

Devakinandan Vishwakarma Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Sep-25-2012

Appellant : Devakinandan Vishwakarma

Respondent : The State of Madhya Pradesh

Advocate for Def. : Shri. Bhanu Pratap Yadav

Advocate for Pet/Ap. : Smt. Amrit Ruprah

Judgement :

1 d. n. vishwakarma Vs. State HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR W.P. No.16591/2005 (s) D. N. VISHWAKARMA
VS. THE STATE OF M.P. & OTHERS Present: Honble Shri Justice Rajendra
Menon. ----- --- Smt. Amrit
Ruprah, learned counsel for the petitioner. Shri Rajesh Tiwari, learned Govt. Adv.
for the respondents No.1, 2 and 3. Shri Bhanu Pratap Yadav, learned counsel for
respondents No.4 and 5. -----
--- Whether approved for reporting: Yes/ No

ORDER

(25-9-2012) Challenging the order dated 7.11.2005 Annexure P/3 passed by the
Additional Collector, 2 d. n. vishwakarma Vs. State District Tikamgarh interfering
with an appellate order passed by the Sub Divisional Officer, Jatara as contained
in Annexure P/1 dated 31.1.2005 and setting it aside, petitioner has filed this writ

petition.

2. In pursuance to a process of selection conducted in the year 1995, petitioner was appointed as Panchayat Karmi vide order dated 9.11.95. While so working it is seen that certain allegations were leveled against the petitioner with regard to his manner of working and therefore, show cause notices and charge sheet were issued to the petitioner on various dates. Thereafter, the matter was placed before the Gram Panchayat on 12.1.98 and a resolution was passed on the same date directing for terminating the appointment of the petitioner on the grounds of various allegations leveled against him in the charge sheet and show cause notice issued. On the post that fell vacant after removal of the petitioner, respondent No.4 has been appointed. Challenging his removal petitioner approached this Court by filing a writ petition. Even though initially an interim stay was granted by this Court but subsequently finding existence of a statutory alternate remedy of appeal, the writ petition was disposed of granting liberty to the petitioner to seek recourse to the remedy available under the statutory Appeal and Revision Rules. Accordingly, petitioner preferred an appeal before the Sub Divisional Officer, 3 d. n. vishwakarma Vs. State Palera but the appeal was dismissed by the said authority on the ground that the authority has no jurisdiction to hear the appeal. Aggrieved thereof, petitioner preferred a revision before the Collector, who allowed the revision and remanded the matter back to the Sub Divisional Officer directing him to decide the appeal on merit. Accordingly, the Sub Divisional Officer conducted an enquiry into the matter and by a detailed order Annexure P/1 dated 31.1.2005 found that proper show cause notice to the petitioner was not issued, the charge sheet and the notice with regard to hearing of the Panchayat is not served on the petitioner, took note of the various affidavits filed by office bearers of the Gram Panchayat and came to the conclusion that even passing of resolution is doubtful and accordingly finding the action taken against the petitioner to be illegal, without giving opportunity of hearing and contrary to the principle of natural justice the Sub Divisional Officer quashed the action of the Gram Panchayat in removing the petitioner from service. This order Annexure P/1 passed by the Sub Divisional Officer has been interfered with by the Collector as is evident from Annexure P/3 dated 7th November 2005 and therefore, petitioner is before this Court challenging the order of the Collector.

3. Smt. Amrit Ruprah, learned counsel appearing for the petitioner took me through the 4 d. n. vishwakarma Vs. State findings recorded by the Sub Divisional Officer as contained in the order Annexure P/1 dated 31.1.2005 and emphasized that after going through the original records of the Gram Panchayat with regard to proceedings held on 12.1.98 so also the notice issued to the petitioner with regard to the allegations and proceedings of the Gram Panchayat held on 12.1.98, it has been held by the Sub Divisional Officer that service of notice to the petitioner and proper opportunity of representing his case before the Gram Panchayat on 12.1.98 is not established. Further it was found by the Sub Divisional Officer that even holding of the meeting of Gram Panchayat on 12.1.98 in accordance to requirement of law is not established. A reasonable finding recorded by the Sub Divisional Officer, it is argued by Smt. Amrit Ruprah, has been interfered with by the Collector on extraneous consideration. She took me through the findings recorded by the Collector and emphasized that the Collector has simply gone into the merits of the allegations leveled against the petitioner, took note of certain facts with regard to pendency of criminal case against the petitioner for offences under Section 363, 366, 376 read with Section 34 of IPC and finding the petitioner to be a unfit person to discharge the duties of Panchayat Secretary due to his involvement in a criminal case has interfered with a reasonable order of Sub Divisional Officer. This 5 d. n. vishwakarma Vs. State according to Smt. Amrit Ruprah is wholly impermissible. The Collector has interfered into the matter without advertent to consider the crucial questions decided by the Sub Divisional Officer with regard to violation of principles of natural justice and only by taking note of pendency of criminal case has recorded a conclusion on extraneous consideration which is unsustainable. Smt. Amrit Ruprah, learned counsel for the petitioner emphasized that the Collector while interfering with the order passed by the Sub Divisional Officer did not even mention a single word as to why and for what reason violation of principles of natural justice and not grant of opportunity to the petitioner as held by the Sub Divisional Officer is found to be unsustainable. It is argued by her that without advertent to consider all these questions, interference made by the Collector was not called for. As far as pendency of criminal case is concerned, she invites my attention to the judgment rendered by the Additional District and Sessions Judge, Nowgaon District Chhatarpur in Sessions Trial

No.217/2006 on 30th June 2008 to emphasize that petitioner has already been acquitted of all the criminal charges and therefore, the basis on which the Collector interfered, no more subsists. Accordingly, Smt. Ruprah prays for interference into the matter and in support of her contention that action taken without notice to the petitioner and without hearing is unsustainable, she 6 d. n. vishwakarma Vs. State places reliance on the judgment of this Court in the case of Narayan Singh Rajput Vs. State of M.P. & Others - 2003(3) MPLJ 539 Also referring to certain statutory rules framed in the matter of issuing notice by the Gram Panchayat for the purpose of conducting meeting, the procedure to be followed for service of notice, learned counsel emphasized that mandatory requirement of this statutory rules has not been followed before conducting the meeting on 12.1.98 and therefore, the entire action stands vitiated and as the Collector has interfered into the matter without taking note of all these factors, the petition be allowed.

4. Refuting the aforesaid contentions and taking me through the show cause notices issued to the petitioner, the allegations found to be established in the meeting of the Gram Panchayat held on 12.1.98 and the findings recorded by the Collector in the impugned order, Shri Rajesh Tiwari, learned Government Advocate emphasized that there are serious allegations against the petitioner and the allegations are found to be proved as is evident from the Panchnama and other documents referred to by the Collector in his order, that being so, not no interference be made as the petitioner is found to be a person unfit to discharge his duties as Secretary due to his involvement in all these activities, Shri Rajesh Tiwari emphasized that the Collector had called for the entire record and found the allegations 7 d. n. vishwakarma Vs. State pertaining to misuse of panchayat funds including appointments to certain post and as all these allegations are found to be correct and as the petitioner inspite of notice did not appear before the Panchayat on 12.1.98 to give his defence, the order passed by the Collector, according to Shri Rajesh Tiwari does not call for any interference. Accordingly, Shri Tiwari submits that the petition be dismissed.

5. I have heard learned counsel for the parties and perused the record. It is a case where petitioner who was appointed as Panchayat Karmi in the year 95 is proceeded against and based on the resolution dated 12.1.98 passed by the Gram

Panchayat, his services were terminated. If the resolution in question available on record as Annexure R4/1 is taken note of it would be seen that the resolution is passed to terminate the services of the petitioner on the ground of a charge sheet issued to him and certain allegations leveled against the petitioner in the said charge sheet. It is indicated in the resolution that in spite of notice the petitioner has not appeared, he has not given his explanation to the charge sheet and therefore, treating the allegations leveled therein to be correct, the impugned action is taken. The question therefore, is as to whether services of the petitioner can be terminated for alleged acts of misconduct as were imputed in the charge sheet without hearing him without granting 8 d. n. Vishwakarma Vs. State proper opportunity of defence. It is further seen from the record that when the matter was considered by the Sub Divisional Officer in the appeal filed by the petitioner, the entire records pertaining to issuance of show cause notice/ charge sheet to the petitioner, complaints received against him and the records of Gram Panchayat in the matter of holding the meeting on 12.1.98 were called for. That apart, when the appeal was pending before the Sub Divisional Officer various witnesses appeared which include the Sarpanch Vimla Devi and various other office bearers like Jagmohan, Prem Lal, Deendayal etc., the statement of all these witnesses were recorded, they were cross examined and based on the entire evidence that came on record and on its marshaling the Sub Divisional Officer recorded a finding that issuance of the notice to the petitioner for the proceedings held on 12.1.98 is not properly proved. It is held that petitioner is not served with the notice with regard to proceedings of Gram Panchayat to be held on 12.1.98 and further finding recorded on the basis of statement of certain witnesses namely the office bearers is to the effect that even some of the members were not aware of the meeting and the question of passing of resolution with regard to petitioner on 12.1.98 is found to be not proved and doubtful by the Sub Divisional Officer. Accordingly, holding that the action taken against the petitioner is 9 d. n. Vishwakarma Vs. State without proper notice to him and without hearing him, the Sub Divisional Officer interfered into the matter. While reconsidering the said decision of the Sub Divisional Officer exercising the powers of revision the Collector again called for the entire records and the order passed by the Collector indicates that he has not adverted to consider the question as to whether finding recorded by the Sub Divisional Officer

with regard to not service of notice and breach of principles of natural justice is a correct finding or not. On the contrary the Collector misdirected himself to various other issues in as much as he went through the record, took note of various show cause notices issued to the petitioner, allegations leveled in the charge sheet, the magnitude of the allegations and considering the fact that a criminal case under Sections 363, 366, 376 read with Section 34 of IPC is pending, held that petitioner is not a fit person to be appointed as Panchayat Karmi or to discharge duties of Panchayat Secretary and interfered into the matter. However, before doing so, the Collector did not even consider it appropriate to examine the question as to whether the findings recorded by the Sub Divisional Officer with regard to not grant of opportunity and breach of principles of natural justice is a proper or a correct finding. Instead of by evaluating the allegations leveled against the petitioner on merits and finding them to be serious in nature, decision is taken 10 d. n. vishwakarma Vs. State against the petitioner. That apart, the Collector took a objection that respondent No.4 has been appointed as a Panchayat Karmi and thereafter notified as Panchayat Secretary and as appointment of respondent No.4 is not challenged, it is stated that no relief can be granted to the petitioner. This approach of the Collector is also wholly misconceived and cannot be upheld by this Court. Respondent No.4 was appointed after petitioner's services were terminated on the post that became vacant on such action being taken against the petitioner. The petitioner having been removed from service had no authority or right to challenge the appointment of respondent No.4 on the post in question. The right would have accrued to the petitioner only if his termination was set aside and before that it was not necessary for the petitioner to challenge the appointment of respondent No.4 in his place. Accordingly it is a case where a reasonable finding recorded by the Sub Divisional Officer with regard to breach of principles of natural justice, not grant of opportunity of hearing to the petitioner based on cogent reason and evidence is interfered with by the Collector without adverting to consider all these questions and the order passed by the Collector is on certain other facts which have no bearing on the order passed by the Sub Divisional Officer. The Collector was carried away by the allegations leveled and on the 11 d. n. vishwakarma Vs. State assumption that the allegations leveled against the petitioner are correct and a proper enquiry has been held has found that petitioner

is not a fit person to be retained in service. This approach of the Collector was wholly uncalled for and unwarranted. The Collector at the first instance should have caused an enquiry with regard to findings recorded by the Sub Divisional Officer, analysis his reasoning with regard to not grant of opportunity and should have interfered with the same only if cogent material was available to show that finding recorded by the Sub Divisional Officer was perverse. The Collector instead of doing so, went on the merits of the allegations on its own and treating them to have established without conducting an proper enquiry interfered into the matter. In the considered opinion of this Court the approach adopted by the Collector was wholly impermissible and merely because some criminal case was pending against the petitioner of which also the petitioner is acquitted could not form on the basis or material to interfere with the order passed by the Sub Divisional Officer.

6. On a close scrutiny of the record available before this Court, it is evident that the Sub Divisional Officer exercising his appellate jurisdiction recorded a finding that petitioner is removed from service without grant of proper opportunity of hearing and on the basis of certain proceedings which were held in Gram 12 d. n. vishwakarma Vs. State Panchayat on 12.1.98 but before taking action and holding the meeting on 12.1.98 proper opportunity of hearing was not granted to the petitioner and therefore, the entire action stands vitiated. The Collector without advertng to address this major legal question interfered into the matter on certain other extraneous considerations with regard to conduct of the petitioner and in doing so, grave error has been committed and therefore, the same warrants interference.

7. It may be taken note of that respondents have miserably failed to established that petitioner's services has been terminated after following the due process of law and after due service of notice for the meeting held on 12.1.98 and therefore, the finding recorded by the Sub Divisional Officer is a reasonable finding and the same is interfered with by the Collector in a illegal manner.

8. At this stage certain objections raised by respondent No.4 may be taken note of, his objection is that as he has been appointed in place of the petitioner therefore, interference be not made. This contention of respondent No.4 cannot be accepted.

Respondent No.4 was appointed because the post became vacant after termination of the petitioner's service. A legal right accrues to the respondent No.4 to continue on the post only if termination of the petitioner is found to be in 13 d. n. vishwakarma Vs. State accordance to law. Once the termination is found to be illegal and contrary to law and once it is set aside, respondent No.4 has to make room for the petitioner as the post was originally held by the petitioner and until and unless the post is vacated in accordance with law respondent No.4 has no right to work on the said post. That being so, objections raised by respondent No.4 cannot be considered and relief granted by this Court to the said respondent.

9. In view of the totality of facts and circumstances, I see no reason to reject the claim and the prayer made by the petitioner. Petition is accordingly allowed. Order impugned Annexure P/3 dated 7th November 2005 passed by the Additional Collector is quashed. Order passed by the Sub Divisional Officer as contained in Annexure P/1 is upheld and restored. Respondents are directed to reinstate the petitioner on the post in question and grant him all consequential benefits and if so advised, they may proceed to take action in accordance with law.

10. Accordingly, this petition stands allowed and disposed of, no order so as to cost. (Rajendra Menon) Judge Mrs.mishra

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