

Omprakash Vs. State of M.P. and Others

Omprakash Vs. State of M.P. and Others

SooperKanoon Citation : sooperkanoon.com/505822

Court : Madhya Pradesh

Decided On : Mar-28-2001

Reported in : 2001(3)MPHT144

Judge : Mr. J.G. Chitre, J.

Acts : [Constitution of India](#) - Articles 226 and 227

Appeal No. : Writ Petition No.897/2000

Appellant : Omprakash

Respondent : State of M.P. and Others

Advocate for Def. : Ms. Chaphekar and ;Shri V.P. Khare, Adv.

Advocate for Pet/Ap. : Shri L. Bhatnagar, Adv.

Disposition : Petition allowed

Judgement :

ORDER

J.G. Chitre, J.

1. All of them have been heard. Shri L. Bhatnagar vehemently submitted that petitioner has been charged for committing the act of forging the seals of Gram Panchayat and thereby preparing the bogus ration cards and misappropriating the

property of Gram Panchayat, Malyahedi weighing about 7.55 quintals of wheat. He has been removed from service without even affording him the opportunity of being heard. He submitted that the said allegation constitutes an offence and if an appropriate writ is not granted in favour of the petitioner, it would stigmatize him and would be leaving him without any defence in the criminal prosecution. Mrs. Chaphekar submitted that she is entitled to make a submission though respondents 1 to 3 did not file the return challenging the maintainability of the writ petition for supporting the order which is being attempted to be quashed. She was given permission to make the submissions making reference to the averments made in the petition and the annexures annexed to the petition.

2. Mrs. Chaphekar submitted that the petition would be falling wholly under purview of Article 227 of the [Constitution of India](#) and, therefore, this Court would be restricted only to see whether the Sub-Divisional Officer and the Addl. Commissioner, Ujjain Division, Ujjain were within the jurisdiction to pass the orders which are being challenged by this petition. She submitted that both the authorities were well within the jurisdiction and, therefore, this ' Court be pleased not to exercise the jurisdiction in view of Article 227 of [Constitution of India](#) for quashing the said orders and the initial order of removing the petitioner from service of Gram Panchayat Malyahedi from the post of Panchayat Karmi (Sachiva).

3. Shri V.P. Kharc, counsel appearing for the respondents 4 and 5 submitted that petitioner happened to be a temporary employee of Gram Panchayat Malyahedi and, therefore, he is not entitled to be heard before being removed. He further submitted that the S.D.O. and the Addl. Commissioner, Ujjain Division, Ujjain dealt with his grievance appropriately and. therefore, this petition will have to be dismissed.

4. This Court finds substance in the submissions advanced by Shri Bhatnagar. The petition itself mentions that the petitioner is making a prayer to this Court to exercise the jurisdiction in view of Art. 226 also in addition to Article 227 of the [Constitution of India](#). The petitioner has been charged with a serious imputation that he forged the seals of Gram Panchayat, prepared bogus ration cards and took away the wheat belonging to Gram Panchayat weighing about 7.55 quintals.

These imputation constitutes an offence and offence punishable under the Indian Penal Code. The judgment and order passed by the S.D.O., Shajapur is at Annexure P-8. A serious grievance was made before him that the petitioner has been removed from the service without passing a resolution and without affording him the opportunity of being heard. The S.D.O. very strangely instead of hearing the petitioner called the Sarpanch, heard him and passed that order which is being justified by counsel appearing for the respondents as proper, justified and legal. It is prima facie perverse. This has been carried forward when the matter was decided by the Addl. Commissioner Revenue Division, Ujjain, who when such grievance was reiterated before him held that the appointment of petitioner was ab initio void because he was appointed without following the procedure which was indicated by the Circular bearing No. 21/12/22/Pancha/I 195 dated 12-9-95. So far as the main grievance of the petitioner that he was not heard when he was removed from service has been dismissed by the learned Addl. Commissioner by observing that he was unable to agree with the submissions advanced by his counsel on that Count. Nothing more than that.

5. How these two judgments and orders can be treated to be consistent with the rule of natural justice. On the contrary they by themselves depict a total failure of justice.

6. The rule of natural justice demands that none can be removed from service without affording him the sufficient opportunity of being heard. The petitioner has been charged with a serious imputation that he forged the seals of Gram Panchayat, using them, prepared bogus ration cards, thereby misappropriated the property of Panchayat in the nature of wheat weighing 7.55 quintals. If these two judgments and orders are maintained, perhaps it may happen that the petitioner may not be getting appropriate opportunity of defending himself in the criminal prosecution arising out of that imputation.

7. Whenever there is gross failure of even natural justice, the High Court would not sit silent and would not only examine whether the authorities below have exercised the jurisdiction by remaining in four corners of it. Words 'ab initio illegal' has to be quashed as illegal. Therefore, the order removing the petitioner from his service as

Panchayat Karmi stands quashed, however, the respondents No. 4 and 5 are at liberty to issue him a show-cause notice for affording him an opportunity of being heard in respect of the serious imputation which has been indicated against him. They are at liberty to follow a legal procedure for the purpose of initiating proceedings against him. When the imputation is serious, authorities are bound to follow a due process of law.

8. Thus, the petition stands allowed with cost and stands disposed off at this stage in the interest of justice. The petitioner stands reinstated because if he is not reinstated it would be totally meaningless that he should be given an opportunity of being heard.

9. Writ Petition allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com