
(2010) 01 CHH CK 0025
In the Chhattisgarh High Court
Case No : Writ Petition No. 617 of 2001

Teerath Raj Tiwari

APPELLANT

Vs

State of CG and Others

RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 — Rule 7
Constitution of India, 1950 — Article 226, 227, 311(2)

Citation : (2011) 1 MPJR 182

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Agnihotri, J.

By this petition, the petitioner seeks to challenge the legality and validity of the order dated 16-3-2001 (Annexure - P/1) passed by the Additional Collector. Sarguja (Ambikapur). In case No. 1/B-121/2000-2001 Teerath Raj Tiwari v. Sarpanch Smt. Asha Kujur & Another whereby and where under the revision filed by the petitioner herein was rejected, upholding the order dated 23-10-2000 (Annexure - P/8) passed by the Sub Divisional Officer Ambikapur, in case No. 90-B-121/99-2000 Teerath Raj Tiwari v. Sarpanch. Gram Panchayat. Onchdeeh.

The facts, in nutshell, for disposal of the case, are that the petitioner was appointed as Panchayat Karmi/Panchayat Secretary on 19-12-1995. All of a sudden by order dated 14-4-2000 (Annexure - P/6) passed by the Sarpanch the petitioner was removed from the post of Panchayat Karmi without following the due process of law.

Being aggrieved by the said order, the petitioner preferred an appeal before the Sub Divisional Officer, Ambikapur, which was rejected on 23-10-2000. There against, the petitioner preferred a revision before the Additional Collector, Sarguja, which was also rejected by order dated 16-3-2001. Thus, this petition.

Learned counsel appearing for the petitioner submits that no charge-sheet has been issued and no enquiry has been conducted before the impugned removal order was passed. The impugned action was taken without complying with the mandatory provisions of Rule 7 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999. (for short "the Rules 1999).

Learned counsel appearing for the State submits that admittedly, no enquiry as envisaged under Rule 7 of the Rules, 1999 was conducted. However, show cause notice was served on the petitioner.

I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

The question of law involved in this case is as to whether the petitioner, who was declared as Panchayat Secretary, can be removed from the post without complying with proper procedures as laid down in Rule 7 of the Rules. 1999. Admittedly, as averred by learned counsel appearing for the petitioner that the petitioner was removed without supplying the charge-sheet and without conducting any enquiry.

It is well-settled principle of law as enshrined in Rule 7 of the Rules. 1999 that if the Gram Panchayat proposes to remove a Panchayat Karmi including Panchayat Secretary, the same may be done in accordance with the procedure prescribed in Rule 7 of the Rules. 1999 Admittedly, the Gram Panchayat, before passing the impugned order has not complied with the provisions of Rule 7 of the Rules, 1999.

This Court, in *Dhaluram Koseria v. State of CG And others* 2006 (2) CCLJ 186, observed as under:

19. It is further admitted by all the parties that the procedure for holding an enquiry is prescribed under Rule 7 of the Rules 1999 for imposition of major penalty, that has not been followed. Hence, the termination is bad and vitiated on the ground of non-compliance of the statutory provisions and denial of the principles of natural justice. It amounts to infraction of not only the provisions of Rule 7 of the Rules 1999 but the provisions of Article 311(2) of the Constitution of India also. The order is in fact penal in nature having civil consequences and as such the elaborate provision of Rule 7 of the Rules 1999 was applicable in the case of the petitioner before termination his services.

Further in *Beegam Ram v. State of CG and others* 2008 LT (CG) 41, this Court observed as under :

7. With regard to exercise of power by the High Court under Article 226 and 227 of the Constitution of India, the Hon"ble Supreme Court in catena of decisions have laid down the principles of law that the High Court has jurisdiction and power to interfere if the Court is satisfied that the error is manifest and apparent on the face of the proceedings, clear ignorance and utter disregard of provisions of law and/or a grave injustice or gross violation of justice has occasioned

thereby. In the present case Revenue Authorities/Tribunals have completely ignored the statutory provisions of Rule 7 of the Rules, 1999 and there is manifest error of the facts on the face of record, without requiring any investigation or enquiry. Admittedly, The alleged show cause notice dated 27.2.2000 (Annexure R/3) could not have been served through the Gudi Kotwar on 24.02.2000, three days before the issue of show cause notice, No. notice as contemplated under Rule 7 of the Rules 1999 was issued to the petitioner. Prior to submission of the enquiry report on 29.6.2000 (Annexure R/5), the Gram Panchayat resolved to remove the petitioner from his service on 18.05.2000 and pursuant thereof, order of the removal was passed on 30.05.2000 (Annexure P/3).

Non-compliance of the statutory provisions and denial of principles of natural justice tent amounts to infraction of not only the provisions of Rule 7 of the Rules, 1999 but the provisions of Article 311(2) of the Constitution of India also. The order of removal being penal in nature, visiting with civil consequences, cannot be passed without holding enquiry in accordance with the elaborate provisions, as prescribed in Rule 7 of the Rules, 1999. It is, thus, clear that the respondents have not followed the statutory provisions of law before passing the impugned order.

In view of foregoing, the impugned order dated 16-3-2001 (Annexure - P/1) passed by the Additional Collector, Sarguja, the order dated 23-10-2000 (Annexure - P/8) passed by the Sub Divisional Officer, Ambikapur and the order dated 14-4-2000 (Annexure - P/6) passed by the Sarpanch, are quashed.

Accordingly, the writ petition is allowed to the extent indicated above. No order as to costs. However, the respondent authorities are at liberty to take fresh steps in accordance with Rule 7 of the Rules 1999. if so advised.