an order or proceeding of the Panchayat or other authorities under the Act. It also stipulates that said appeal shall lie to such authority and in such manner as may be prescribed.

27. If the language of section 85 is understood properly it is invincible that power has been conferred on the State Government or the prescribed authority. The power is of the wide amplitude. The State Government has the authority to suspend the execution of any resolution. It also prohibits to perform any act by Panchayat. Many a ground has been enumerated empowering the State Government for interference. The term used is "resolution" as well as "order", etc. Though the language employed u/s 85 does not use the term suo motu but it is virtually the suo motu exercise of power because the State Government can take up the issue by itself. Suo motu power can also be invoked by a person aggrieved. In the absence of the rules it will be difficult to hold that the power of appeal or revision can be exercised by the said authorities but Court cannot be oblivious of the fact that an appeal or revision is provided in the substantive provision of the Act. The State Government has not framed rules by providing a forum. Under these circumstances it would be apposite and seemly to hold that the person aggrieved can bring his grievance to the notice of the State Government and the State Government should take a decision u/s 85 of the Act. While taking the said decision the State Government shall be guided by the concept of promptitude which is an intrinsic and insegregable facet of suo motu exercise of jurisdiction. Be it noted, while exercising suo motu power u/s 85 of the Act the State Government shall be guided by the parameters provided therein and the nomenclature given to a proceeding u/s 85 of the Act.

28. The reference is answered accordingly. Matter be placed before the appropriate Single Bench.

3. In view of the settled position of law in Sagar Machhua Sahakari Samiti (supra), if the learned Single Judge has set aside the order of the SDO. no fault is found.

4. Learned counsel for the appellant also placed reliance on a decision rendered by the Division Bench of this Court in the case of Devidayal Raikwar Vs. State of M.P. and Others, , and submitted that in the light of the aforesaid judgment, the impugned order issued by the learned Single Judge may be set aside, but in Devidayal Raikwar (supra), the order of appointment of the Panchayat Karmi was

under challenge before the SDO and not the resolution. The aforesaid judgment is not applicable in the present case.

5. At this stage, it was submitted by Shri Raghuvanshi, learned Additional Advocate General, that the SDO has set aside a resolution which was not legal and justice was done so in the writ jurisdiction, such order could not have been interfered with. He has placed reliance to a judgment of the Hon''ble apex Court in the case of Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others, and submitted that once an illegal resolution was set aside by the SDO, learned Single Judge erred in interfering in the matter. But the factual position in the present case is entirely different. The order of the SDO entertaining an appeal against the resolution was prima facie illegal in the light of the judgment of this Court in the case of Sagar Machhua Sahakari Samiti (supra), and Devidayal Raikwar (supra), and the learned Single Judge has rightly set aside the order. There is no merit in this appeal for admission. This appeal is found without merits. It is dismissed accordingly. As we have considered the case on admission and have found that no case is made out for admission, it is not necessary for this Court to consider the application seeking condonation of delay. Hence, aforesaid application is also dismissed.