

(1955) 04 MP CK 0002

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Case No. 16 of 1954

Subalal Hodhraj Sharma

APPELLANT

Vs

Govt. of Madhya Bharat

RESPONDENT

Date of Decision : 14-04-1955

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1955 MP 173

Hon'ble Judges : Shinde, C.J.;Dixit, J

Bench : Division Bench

Advocate : Anand Bihari Misra, for the Appellant;

Final Decision : Dismissed

Judgement

Shinde, C.J.—Subalal Sarpanch Kendra Panchyat Mihona district Bhind, has filed this petition under Art. 226, Constitution of India for the issue of a writ of certiorari against the Government of Madhya Bharat. The relevant facts as alleged in the petition are as follows:

That the petitioner was duly elected Sarpanch of the Kendra Panchayat Mihona Pargana Lahar District Bhind that in the said Panchayat Shree Raghuwardayal was employed as a Gram Sewak; that on the recommendation of the Deputy Development Commissioner, the Development Commissioner of Madhya Bharat made temporary appointment of Shri Nathuram Sharma as Gram Sevak; that on the receipt of the above letter of appointment the petitioner, as Sar Panch, passed order that the proceedings of handing over the charge to Shri Nathuram be suspended as the order did not contain any instructions regarding the permanent Gram Sewak Shri Raghuwardayal; that on 23-12-1953 the petitioner wrote a letter to the Development Commissioner that the new Gram Sewak Shri Nathuram Sharma being a resident of the place and also being deeply interested in the village parties and not having been possessed of the required qualifications, is not a suitable person for the Panchayat and that the Panchayat and the Sarpanch were dissatisfied with the new appointment; that the

development officer Bhind wrote to the Panchayat that the order of the Commissioner should be carried out and that if the Panchayat did not want to keep Shri Nathuram they should pass a resolution to that effect; that the Kendra Panchayat Passed Resolutions on 26-12-1953 and 30-12-1953 copies of which were sent to the development Commissioner; that the petitioner received an order from the development officer requiring the petitioner to hand over the charge to Shri Nathuram which the petitioner expressed his inability to do that the panchayat was called upon to show cause why it should not be dismissed under S. 20 of the Panchayat Act; that on receiving the reply of the Panchayat, the Madhya Bharat Government ordered the dismissal of the petitioner and the Panchas on the ground that the said Kendra Panchayat had abused its powers and neglected its duties; that the said order of the Government is illegal and ultra vires the Panchayat Act as under S. 30 of the Panchayat Act it is the panchayat that has been given power to appoint its servants and hence the appointment of Shri Nathuram by the development Commissioner was illegal and without jurisdiction, non-compliance with which cannot amount to abuse of powers or neglect of duty that the order of the Government is without jurisdiction in so far as no reply of the petitioner was taken as contemplated by S. 20 of the Panchayat Vidhan.

On these allegations the petitioner prays that a writ of certiorari be issued and the order dismissing the Panchayat published in the Gazette of 22-11-1954 be quashed. In the return filed by the non-petitioner it is denied that the Development Commissioner has no right to appoint a Gram Sevak. It is also denied that the notice as contemplated by S. 20 of the Panchayat Vidhan was not served on the petitioner.

In the return an additional objection has been taken that the writ of certiorari cannot issue as the impugned orders were passed by an administrative authority and not by a judicial or quasi-judicial authority.

2. The first question to consider in this case is whether a writ of certiorari can issue in this case or not. It is now well established that a writ of certiorari can issue only when the impugned act is either judicial or quasi-judicial and it is done without jurisdiction or in excess of jurisdiction. In --- Province of Bombay Vs. Kusaldas S. Advani and Others, Kania C. J. made the following observations:

It is clear that such writ (a writ of certiorari) can be asked for if two conditions are fulfilled. Firstly, the decision of the authority must be judicial or quasi-judicial, and secondly, the challenge must be in respect of the excess or want of jurisdiction of the deciding authority. Unless both those conditions are fulfilled, no application for a writ of certiorari can succeed.

In the same case Fazl Ali J. observed as follows:

It is well settled that a writ of certiorari can be issued only against inferior courts or persons or authorities who are required by law to act judicially or quasi-judicially, in those cases where they act in excess of their legal authority. Such a

writ is not available to remove or correct executive or administrative acts.

Mahajan and Mukherjea JJ. in the same case made similar observations. Das J. in the same case observed as follows:

The law is now well settled that a writ of certiorari will lie to control a statutory body if it purports to act without jurisdiction or in excess of it or in violation of the principles of natural justice, provided that on a true construction of the statute creating the body it can be said to be quasi-judicial body entrusted with quasi-judicial functions.

Again in"-- T.C. Basappa Vs. T. Nagappa and Another, Supreme Court held as follows:

One of the fundamental principles in regard to the issuing of a writ of certiorari, is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression "Judicial acts" includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts. The second essential feature of a writ of certiorari is that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity.

In the same decision it is further held:

Certiorari may and is generally granted when a court has acted without or in excess of its jurisdictions.

It is thus abundantly clear that a writ of certiorari lies only when the impugned decision is that of a judicial or quasi-judicial authority and the said authority acts without jurisdiction or in excess of its jurisdiction.

3. It is by no means easy to draw a line between an administrative act and a quasi-judicial act. In -- Khushaldas S. Advani's case (A)", cited above, the learned Chief Justice made the following succinct observations:

It seems to me that the true position is that when the law under which the authority is making decision, itself requires a judicial approach, the decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed. (vide Para 7)

In the same case Fazl Ali J. threw more light on the subject. He observed as follows:

Without going into the numerous cases cited before us it may be safely laid down that an order will be a judicial or quasi-judicial order if it is made by a court or a Judge, or by some person or authority who is legally bound or authorised to act as if he was Court or a Judge. To act as Court or a Judge necessarily involves giving an opportunity to the party who is to be affected by an order to make a

representation, making some kind of inquiry, hearing and weighing evidence, if any, and considering all the facts and circumstances bearing on the merits of a controversy before any decision affecting the rights of one or more parties is arrived at. (Vide para 16)

Applying this test it was held by a Division Bench of this Court in the case of -- Vishvanath Vasudeo and another Vs. The State of Madhya Bharat, that the decision of the Government under S. 11, Gwalior Municipalities Act was a quasi-judicial decision. In the present case S. 20 of the Panchayat Vidhan enjoins that before passing order of dismissal it is obligatory that the Panchayat be given an opportunity to show cause. S. 20 reads as follows:

It is thus clear from the language of the section that before the order is passed against Panchayat, it is to be given an opportunity to make representation. If the Panchayat chooses to adduce same evidence to disprove the charges levelled against them there is nothing in the section to stop them from doing so. An opportunity to show cause, therefore, may also involve making some kind of enquiry, hearing and weighing evidence and considering all the facts and circumstances bearing on the merits of the controversy, before the decision affecting the rights of the Panchayat is given. In these circumstances it appears to me that the Government is to act quasi-judicially under S. 20 of the Panchayat Vidhan.

4. The first condition having been fulfilled, we have now to consider whether the act of the Government is without jurisdiction or in excess of jurisdiction. It is alleged in the petition that notice as contemplated by S. 20 was not given by the Government. It appears from the annexure to the petition that notice was given by the Collector Bhind (Vide Appendix H of the petition). Mr. Anandbihari Misra who appears for the petitioner contends that notice should have been given in the name of His Highness the Rajpramukh.

It has not, however, been shown that there is any prescribed procedure for the giving of the notice under S. 20 of the Panchayat Vidhan. There is nothing to prevent the Government from giving the requisite notice through the Collector. The notice clearly mentions that the notice is being given under S. 20 of the Panchayat Vidhan. In these circumstances there is no reason why the notice given by the Collector may not be considered to be valid notice. Consequently the allegation that no valid notice was given under S. 20 of the Panchayat Vidhan is not substantiated.

5. The second allegation in the petition is that the order of the Government is illegal in so far as non-compliance with the order of the Development Commissioner does not amount to abuse of power or neglect of duty. It is contended by Mr. Anandbihari Misra that the power of appointment vests in the Panchayat under S. 30 of the Panchayat Vidhan.

Consequently the Development Commissioner has no power to make appointment of a Gram Sewak. If, therefore, Panchayat disobeys the order of the

Development Commissioner that does not amount to either abuse of power or neglect of duty. In this connection it is well to remember that this court is not a court of appeal. Consequently this Court cannot go into the merits of the case and determine whether the Government's decision is right or wrong. This court can interfere by the issue of a writ of certiorari only if it is convinced that the Government has acted without jurisdiction or in excess of its jurisdiction.

Under S. 20 of the Panchayat Vidhan it is the Government that has to decide whether a Panchayat Board has abused its power or neglected its duty. The jurisdiction, therefore, is vested in the Government. In the exercise of that jurisdiction if the Government comes to a wrong decision, this court cannot interfere by way of certiorari. So long as the Government has not exceeded its jurisdiction or acted without jurisdiction this court cannot interfere by issuing a writ of certiorari merely on the ground that its decision is wrong. The law on the point is summed up in Halsbury's Law of England as follows:

The case is more difficult where the jurisdiction of the court below depends, not upon some preliminary proceeding, but upon the existence of some particular fact. If the fact be collateral to the actual matter which the lower court has to try, that court cannot, by a wrong decision with regard to it, give itself jurisdiction which it would..... not otherwise possess.

The lower court must, indeed decide as to the collateral fact, in the first instance; but the superior court may upon certiorari inquire into the correctness of the decision, and may quash the proceedings in the lower court if such decision is erroneous, or at any rate if there is no evidence to support it. On the other hand, if the fact in question be not Collateral, but a part of the very issue which the lower court has to inquire into, certiorari will not be granted, although the lower court may have arrived at an erroneous conclusion with regard to it. (Vide Halsbury's Laws of England 2nd Edn. Vol. 9 P. 881 para 1485)

6. On the same subject Lord Esher M. R. observed in -- "Queen v. Commr. for Special purposes of income tax", (1888) 21 QBD 313 (D) as follows:

When an inferior court or Tribunal or body, which has to exercise the power of deciding facts, is first established by the Act of Parliament, the Legislature has to consider what powers it will give that Tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such Tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise.

There it is not for them conclusively to decide whether that state of facts exists, and if they exercise the jurisdiction without its existence what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The Legislature may entrust the Tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction on finding that it does exist to proceed further or do something more.

When the Legislature are establishing such a Tribunal or body with limited jurisdiction, they also have to consider whatever jurisdiction they give them whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned, it is an erroneous application of the formula to say that the Tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the facts including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; & if they were given jurisdiction go to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction.

In *Province of Bombay Vs. Kusaldas S. Advani and Others*, *Mukherjea J.*, as he then was, observed as follows:

When the Legislature delegates powers to an authority, and lays down that the powers could be exercised only if a certain state of facts exists, obviously the authority cannot act if the condition is not fulfilled. If it wrongly holds or assumes that the condition exists although it actually does not exist, its assumption of jurisdiction would be un-supportable and could be removed by a writ of certiorari.

The Legislature however may entrust the authority with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists. In such cases even if the authority makes a wrong decision either of facts or law, it can be corrected by an appellate tribunal if there is any, but not by a writ of certiorari, as every authority if it acts within jurisdiction is competent to decide both rightly or wrongly.

It is thus clear from these authorities that if the Legislature entrusts the authority with jurisdiction to determine whether the preliminary state of facts exists, no certiorari can lie even if the decision be wrong, the reason being that the jurisdiction having been conferred the authority has power to decide both rightly or wrongly. In the instant case S. 20 of the Panchayat Vidhan confers jurisdiction on the Government to decide whether any Panchayat Board has abused its powers or neglected its duty; consequently in the proper exercise of its jurisdiction if it decides wrongly this Court cannot interfere by way of certiorari proceedings. This contention, therefore, must be rejected.

7. For the reasons given above the petition is dismissed with costs. Counsel's fee Rs. 75/-.

Dixit J. :

8. Without expressing any opinion on the point whether an order passed by the Government under S. 20 of the Panchayat Act dissolving a Panchayat is a quasi-judicial order or whether the giving of notice under the proviso to that section is conclusive of the quasi-judicial nature of the order and assuming that an order made under that section is a quasi-judicial order, I think this is not a case in which a writ of certiorari ought to go for quashing the order of the Government

dissolving the Kendra Panchayat of Mihona District.

As has been pointed out by my Lord the Chief Justice the petitioner was given an opportunity of showing cause against the dissolution of the Panchayat. That being so, it cannot be maintained that the order passed by the Government dissolving the Panchayat was wholly without jurisdiction. S. 20 of the Act gives to the Government the power to dissolve Panchayat on grounds of abuse of power, dereliction of duty and for other sufficient reasons.

The question whether, here the refusal of the Panchayat to give effect to the appointment, made by the Development Commissioner of Shree Nathuram as Gram Sewak did or did not constitute sufficient reason for the dismissal of the Panchayat is clearly one of which Government is the sole Judge. This court cannot convert itself into a Court of Appeal and enter into the question of sufficiency or adequacy of the ground for the dissolution of the body. For these purposes and also for the reason that the petitioner moved this Court under Art. 226 without first approaching the opponent for a demand of justice, this petition must be dismissed. I, therefore, agree with the order proposed by my Lord the Chief Justice.