

(1989) 09 MP CK 0031
In the Madhya Pradesh High Court
Case No : M.P. No. 975 of 1989

Vikram Singh and Another

APPELLANT

Vs

The Collector, District Dewas and Others

RESPONDENT

Date of Decision : 07-09-1989

Acts Referred:

Madhya Pradesh Panchayat (Sansodhan Tatha Vidhi Manyakaran) Adhyadesh, 1989 — Section 80(3)
Madhya Pradesh Panchayat Adhiniyam, 1981 — Section 17B

Citation : AIR 1990 MP 96 : (1989) JLJ 675 : (1989) MPJR 892 : (1989) MPLJ 817

Hon'ble Judges : V.D. Gyani, J; S.D. Jha, J

Bench : Division Bench

Advocate : T.N. Singh, for the Appellant; S.R. Joshi, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani, J.

The order in this petition shall also govern the disposal of Misc. Petition No. 1057 of 1989 (Babulal S/o Durgaji Patel v. The Collector, District Dewas and another) and Misc. Petition No. 1062 of 1989 (Rameshwar S/o Chainsingh v. The Collector, District Dewas and another), as all these petitions, relate to constitution and appointment of a committee, otherwise known as Administrative Committee for respective Gram Panchayats.

The Government of Madhya Pradesh, on 11th July, 1989, promulgated an Ordinance No. 3 of 1989 known as Madhya Pradesh Panchayat (Sanshodhan Tatha Vidhi Manyakaran) Adhyadesh, 1989, (for short "the Ordinance") amending thereby Sections 15 and 17 of the M.P. Panchayat Adhiniyam, 1981 (for short "the Acf). This was followed by Memo No. 2670/22 Panchayat Raj/89 dated 12th July, 1989, and Memo No. 2684/22/Panchayat Raj/89 dated 17th July, 1989. Further clarified by Memo No. 2711-1562-22-Panchayat Raj-89 dated 21st July, 1989 which provided for guidelines to be followed in the matter of

appointment of members of the Administrative Committee. These Memos have been filed as Annexures-1 and 2 to the petition.

The petitioner has challenged the order No. 1245 dated 24-7-1989 (Annexure 3) passed by respondent No. 1, Collector, Dewas, who in purported exercise of powers conferred by Section 17(4) read with Section 80(3) of the Act appointed sixteen persons named therein, as members of Administrative Committee for Gram Panchayat Tonk-Kala.

Collector's order appointing members of the Committee has been challenged by Shri Singh, learned counsel for the petitioner on two grounds (1) lacking in jurisdiction, and (2) non-compliance of the guidelines prescribed by the State Government in its Memo dated 21-7-1989 (Annexure-2) in the matter of appointment of members of the committee.

Shri Samvatsar, learned Govt. Advocate, supporting the action, submitted that the petitioner is not eligible to be appointed a member in view of the fact that he is facing a criminal prosecution. As for lack of jurisdiction, he placed before us a Notification dated 13th July, 1989, issued by the State Government, and contended that the Collector had authority to make appointments of members of the committee.

It is the first question regarding jurisdiction and authority of the Collector, that we take up for consideration first.

The impugned order dated 24-7-1989 (Annexure-3) passed by the Collector, as noted above, has been passed u/s 17(4) read with Section 80(3) of the Act.

Section 17(4) of the Act reads as follows:--

"(4) If before the expiry of the period mentioned in Sub-section (2) the term is not extended by the State Government under Sub-section (3) or if within the period extended by the State Government under Sub-section (3) the Gram Panchayat is not newly constituted, it shall stand dissolved and the provisions of Section 77 shall apply in respect thereto."

Section 80(3) of the Act is also reproduced for ready reference :--

"(3) On dissolution of panchayat under Sub-section (1), the following consequences shall ensue--

(a) all the panchas or members of such panchayat, 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 authorised by it may issue or institute or defend any action at law by or against the panchayat."

A mere reading of these provisions of the Act would make it clear that neither of the two confer any power on the Collector to make an order, appointing members of an Administrative Committee for the Panchayat.

Section 17(4) of the Act provides for a situation which may arise as a result of non-extension of terms of a Panchayat, on expiry of its period as provided by Section 17(2) of the Act. It provides for control u/s 77 of the Act in case no new Gram Panchayat is constituted. Similarly Section 80(3) merely enumerates the consequences that followed dissolution of a Panchayat u/s 80(1) of the Act, which empowers the Government to dissolve a Panchayat for default in the performance of duties imposed under the Act, or abuse of powers. None of these provisions are attracted to the facts of the case at hand. It is not even the case of the respondents.

The only distinguishing feature of Misc. Petition No. 1062 of 1989 (Rameshwar v. Collector) is that the order dated 24-7-1989 (Annexure-3) appointing the members of the Administrative Committee for Gram Panchayat Polayjagar has been passed in exercise of the powers conferred by Section 17(B?) of the Act. Let us, therefore, now consider Section 17(B) of the Act.

Adverting to the Ordinance promulgated by the Government of M.P., new Section 17-A and 17-B have been added to the existing Section 17 of the Principal Act. We are presently concerned with Section 17-B(1), which reads as follows :--

"17-B. (I) Notwithstanding anything contained in this Act or rules made thereunder if the State Government is of opinion that--

(a) the election

(i) of a Gram Panchayat established for the first time u/s 4; or

(ii) of a Gram Panchayat constituted or affected as a result of the order passed under Sub-section (1) of Section 120; or

(iii) for a fresh constitution of a Gram Panchayat in place of a Gram Panchayat dissolved u/s 80 or Section 81 and where the Gram Panchayat has not been constituted afresh in place thereof within a period specified in the said section;

is likely to be delayed for any reason whatsoever; and

(b) it is necessary or expedient to set up an authority for the exercise of powers and discharge of duties of such Gram Panchayat under this Act or the rules made thereunder pending constitution thereof.

The State Government may, by order, declare that there shall be a committee of persons qualified to hold office of Panch not exceeding the number of wards plus one for such Gram Panchayat for the aforesaid purpose and thereupon the State Government or prescribed authority shall appoint a committee for such Gram

Panchayat and shall also appoint a head of such Committee."

It is this section which governs the exercise of powers of Gram Panchayats pending constitution of a committee as contemplated by Section 17-B (1)(b) of the Act as introduced by the Ordinance.

The section, particularly the later part of Sub-section (b) as quoted above, very clearly shows that the power to constitute a committee and to declare the same vests in the State Government.

It is here that the question arises whether the Collector has been validly authorised to exercise power u/s 17-B of the Act as introduced by the Ordinance. The notification No. 2674-713-XXII-P.R. 89 dt. 13-7-1989, placed before us relates to conferment of power on the Collector or Additional Collector u/s 17-A(1) and not Section 17-B of the Act. Its Hindi version has also been placed it certainly refers to Section 17-A(1) but the notification in Hindi is of no avail to the respondents. By this notification, dated 13th of July, 1989, the following entry in place of serial number 7 in the notification dated 23-2-1989 has been substituted :-

S. No.

Section

Officers or authorities

7 (A)

17-A(1)

Collector or Additional Collector

This provides for authorisation in respect of officers or authorities mentioned in column No. 3 who are authorised to discharge the functions of the prescribed authority under the provisions of sections specified in the corresponding entries in column No. 2. A mere glance at the notification would show that authorisation is meant for discharge of functions of the prescribed authority u/s 17-A(1) of the Act and not Section 17-B(1) thereof. In the circumstances, the action taken by the Collector is wholly without any authority.

Shri Samvatsar, learned Govt. Advocate placing reliance on a Full Bench decision of this Court in *Mangilal and Another Vs. Board of Revenue, Gwalior and Others*, , urged that the Hindi version of this Notification may be looked into. This case, no doubt holds that in case of doubt, the Hindi version can be relied upon. The Court was called upon to consider and interpret Section 36 of the Madhya Bharat Land Revenue and Tenancy Act. What we are concerned with is a Notification. There is no question of any interpretation involved in it.

Going by the Notification in English, it is clear beyond any doubt on its plain reading that there is no vesting of authority in the Collector or the Additional Collector to take any action as contemplated by Section 17-B of the Act. What

follows therefore is that the constitution of the Administrative Committee and appointment of members thereto by the Collector and in absence of a Notification notifying him as the "Prescribed Authority", as required by Section 17-B of the Act it is wholly without any jurisdiction and must be quashed on this account. It is accordingly quashed.

Apart from this inherent lack of authority for want of a valid notification, there is yet another aspect of the matter. Section 17-B of the Act, as newly introduced, requires that before the "Prescribed Authority" constitutes and appoints members of an Administrative Committee for any Gram Panchayat, there has to be an order made by the State Government declaring that there shall be a Committee for any particular Gram Panchayat. The exercise of power in the matter of constitution of such a Committee depends on and pre-conditioned by such a declaratory order on the part of the State Government. No such order is pleaded to have been passed, much less placed on record or brought to our notice. In the circumstances, the subsequent action taken by the Collector, in absence of an order by the State Government, is nothing short of putting the cart before the horse. The "Prescribed Authority", assuming that there is a valid notification, can act only when the State Govt. has passed an order as contemplated by Sub-section (b) (the later part thereof) of Section 17-B(1) of the Act, whole exercise by the Collector is in futility, has no legal sanction or sanctity and must, therefore, be quashed. It is accordingly quashed.

The petitions succeed and are allowed with costs. Counsel's fee shall be Rs. 500/-, if certified.