

(1976) 11 MP CK 0001

Madhya Pradesh High Court

Case No: Miscellaneous Petition No. 613 of 1976

Bansmani Prasad Veerbhadra
Shukla

APPELLANT

Vs

State of Madhya Pradesh and
others

RESPONDENT

Date of Decision: Nov. 9, 1976

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: J.S. Verma, J; G.P. Singh, J

Bench: Division Bench

Advocate: Y.S. Dharmadhikari, for the Appellant; S.K. Dixit with K.K. Adhikari and L.S. Baghel for Intervenor Ramdhani Mishra, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G.P. Singh, J.

The petitioner, Bansmani Prasad, was elected Panch of the Gram Panchayat, Kailashpur, in 1970. He was thereafter elected a member of the Janapada Panchayat Hanumana. He was subsequently elected President of the Janapada Panchayat. By an order passed by the State Government on 12th May 1976 the petitioner was removed from the office of President as also from the membership of the Janapada Panchayat. The petitioner then filed this petition under Article 226 of the Constitution challenging this order.

2. It appears that an ex parte inquiry was held against the petitioner by the Additional Collector, Rewa, as a result of which the State Government framed seven charges. A notice was issued to the petitioner on 24th January 1976 calling upon him to show cause why he should not be removed from the office of President as also from the membership of Janapada Panchayat. Along with this notice, some

particulars of the charges were also enclosed. The petitioner denied the charges and submitted his reply on 26th February 1976. The State Government then passed the impugned order on 12th May 1976. This order recites that as a result of the inquiry made by the Additional Collector, the petitioner was essentially found guilty of the following charges:

- 1) The petitioner indiscriminately transferred teachers and misbehaved with lady teachers.
- 2) The petitioner drew false travelling allowance and Dearness Allowance.
- 3) The petitioner resided permanently in the Janapada office building.

The order further states that the explanation of the petitioner was found to be unsatisfactory and he was guilty of the aforesaid charges of misconduct.

3. The petitioner's grievance is that in passing the order of removal he was not afforded proper opportunity to show cause as is contemplated by the proviso to sub-section (1) of section 116 of the Madhya Pradesh Pancha-yats Act. The proviso referred to here requires that "no member, President or Vice President shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office."

4. It is an admitted position that the inquiry held by the Additional Collector was an ex parte inquiry in which the petitioner was not asked to participate. The show cause notice issued to the petitioner is, no doubt, accompanied by particulars of the charges, but it does not state as to what material or evidence was collected by the Additional Collector against the petitioner in the inquiry. The report of the inquiry was also not supplied to the petitioner. After the petitioner denied the charges and gave his explanation, there was no further inquiry. The order removing the petitioner does not give the reasons why the petitioner's explanation was rejected and the charges were held to be proved. In our opinion, the procedure followed in removing the petitioner cannot be said to have afforded him opportunity to show cause as required by the proviso.

5. It cannot be disputed that opportunity to show cause must be real opportunity. The person proceeded against must not only be told the allegations of misconduct, but he must also be informed of the material which is sought to be used against him in support of the charges so that he may offer his explanation in respect of that material. A person who holds office as a member or as President has a right to continue in the office until the expiry of the term. The order of removal which is passed u/s 116 affects this valuable right and the finding of misconduct on which such an order is based casts a stigma on the public life of the person. Having regard to these consequences, we are of opinion that the power of removal is quasi-judicial in nature. In [Bhagat Ram Patanga Vs. The State of Punjab](#), a provision in the Punjab Municipal Act relating to the removal of members was considered by the Supreme

Court. It was held in that case that the order contemplated by the provision removing a member was quasi-judicial in nature and that it was not only desirable but also essential that the authority passing the order should give reasons. It was further pointed out that all the material should be disclosed to the person concerned so that he may give an effective answer not only to the averments contained in the show cause notice but also to the materials on the basis of which the show cause notice was issued. The principles laid down in *Bhagat Ram v. State of Punjab* (supra) equally apply to the exercise of power u/s 116 of the Panchayats Act. The State Government while taking action under this provision should not only disclose the charges but also the entire material on which the charges are based to the person concerned so as to afford him real opportunity to show cause against the charges. Further, the State Government should give reasons in support of the order removing the person from the office so as to indicate why the explanation submitted is not acceptable. It has recently been observed that the rule requiring reasons to be given is like the principle of audi alterum partem, a basic principle of natural justice: [The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India \(UOI\) and Another,](#) . Even in case of administrative orders where rights of parties are affected rules of natural justice have to be followed and it is desirable that the order should contain reasons: [Hochtief Gammon Vs. State of Orissa and Others,](#) , [Mahabir Jute Mills Ltd., Gorakhpore Vs. Shibban Lal Saxena and Others,](#) and [State of Gujarat and Others Vs. Ambalal Haiderbhai and Others,](#)

6. We have earlier stated that the petitioner denied all the charges levelled against him. In respect of the charge of misbehaviour with the lady teachers, which is one of the charges, no particulars were given along with the show cause notice and no material was disclosed as to on what basis the said charge was levelled against the petitioner. As regards the charge of drawing false T. A. and D. A., the only thing communicated to the petitioner was that he did not submit the bus tickets. The petitioner, however, submitted in reply that the fact that he undertook the journey on the relevant dates in connection with the work of the Janapada Panchayat can be verified by referring to the registers maintained by the Panchayat. It was also pointed out that T. A. and D. A. bills were passed by the proper officer and the charge was false. The material, if any, in support of the charge was not disclosed to the petitioner at all and it is difficult to understand as to how the charge was held to be proved. Similar is the position relating to the charge that the petitioner permanently resided in the office building of the Panchayat. The material in support of this charge was also not disclosed to the petitioner. It appears that in support of all these charges the Government relied upon the material collected by the Additional Collector in the ex parte inquiry conducted by him as also on his inquiry report. Neither the report nor the material collected in the inquiry was disclosed to the petitioner. The State Government also failed to give reasons in the final order as to why the explanation submitted by the petitioner was not acceptable. In our opinion, therefore, it cannot be held that the petitioner was given proper

opportunity of showing cause as contemplated by section 116 of the Act. The impugned order of removal, therefore, cannot be sustained.

7. The learned Government Advocate pointed out that the petitioner admitted in his reply that certain teachers were transferred by him contrary to the Government instructions and, therefore, at least one charge was established against the petitioner. It does appear that the petitioner passed order of transfer regarding certain teachers when there was a general order of the Government forbidding transfers except with the permission of the Head of the Education Department or the Government. The petitioner's explanation was that transfers were made in those cases only where the teachers affected consented or where there was surplus staff at a place. There is no exception in the Government order that in such cases transfers can be made. The petitioner, therefore, did transfer teachers contrary to the instructions of the Government, presumably under a misapprehension. Be that as it may, even if this charge is taken to be proved, we do not think that this charge was so serious that the Government on this charge alone would have passed the impugned order. The order of removal is based on the cumulative effect of all the charges and when the finding regarding the more serious charges cannot be sustained, it is difficult to uphold the order on a comparatively insignificant charge alone.

8. The petition is allowed. The order removing the petitioner from the office of President as also from the membership of the Janapada Panchayat is quashed. There shall be no order as to costs of this petition. The security amount shall be refunded to the petitioner.