

(2022) 03 MP CK 0122
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 105 Of 2022

Suresh Kumar

APPELLANT

Vs

State Of M.P And Others

RESPONDENT

Date of Decision : 16-03-2022

Acts Referred:

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 9, 40, 87, 87(2), 87(3), 87(3)(a), 87(3)(b), 119

Citation : (2022) 03 MP CK 0122

Hon'ble Judges : Ravi Malimath, CJ;Purushaindra Kumar Kaurav, J

Bench : Division Bench

Advocate : Anil Kumar Dwivedi, Suyash Thakur

Final Decision : Dismissed

Judgement

Purushaindra Kumar Kaurav, J

1. This intra Court appeal takes exception to order dated 20.01.2022, passed by the learned Single Judge in Writ Petition No. 16440 of 2020, whereby, petition filed by the appellant-petitioner has been dismissed.

2. The facts of the case are that the appellant-petitioner was elected as Sarpanch of Gram Panchayat Karondi Tola, Janpad Panchayat Manpur, District Shahdol for a period of five years from 2015 till March, 2020. Since the election could not take place before expiry of the duration of Panchayat, therefore, on 08.03.2020, the State Government in exercise of power conferred under Section 87(3)(b) of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short "Act of 1993) directed that all powers and duties of the Panchayat shall, until the Panchayat is reconstituted, be exercised and performed by the Committee of persons. The State Government also decided that the Head of the Committee would be the outgoing Sarpanch who was holding the post of Sarpanch on the date of expiration of the term of five years. In pursuance to the directions dated 08.03.2020, the appellant was appointed as "Pradhan" of the Administrative

Committee. On account of certain complaints against the appellant-petitioner for causing financial loss and working against the interest of the Panchayat, vide order dated 25.08.220, the Chief Executive Officer, Janpad Panchayat constituted a Committee and directed to submit its report. The inquiry report was submitted on 10.09.2020 in which certain anomalies were reported. On 11.09.2020, a show cause notice was issued against the appellant-petitioner alleging various financial irregularities against him. The appellant-petitioner filed W.P.No.13308-2020 before this court which was decided on 21.09.2020 directing the Chief Executive Officer, Janpad panchayat Manpur to take appropriate steps in the matter and provide proper opportunity of hearing to the appellant-petitioner before taking any action. On 14.10.2020 (Annexure P-14), an action for removal of the appellant-petitioner was taken which was challenged by the appellant by filing W.P.No.16440-2020. The learned Single Judge held that there was no fault in the impugned order dated 14.10.2020 (Annexure P-14) and dismissed the said petition against which the appellant has filed the instant writ appeal.

3. The learned counsel appearing for the appellant-petitioner submits that the inquiry was conducted behind the back of the appellant-petitioner; the impugned action of removal taken against the appellant-petitioner is in violation of principles of natural justice. He also submits that the provisions of Section 40 of the Act of 1993 have not been followed and, therefore, the learned Single Judge has erred in dismissing the writ petition.

4. We have heard the learned counsel for the appellant and we find no substance in the submission made by the learned counsel for the appellant.

5. From the perusal of the record, we find that the show-cause notice was given to the appellant. So far as the argument of the counsel for the appellant that the inquiry was conducted behind the back of the appellant-petitioner is concerned, it is found that the inquiry proceedings conducted by the Committee was inquisitorial in nature and was only with an object to find out whether there was enough material to proceed against the appellant-petitioner. The inquiry-investigation conducted by the Committee by itself does not prejudice the appellant-petitioner in any manner. It was on the basis of material collected during the inquisitorial process, a show-cause notice was given to the appellant-petitioner and he did submit his reply to the said show-cause notice, therefore, it cannot be held that the action taken against the appellant-petitioner was in violation of principles of natural justice.

6. So far the argument with respect to non adherence to the provisions of Section 40 of the Act of 1993 is concerned, the same also does not have any substance and deserves to be rejected. Section 40 of the Act of 1993 relates to removal of an "Office Bearer" if he is found guilty of misconduct in discharging his duties and/ or if his continuance in the office is undesirable in the interest of public. The duration of Panchayat as per Section 9 of the Act of 1993 is for five years from the date appointed for its first meeting. Admittedly, the term of Panchayat which is of five years is already over. The impugned action does not

relate to the duration of five years for which the appellant-petitioner was elected as Sarpanch. Presently, the State Government has exercised powers conferred under Section 87 of the Act of 1993 and has appointed a Committee of persons including appointment of the Head of such Committee. Section 87 of the Act of 1993 is reproduced as under :-

"87. Power of State Government to dissolve Panchayat for default, abuse of powers etc. - (1) If at any time it appears to the State Government or the prescribed authority that a Panchayat is persistently making default in the performance of the duties imposed on it by or under this Act or under any other law for the time being in force, or exceeds or abuses its powers or fails to carry out any order of the State Government or the competent authority, the State Government or the prescribed authority, may after such enquiry as it may deem fit, by an order dissolve such Panchayat and may order a fresh constitution thereof.

(2) No order under sub-section (1) shall be passed unless reasonable opportunity has been given to the Panchayat for furnishing its explanation. The notice calling explanation shall be addressed to the Sarpanch or President of Gram Panchayat, Janpad Panchayat or Zila Panchayat as the case may be, and shall be served according to the provisions of Section 119. The reply of the Panchayat to the notice shall be supported by the resolution of the Panchayat.

(3) On dissolution of Panchayat under sub-section (1), the following consequences shall ensue namely,-

(a) all the office-bearers, shall vacate their offices with effect from the date of such order; (b) all powers and duties of the Panchayat shall, until the Panchayat is reconstituted, be exercised and performed by such person or committee of persons as the State Government or the prescribed authority may appoint in this behalf and where a committee of persons is so appointed, the State Government or the prescribed authority shall also appoint a head of such committee;

(c) where a committee is appointed under clause (b) any member of such committee duly authorized by it may issue or institute or defend any action at law on behalf of by or against the Panchayat.

(4) Any person appointed to exercise and perform the powers and duties of a Panchayat during the period of dissolution may receive from the fund of the Panchayat concerned such payment for his service as the State Government may, by order determine.

(5) A Panchayat dissolved under sub-section (1) shall be reconstituted in accordance with the provisions of this Act within six months of its dissolution. Such reconstituted Panchayat shall function for the remaining term of the Panchayat :

Provided that if the unexpired period is less than six months the reconstitution of the Panchayat shall not be done for this period."

7. A careful reading of Section 87 of the Act of 1993 shows that the power under Section 87 of the Act of 1993 can be exercised on dissolution of the Panchayat under Sub Section (3) of Section 87 of the Act of 1993. In the instant case, by virtue of expiration of the term of the Panchayat and, in absence of any provision in the Act of 1993 dealing with such a situation, the State Government has made an arrangement with the aid of sub Section 3 of Section 87 of the Act of 1993 and has appointed a Committee of persons to exercise and perform all the powers and duties of the Panchayat, until the Panchayat is reconstituted. Any appointment as per Clause (b) of Sub Section 3 of Section 87 of the Act of 1993, is not an appointment of an "Office Bearer" of Panchayat, rather Clause (a) of Sub Section 3 of Section 87 of the Act of 1993 clearly prescribes that all the "Office Bearers" shall vacate their Office with effect from the date of order under Sub Section 2 of Section 87 of the Act of 1993. In the instant case, when five year term had expired, the appellant-petitioner was no longer an "Office Bearer" of the Panchayat and hence, the provision of Section 40 of the Act of 1993 would not be applicable as the said provisions are applicable only to the "Office Bearers" of the Panchayat.

8. For the aforesaid reasons, we find that the learned Single Judge has not committed any error while dismissing the writ petition filed by the appellant. Hence, the instant appeal stands dismissed.