
(1978) 10 MP CK 0009
Madhya Pradesh High Court
Case No: M.P. No. 158 of 1978

Mod Singh		APPELLANT
	Vs	
State of M.P. and others		RESPONDENT

Date of Decision: Oct. 27, 1978

Acts Referred:

- Madhya Pradesh Panchayat Act, 1962 - Section 17, 310

Citation: (1979) J LJ 90

Hon'ble Judges: G.L. Oza, J; G.G.Sohani, J

Bench: Division Bench

Advocate: A.M. Mathur, for the Appellant; S.L. Garg, Advocate General for State, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G.L. Oza, J.

This petition is filed by the petitioner challenging the order passed by the Collector, Dewas (respondent No. 2), dated 19th May, 1978 (Annexure-F), disqualifying the petitioner for contesting any election as Panch or Sarpanch.

2. According to the petitioner, he was chairman of the Janapada Panchayat, Dewas. earlier and according to him on certain complaints received by the State Government, the State Government conducted an enquiry and by order dated 17-5-1978 (Annexure-B) the Collector, Panchayats Dewas, issued a notice to show cause dated 28-3-1975. It is further alleged that by the orders of the State Government dated 6-10-1976, the matter was finally decided and two allegations against the petitioner were found proved, but the State Government did not think it fit to take any action for these two grounds and It only passed in order warning the petitioner. According to the petitioner inspite of this order passed by the State Government, the Collector Panchayats Dewas issued a show-cause notice dated

17-5-1978, which was received by the petitioner on 18-5-1978 at 11 a.m. in which the petitioner was called upon to file his reply within two days of the receipt of this notice. The petitioner contends that the allegations contained in this notice were the same allegations on which earlier proceedings have ended in the order passed by the State Government in 1976.

3. It is further submitted by the petitioner that after receipt of the notice on 18-5-1978 at 3 45 p. m. on the same day the petitioner submitted an application to respondent No. 2, Collector, Dewas, stating his objections about the show-cause notice in view of the earlier decision of the State Government and further stating that it would not be possible for the petitioner to reply to the notice within two days when he has yet to get the copies of a number of documents, which are referred to in this show-cause notice. It appears that the petitioner also raised an objection in this application that two days time was not sufficient, and it should be 30 days notice, as provided for in section 17 (1) (this provision having been amended, 30 days notice was not necessary). According to the petitioner, respondent 2. Collector, Dewas, sent a letter to the petitioner dated 19-5-1978 directing him that if he wants copies of documents he should apply to the Chief Executive Officer of the Janapada Panchayat, Dewas and he will provide him copies of the documents that he wanted. This letter was received by the petitioner at 11 a.m. on 19-5-1978, On the same day, i. e, 19-5-1978 the petitioner submitted another application to respondent No. 2 at 3-30 p. m. that the Chief Executive Officer was not available in his office and ultimately he has promised that after 3 o'clock he will be available and will make arrangements to get the petitioner copies of document that he wants. The petitioner also submitted in his application that before he could get copies, two days time will come to an end and, therefore, wanted further time for filing a reply and also prayed for postponement of the Panchayat elections for the Gram Panchayat, Nariakheda. According to the petitioner the Chief Executive Officer of the Janpad Panchayat Dewas got the records and the relevant files inspected by the petitioner at 5.35 p. m and provided certain copies at 9.15 p. m. at night of 19-5-1978 and, therefore, it was not possible for the petitioner to file his reply on 19-5-1978 and he went to the office with his reply on 20-5-1978. But, it appears that before his reply could be filed on 20th May, 1978, according to the petitioner, on 19-5-1978 itself at 12 O'clock at night the Collector (respondent 2) passed an order against the petitioner disqualifying him for elections to the Panch or Sarpanch in the Panchyats elections. It is also alleged by the petitioner that this order was sent by respondent No. 2 to respondent No. 3 (the Election Officer) as on 20th May, 1978, it was the date fixed for scrutiny of the nomination papers and the petitioner had filed a nomination paper for election of the Gram Panchayat, Nariakheda. On receiving this order from respondent No. 2, the respondent No. 3 rejected the nomination paper of the petitioner.

4. The petitioner in this petition had challenged the order passed by the Collector (respondent No. 2) dated 19-5-1978 and also challenged the order passed by the

Election Officer (respondent No. 3) rejecting the nomination paper of the petitioner. He also alleged that respondent No. 2 Collector, acted mala fide under the political pressure and passed this order against the petitioner. At the time of hearing, the petitioner gave up the relief against rejection of the nomination paper as the learned counsel for the petitioner stated that the election having taken place, there is no question about challenging the order rejecting the nomination paper and the petitioner only challenged the order passed by the Collector (respondent No. 2) on 19th May, 1978, holding that the petitioner is disqualified for elections of the Panchayat.

5. In the return filed by the respondents it is not disputed that the notice was issued on 17-5-1978, which was received by the petitioner on 18-5-1978 at 11 a.m. It is also not disputed that on 18-5-1978 itself at 3-45 p. m. the petitioner submitted an application saying that the time was not sufficient and that he wanted certain copies of the documents and wanted to refer to certain files and records before filing his reply and he also objected that the time granted is too short. It is also not disputed that the respondent No. 2 sent a letter to the petitioner on 19-5-1978 directing him to approach the Chief Executive Officer of the Janapada Panchayat for getting the copies and inspection of the records and that this letter of respondent 2 was received by the petitioner at 11 a. m. It is also not disputed that on 19-5-1978 itself the petitioner submitted an application at 3-30 p. m. to respondent No. 2 informing him that the Chief Executive Officer was not available and he had given time at 5 p. m. for giving copies and for inspection of records and the petitioner also prayed for extension of time of two days and also sought that the election to Nariakheda Panchayat be postponed. It is also not disputed that the petitioner could inspect the records at 5 35 p. m. on 19-5-1978 and get copies of the documents at 9.15 p.m. on 19-5-1978. It is also not disputed that respondent No. 2 on 19-5-1978 itself at 12 O'clock at night passed the order holding the petitioner as disqualified for elections to the Panchayat.

6. At the time of arguments the only question which was raised was that respondent No. 2-Collector, Dewas, had no jurisdiction to pass such an impugned order and the impugned order was passed in a great hurry. The learned counsel for the petitioner contended that it could not be an order under S. 310 of the M, P. Panchayats Act, because section 310 contemplated determination of liabilities and a direction for payment thereof on a date so fixed in the order itself. He also contended that this could not be an order u/s 17(1) of the Act as section 17(1) does not contemplate any order declaring a person disqualified for elections. The learned Advocate General, appearing for the respondents, conceded that no order by respondent No. 2-Collector was contemplated under the provisions of section 17 of the Act. But he contended that this is an order passed by respondent No. 2-Collector, Dewas u/s 310 of the M. P. Panchayats Act, 1962. As regards facts the learned Advocate General did not contest as the facts which have not been disputed or admitted in the return.

7. From the allegations in the petition and the admission or failure to deny facts in the return the facts: which are not in dispute appear to be that on 17-5-1978 a notice to show cause was issued to the petitioner, which was received by the petitioner at 11 a.m. on 18-5-1978. This notice directed the petitioner to file his reply within two days from the date of receipt of this notice, as it is clearly stated in this notice :

After receipt of this notice on 18-5-1978 at 11 O'clock, the petitioner approached the respondent No. 2 with an application, which he "filed on 18-5-1978 " itself at 3-45 p.m., in which; he stated that he wanted copies of certain documents for filing and preparing the reply and also inspection of "certain documents and records. He also drew attention of the respondent No 2 that for all this the time permitted to him i. e two days, is too short. The respondent No. 2 sent a letter to the petitioner on 19-5-1978 directing him to approach the Chief Executive Officer of the Janapada-Panchayat for getting the necessary documents and inspection of records and this letter was received by the petitioner at 11 a. m. on 19-5-1978; On 19-5-1978 the petitioner, submitted an application to the respondent No. 2 at 3-30 p-m. saying that the Chief Executive Officer was not available and he has ultimately called him, at 3 O'clock to make available the necessary records and copies and ultimately the petitioner inspected the records at 5:35 p.m. on 19-5-1978 and he was given copies of the documents at 9.15 pm on 19-5-1978 and on 19-5-1978 itself at 12 O'clock (midnight) respondent No. 2 passed the impugned order.

8. It is, therefore, clear that in spite of the fact that the notice clearly mentioned that the petitioner was to submit his reply within two days from the date of receipt of notice and as it is not disputed that the petitioner received the notice on 18-5-1978 at 11 a. m., he was entitled, to file his reply up to the 20th May, 1978. It is also clear that before the time for filing the reply expired, respondent No. 2 passed, the order at mid-night holding the petitioner disqualified for elections to the Panchayat. It is also clear that on the same day at 3.30 p. m. he was informed by the petitioner that he has yet to get copies and has to inspect the records and it is also not disputed that the petitioner ultimately got the copies of the documents at 9 15 p. m (night) on 19-5-1978. These facts speak about the manner in which the order has been passed, although we do not think it necessary to go into the allegations of malafides as we will examine the question about jurisdiction of respondent No. 2-Collector to pass the impugned order.

9. The learned Advocate General frankly conceded that if at all there is any provision which confers jurisdiction on respondent No, 2 to pass an order like this, it is only section 310 of the Act. Section 310 is as under:

S. 310.-Liability of members etc, for loss, waste or misapplication-(I) Every Panch, member or office bearer of a Panchayat shall be personally liable for the loss, waste, or misapplication of any money or other property of the Panchayat to which he has been a party or which has been caused or facilitated by his misconduct or gross

neglect of his duty as a Panch, member or office bearer.

(2) If, after giving the person concerned, a reasonable opportunity for showing cause to the contrary, the Collector is satisfied that the loss, waste or misapplication of any money or other property of the Panchayat or the Nyaya Panchayat is a direct consequence of his misconduct or gross neglect on his part, the Collector shall, by order in writing, direct such person to pay to the Panchayat before a fixed date, the amount required to reimburse it for such loss, waste or misapplication.

(3) If the amount is not so paid, the Collector shall recover it as an arrear of land revenue and credit it to the appropriate fund.

(4) Any person aggrieved by the decision of the Collector may within thirty days from the receipt by him of the decision of the Collector prefer an appeal to the Commissioner against such decision whose order thereon shall be final.

This provision talks of liability of members etc. for loss, waste or misapplication and the scheme of this provision indicates that the Collector exercising jurisdiction under this provision has after giving a notice to show cause and a reasonable opportunity to show cause and after considering all the material to determine the liability which in the opinion of the Collector the person is bound to pay and direct that the amount be paid upto a fixed date. It is therefore, clear from the scheme of this provision that it does not contemplate any question of disqualification, but it pertains to the fixing of any liability of loss, waste or misapplication and contemplates the Collector to apply his mind after giving reasonable opportunity and determine the amount and fix a date before which the person is expected to reimburse the amount. In the order in question it appears that the Collector was mainly concerned with the question of qualification or disqualification of the petitioner and there is nothing to indicate that the Collector (respondent No. 2) acted in accordance with section 310 to determine the liability of the petitioner, nor he fixed any date before which the amount was to be deposited. He mainly directed that the petitioner is disqualified for elections to the Panchayat and as alleged the order communicated to the Election Officer of the concerned Panchayat. The learned Advocate General seriously contended that the order does not hold that the petitioner is disqualified, but only states that he incurs disqualification. Unfortunately, this contention cannot be accepted. The order of the Collector in dispute in the operative portion clearly states:

With the return an affidavit has been filed by the Collector, who passed the impugned order and in para 1 of his affidavit he has clearly stated thus:

That, I passed the Order No. 381 dated 19.5.73 under which Shri Modsingh Chawada, Ex-Chairman, Janapad Panchayat, Dewas stood disqualified to stand for election for Panch, and Sarpanch, Gram Panchayat....

Apart from it whether this order indicates that the petitioner is disqualified to contest the elections or incurs a disqualification there is no substantial reference.

The main question is whether such an order could be passed by Respondent No. 2 Collector, Dewas, exercising jurisdiction u/s 310 of the M. P. Panchayat Act, 1962. Looking to the scheme of section 310 of the Act and the requirements thereof, we have no hesitation in holding that this order could not be said to be an order passed u/s 310 of the Act.

10. It is not the case of the respondents and the learned Advocate General frankly conceded that u/s 17 (i)(m) of the Act, respondent No. 2 had no jurisdiction to pass any order. Section 17 talks of certain disqualifications which could be considered by the Returning Officer at the time of scrutiny of the nomination papers. Apparently, therefore, the respondent No. 2 was not at all expected to pass any order u/s 17 of the Act. Consequently, the order passed by the Collector (respondent No.2) is not within the jurisdiction conferred on him under any of the provisions of the M. P. Panchayat Act, 1962. It is, therefore, without jurisdiction and deserves to be quashed. We do not wish to express any opinion about the subsequent matter about rejection of the nomination paper, as that matter has been given up by the petitioner.

11. The petition is, therefore, allowed. The order dated 19.5.1978 (Annexure-F) passed by the Collector (respondent No. 2) directing the petitioner as disqualified for elections under the M. P. Panchayats Act, 1962, is quashed. The petitioner shall be entitled to costs of this petition. Counsel's fee Rs. 200/-, if certified. The outstanding amount of the security deposit shall be refunded to the petitioner.