

(1999) 02 MP CK 0019

Madhya Pradesh High Court

Case No: Writ Petition No. 26 of 1997

Ashok Kumar Kaurav

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision: Feb. 2, 1999

Acts Referred:

- Madhya Pradesh Panchayat Raj Adhiniyam, 1994 - Section 69, 69(1), 70, 70(1), 95

Citation: (2000) ILR (MP) 1057 : (1999) 2 JLJ 273 : (1999) 2 MPJR 296 : (1999) 2 MPLJ 729

Hon'ble Judges: Shahi Kant Kulshreshtha, J

Bench: Single Bench

Advocate: Aditya Adhikari, for the Appellant; P.D. Gupta, Government Advocate for respondent Nos. 1 to 5 and 7 and Alok Hoonka, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.K. Kulshreshtha, J.

By this petition, the petitioner challenges the order dated 11-9-1996 (Annexure P-7) of the Deputy Director, Panchayat and Social Services, Narsinghpur, by which he has directed the Sarpanch of the Gram Panchayat, Nargi, to appoint Panchayat Karmi in the said Gram Panchayat after inviting applications in this behalf and it has been clarified that the removed Secretary of the Panchayat viz., Laxman Pd. Sharma (respondent No. 8) would also be free to make such an application. By amendment in the petition, the petitioner has also challenged the appointment of respondent No. 8 by order dated 14-8-1997 [Annexure 11(D) passed by the Up-Sarpanch of the said Gram Panchayat, by which the respondent No. 8 has been appointed as Panchayat-Karmi-cum-Secretary of the said Panchayat.

The case of the petitioner, in short, is that by Annexure P-1, the Deputy Director, Panchayat and Social Services, (respondent No. 5), under the instructions of the Collector, Narsinghpur, directed Sarpanch of the Gram Panchayat Nargi (respondent

No. 6) that the post of Secretary be treated as vacant in the said Panchayat and steps should be taken in accordance with the Panchayat Karmi Yojna to fill up this vacancy. In pursuance of the said direction of the Collector to the Deputy Director, Panchayat and Social Services, the Gram Panchayat considered the applications of four persons in its meeting dated 17-8-1998 and the petitioner was selected on the basis of percentage of marks obtained by him in Matriculation Examination and fulfilment of the qualifications as per the eligibility criteria laid down. The petitioner has filed copy of the proceedings of the Gram Panchayat as Annexure P-2. In pursuance of the said proceedings, appointment order dated 17-8-1996 (Annexure P-3) was issued, by which by virtue of appointment of the petitioner as Panchayat Karmi, he was also appointed as a Panchayat Secretary. The petitioner has placed on record the documents evidencing his having joined on the said post and taking over charge, but later by the impugned order Annexure P-7 dated 11-9-1996, the Deputy Director, Panchayat and Social Services, directed that the post be treated as vacant in pursuance of the order dated 4-7-1996 (Annexure P-1) and steps be taken to fill up the post in accordance with the scheme. The petitioner contends that this communication has been sent by the Deputy Director apparently in ignorance of the fact that the post already stood filled up by the appointment of the petitioner, which was duly communicated to the Deputy Director, Panchayat and Social Services, of which the acknowledgment has been placed on record as Annexure P-6. The petitioner further submits that against the said order/ communication, the petitioner filed an appeal Annexure P-9 to the Collector and Annexure P-10 to the Commissioner, Jabalpur, as it was not clear as to who would be the appellate authority against the said order Annexure P-7 since the order had been passed under the directions of the Collector. Since the appeal of the petitioner was not decided either by the Collector or the Commissioner and no steps were taken in connection therewith, the petitioner filed this petition.

During the pendency of this petition there were other developments and one Ganesh Prasad Mehra was appointed on the post of Secretary of the respondent No. 6 Gram Panchayat Nargi, but later withdrawn. Thereafter, by Annexure P-11(A) one Jagdish Awasthy was placed in charge of the Gram Panchayat, with the result, the Gram Panchayat by resolution dated 13-8-1997 postponed selection of a new Panchayat Karmi/Secretary, which was earlier scheduled on 14-8-1997. However, the Up-Sarpanch of the Gram Panchayat then issued another order Annexure P-II(D) dated 14-8-1997, by which he appointed respondent No. 8 Laxman Sharma on the post of Panchayat Karmi/Secretary in reference to the same order of the Collector. The petitioner has, therefore, by amendment, challenged the order Annexure P-11(D) on the ground that Laxman Sharma (respondent No. 8) firstly could not have been appointed in the manner it has been done and secondly, the Up- Sarpanch, while the Sarpanch was holding the Office, had no authority to make any appointment. Respondents 1 to 5 and 7 have filed their return in which they have pointed out that the respondent No. 8 Laxman Sharma was working as Panchayat

Secretary in the respondent No. 6 Gram Panchayat, but he was removed from the post and on the post becoming vacant, letter Annexure P-I was issued directing respondent No. 6 to take steps to fill up the same. While not disputing that the respondent No. 6 appointed the petitioner, these respondents have asserted that the removed Secretary Laxman Sharma had raised dispute about his removal and the Collector, therefore directed that his candidature be also considered while considering fresh appointment. The respondent have further averred that u/s 69 of the M. P. Panchayat Raj Adhiniyam, 1993 and the guidelines issued by the Government (Annexure P-12), appointment of Panchayat Karmi has got to be notified by the Competent Authority and then only the appointment becomes valid. The respondents have further averred that since the post was vacant, the appointment of Ganesh Prasad Mehra could be made and they have, thus, denied the claim of the petitioner to any relief. The Gram Panchayat (respondent No. 6) has also filed a return and the respondent No. 8, although has not filed any reply, has opposed the petition on the facts referred to in the return of the other respondents. Before advertiring to the facts, it is necessary to refer to the provisions of the M. P. Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as the Panchayat Adhiniyam), which dealt with the appointment of Secretary, Chief Executive Officer and other officers and servants of Panchayat. Section 69 of the Adhiniyam provides for appointment of Secretary and Chief Executive Officer and lays down that the State Government or the prescribed authority may appoint a Secretary for a Gram Panchayat or group of two or more Gram Panchayats. The proviso to sub-section (1) of Section 69, however, permits continuance of person holding the charge of a Secretary of the Gram Panchayat immediately before the commencement of the Act as a person deemed to be appointed in accordance with the provisions of sub-section (1). Section 70 provides for appointment of other officers and servants of the Panchayat and lays down that subject to the provisions of Section 69 every Panchayat may with previous approval of prescribed authority appoint such other officers and servants as it considers necessary for the efficient discharge of its duties. The State Government has framed a scheme of which a copy has been filed by the petitioner as Annexure P-12. The scheme is stated to have been issued under the provisions of Section 70(1) read with Section 69(1) of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993, for appointment of Panchayat Karmi and his functioning as Secretary by virtue of such an appointment. Since the controversy between the parties rests on the construction of Sections 69 and 70 and the provisions made thereunder by the "PANCHAYAT KARMI YOJNA", the said Sections 69 and 70 are reproduced here under:

"69. Appointment of Secretary and Chief Executive Officer. - (1) The State Government or the prescribed authority may appoint a Secretary for a Gram Panchayat or group of two or more Gram Panchayats : Provided that the person holding the charge of a Secretary of Gram Panchayat immediately before the commencement of this Act shall continue to function as such till a Secretary is

appointed in accordance with this section.

Provided further that a person shall not hold charge of a Secretary of Gram Panchayat, if such a person happens to be relative of any office bearer of the concerned Gram Panchayat.

Explanation. - For the purpose of this sub-section the expression "relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law.

(2) The State Government shall appoint for every Janpad Panchayat a Chief Executive-Officer and may also appoint one or more Additional Chief Executive officers, who shall discharge such functions and perform such duties as may be assigned to them by the Chief Executive Officer.

(3) The State Government shall appoint for every Zila Panchayat a Chief Executive Officer and may also appoint one or more Additional Chief Executive Officers, Deputy Chief Executive Officers and Executive Officers who shall discharge such functions and perform such duties as may be assigned to them by the Chief Executive Officer.

(4) During the absence of a Secretary of Gram Panchayat or Chief Executive Officer of Janpad Panchayat or Zilla Panchayat due to leave, retirement, death, resignation or otherwise the prescribed authority shall, as soon as possible, make such arrangements as he deems fit for carrying on the office of Secretary of Gram Panchayat or Chief Executive Officer of Janpad Panchayat or Zilla Panchayat, as the case may be. A person while carrying on such office shall exercise all powers conferred by this Act or rules made thereunder on the Secretary of Gram Panchayat or Chief Executive Officer of Janpad Panchayat or Secretary of Zila Panchayats as the case may be.

(5) The Secretary of the Gram Panchayat, the Chief Executive Officer of the Janpad Panchayat and Zila Panchayat shall be responsible for keeping and maintaining the records of the Gram Panchayat, Janpad Panchayat or Zila Panchayat as the case may be."

"70. Other officers and servants of Panchayat. - (1) Subject to the provisions of Section 69 every Panchayat may with previous approval of prescribed authority appoint such other officers and servants as it considers necessary for the efficient discharge of its duties. (2) The qualifications, method of recruitment, salaries, leave, allowance and other conditions of service including disciplinary matters of such officer and servants shall be such as may be prescribed."

In the Panchayat Karmi Yojna (hereinafter referred to as the Scheme), parties have referred to clause 2.4 thereof in support of their contention about the validity attached to the resolutions made by the Panchayat. Clause 2.4 reads as follows :-

MADHYA PRADESH PANCHAYAT RAJ ADHINIYAM KI DHARA 70 KI UPDHARA (I) ME PRADATT SHAKTIYON KA PRAYOG KARTE HUE RAJYA SARKAR NIRDESHIT KARTI HAI KI UPROKTA NIRDESHON KE ANTARGAT GRAM PANCHAYATON KO CHHODKAR JINME SHASAN DWARA NIYUKT GRAM SAHAYAK PANCHAYAT SACHIV KA KARYA KARENGE, SHESH GRAM PANCHAYATEN, PANCHAYAT SACHIV KE KARYA SAMPADAN KE LIYE KISI EK VYAKTI KO SWAYAM APNE STAR SE IN NIRDESHON KE ANTARGAT NIYUKT KAREGL YAH VYAKTI GRAM PANCHAYAT KI AWASHYAKTA ANUSAR PURNAKALIK, ARDHKALIK ATHWA SAMVIDA AADHAR PAR NIYUKT KIYA JAA SAKEGA. IS TARAH NIYUKT HUA VYAKTI SAMEANDHIT GRAM PANCHAYAT KA MANSEVI KARMCHARI HOGA TATHA YAH "PANCHAYAT KARMI" KE NAAM SE JAANAA JAVEGA. "PANCHAYAT KARMI" KO MADHYA PRADESH PANCHAYAT RAJ ADHINIYAM KI DHAARA 69(1) KE ANTARGAT SAMBANDHIT GRAM PANCHAYAT KA SACHIV BHI GHOSHIT KIYA JAATA HAI."

The said Scheme in the clause as reproduced above, directs that in Panchayats other than in which Gram Sahayaks have been appointed by the State Government for carrying out the functions of Secretary, the Panchayat shall select a person at its own level in accordance with the terms contained in the scheme as full-time, part-time or contract employee and such a person shall be the honorary employee of the Panchayat and would be called "PANCHAYAT KARMI". Such Panchayat Karmi has been declared by the State Government u/s 69(1) to be the Secretary of the Panchayat concerned.

From the provisions in Sections 69 and 70, it is noticed that both sections act in distinct spheres; first in relation to the appointment of Panchayat Secretary while the second in relation to the appointment of other officers and servants of the Panchayat. Section 69 of the Adhiniyam provides for appointment of a Secretary only by State Government or the Prescribed Authority. Section 2(xxi) defines "Prescribed Authority" to mean such officer or authority as the State Government may, by notification, direct to discharge the functions of a prescribed authority under the provisions of the Act. Section 2(25) of the M. P. General Clauses Act defines "notification" as meaning a notification published in the Gazette. It is a common ground that the scheme Annexure P-12 has not been notified, with the result, the function entrusted to the Gram Panchayat in selecting and appointing Panchayat Karmi cannot be said to be that of an authority appointed u/s 69(1) as prescribed authority for the purposes of making appointment of Secretary for a Gram Panchayat. Learned counsel for the petitioner has, however, invited attention to clause 2.4 and has contended that the fact that on appointment of Panchayat Karmi, he would be deemed to have been declared a Secretary, clearly manifests appointment of such person as Secretary by the State Government as and when such appointments are made by the Gram Panchayat concerned. Section 69(1) does not grant any power to leave the matter of appointment as Secretary in the hands of any authority other than the prescribed authority. As noticed from the provisions of Section 69, only State Government or the prescribed authority is competent to make

appointment, which postulates that the appointment would be made by either of them. The scheme virtually transfers this power to the Gram Panchayat as appointment of Panchayat Karmi is made by Gram Panchayat and by a deeming provision introduced in the scheme, he is appointed as Secretary. As observed above, the scheme having not been notified, the Gram Panchayat cannot act as a prescribed authority and by such general executive instructions, the requirement of making appointment by the State Government or the prescribed authority u/s 69 cannot be circumvented.

The next contention of the learned counsel is that even assuming that the Gram Panchayat is not competent to make appointment of a person as Secretary u/s 69(1), it having not been made a prescribed authority under that provision, insofar as the selection and appointment of a person on the post of Panchayat Karmi is concerned, no fault can be found as such appointment is not required to be made by the State Government or the prescribed authority as is in the case of appointment of Secretary u/s 69. Section 70 provides for appointment of officers and servants in the Gram Panchayat and lays down that every Panchayat may with previous approval of prescribed authority appoint such other officers and servants as it considers necessary for the efficient discharge of its duties. Sub-section (2) of Section 70 provides qualifications, method of recruitment, salaries, leave, allowances and other conditions of service of such officer and servants which shall be such as may be prescribed. What is, therefore, necessary to be seen is whether the scheme can be said to be a scheme laying down qualifications, method of recruitment, other conditions of service etc. in accordance with sub-section (2) of Section 70. Sub-section (2) of Section 70 requires that such qualifications, method of recruitment etc. would be such as may be prescribed. The meaning of the word "prescribed" can be ascertained from the meaning ascribed to it by Section 2(32) of the M. P. General Clauses Act, 1957. Section 2(32) lays down that "prescribed" means prescribed by rules made under an enactment. It is, therefore, necessary to see whether the present scheme can be said to be the rules made under the Panchayat Raj Adhiniyam. The power to make rules has been granted by Section 95 of the Adhiniyam for carrying out the purpose of the Act. Sub-section (3) of Section 95, however, requires previous publication of all rules and sub-section (4) provides that all rules shall be laid on the table of Legislative Assembly. It is not shown that the Scheme (Annexure P-12) was ever-intended as rules under the provisions of the Act as the Scheme makes reference only to the provisions of Sections 69 and 70 of the Act and not to the rule making power of the State Government. The conditions contained for appointment of officers and servants in the scheme cannot, therefore, be treated to be as Rules prescribing qualifications, conditions etc. but only executive instructions to the Gram Panchayat.

The question that, however, still remains to be answered is as to whether the appointment of the petitioner can be said to have been made in accordance with sub-section (1) of Section 70 of the Adhiniyam. It is not disputed that by Annexure P-1

dated 4-7-1996, the Collector through Deputy Director of Panchayats had directed that the vacant post of Panchayat Karmi be filled up in accordance with the scheme. The fact that the direction was for appointment of Panchayat Karmi itself makes it clear that the direction was not with regard to the appointment of a Panchayat Secretary in whose case the appointment is to be made by the State Government or the Prescribed Authority u/s 69(1). This direction is clearly referable to sub- section (1) of Section 70, which requires previous approval of the prescribed authority for appointment of any officer and servant in the Gram Panchayat. For the purposes of Sections 69 and 70, both, by notification dated 29-2-1996, the Collector has been appointed as prescribed authority while for powers u/s 70(1), Collector and Additional Collector, both, have been notified as prescribed authority. The direction Annexure P-I for appointment of a Panchayat Karmi, therefore, clearly had the sanction and approval as required by sub-section (1) of Section 70 of the Adhiniyam and the Gram Panchayat was, therefore, competent to make selection of such a Panchayat Karmi. Under these circumstances, the appointment order Annexure P-3 dated 17-8-1996, issued in favour of the petitioner was valid, insofar as the said appointment refers to appointment u/s 70. However, the appointment could not have been described as appointment on the post of Secretary, for which only State Government or the prescribed authority is competent. No approval was necessary for the appointment of the petitioner as Panchayat Karmi as previous approval for making appointment had already been obtained.

In the result, this petition is partly allowed. Appointment of the petitioner as Panchayat Karmi under the provisions of Section 70 of the Panchayat Raj Adhiniyam, 1993, is held to be valid. Although no specific order has been brought on record to show that this appointment has been terminated, by direction contained in Annexure P-7 to make fresh appointment, it is clear that the petitioner has not been allowed to work on the post of Panchayat Karmi. The respondents are, therefore, directed to continue the petitioner on the post of Panchayat Karmi in accordance with the appointment order Annexure P-3 if otherwise not disentitled. The appointment of respondent No. 8 vide Order Annexure 11 (D) is quashed. It is made clear that a Panchayat Karmi appointed under the scheme does not acquire the status of Secretary of the Panchayat u/s 69(1) unless specifically appointed by a competent authority under that provision. There shall, however, be no order as to costs.