

Devidayal Raikwar Vs. State of M.P. and ors.

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Court : Madhya Pradesh

Decided On : Apr-08-2008

Reported in : 2008(3)MPHT505

Judge : A.K. Patnaik, C.J. and ;Shantanu Kemkar, J.

Appellant : Devidayal Raikwar

Respondent : State of M.P. and ors.

Advocate for Pet/Ap. : Mr. Sanjay Patel

Judgement :

ORDER

A.K. Patnaik, C.J.

1. This is an appeal filed under Section 2(1) of the M.P. Uchcha Nyayalaya (Khand Peeth Ko Appeal) Adhiniyam, 2005 against the order dated 14-3-2008 passed by learned Single Judge in W.P. No. 2766 of 2008.

2. The relevant facts briefly are that the appellant applied for appointment to the post of Panchayat Karmi in Gram Panchayat, Deri. The Gram Panchayat adopted a resolution on 17-8-2007 for appointment of respondent No. 5 as Panchayat Karmi. Aggrieved, the appellant filed Writ Petition No. 2766 of 2008 challenging the appointment of the respondent No. 5 as Panchayat Karmi on various grounds. The learned Single Judge held in the impugned order that the appellant has an

efficacious and alternative remedy under Section 85 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short 'the Adhiniyam') and accordingly disposed of the writ petition with liberty to the appellant to avail the remedy under Section 85 of the Adhiniyam. Aggrieved, the appellant has filed this appeal.

3. Mr. Sanjay Patel, learned Counsel for the appellant submitted that Section 85 of the Adhiniyam vests power in the State Government and the Prescribed Authority to suspend an order on resolution of the Gram Panchayat and does not provide for any appeal or revision against the appointment of Panchayat Karmi by the Gram Panchayat.

4. Mr. Kumaresh Pathak, learned Deputy Advocate General for the respondent Nos. 1 and 2 submitted that under Section 91 of the Adhiniyam, an appeal and revision are provided against any order or proceeding of the Panchayat and for this reason, in the Panchayat Karmi Scheme notified by the Government of Madhya Pradesh for Panchayat and Rural Development Department on 12-9-1995, it is stated that a party aggrieved by appointment of Panchayat Karmi may obtain relief by means of an appeal or revision before the Prescribed Authority under Section 95 of the Adhiniyam.

5. Learned Counsel for the parties, however, referred to conflicting decisions of this Court in Smt. Hem Lata v. State of M.P. and Ors. 1997 (2) Vidhi Bhasvar 113, Ram Charan Ahirwar v. Sub Divisional Officer, Jatara and Ors. 1998 (2) JLJ 267, Ram Lakhan Rawat v. State of M.P. and Ors. 2000 (2) M.P.L.J. 176 and Hukumchand v. Dheer Ji and Ors. 2001 (1) JLJ 229, on the question whether an appeal or revision against resolution passed by a Gram Panchayat is available under Section 91 of the Adhiniyam read with Rules 3 and 5 of the Madhya Pradesh Panchayats (Appeal and Revision) Rules, 1995 (for short 'the Rules of 1995'). They further submitted that although an attempt was made by the Division Bench in S.M. Sahakari Samiti Seoni v. Chief Executive Officer, Janapad Panchayat, Seoni and Anr. 2008 (1) M.P.H.T. 254 (DB) to resolve the conflicting decisions of this Court on this point, the conflict has not been resolved and the law continues to remain ambiguous whether an appeal or revision at all is available under Section 91 of the Adhiniyam read with the Rules of 1995 from a resolution

passed by a Panchayat.

6. Sections 70 and 91 of the Adhiniyam, which are relevant for deciding whether appeal or revision is available against appointment of Panchayat Karmi made by the Panchayat, are quoted herein below:

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.

91. Appeal and revision.-An appeal or revision against the orders or proceedings of a Panchayat and other authorities under this Act shall lie to such authority and in such manner as may be prescribed.

7. Sub-section (1) of Section 70 of the Adhiniyam quoted above states that every Panchayat may with the previous approval of Prescribed Authority appoint such other officers and servants as it considers necessary for the efficient discharge of its duties subject to the provisions of Section 69. Section 69 of the Adhiniyam provides for appointment of Secretary of a Panchayat and Chief Executive Officer of Janapad Panchayat and Zila Panchayat by the State Government or the Prescribed Authority. Hence, appointment of Panchayat Karmi is made under Sub-section (1) of Section 70 of the Adhiniyam. Sub-section (1) of Section 70, however, does not state that such appointment has to be done by the Panchayat by a resolution.

8. It is only the Panchayat Karmi Scheme notified by the Government of Madhya Pradesh in the Panchayat and Rural Development Department on 12-9-1995, which requires a resolution to be adopted by Panchayat selecting the Panchayat Karmi and thereafter an appointment letter to be issued by the Sarpanch in favour of the selected person. English translations of Clauses 4.4 and 4.5 of the

Panchayat Karmi Scheme as notified by the Government of Madhya Pradesh on 12-9-1995 are extracted herein below:

4.4. All the applications shall be placed before the General Body of the Gram Panchayat for consideration. General Body of the Gram Panchayat after consideration on the applications shall select a candidate and place a candidate in the waiting list.

4.5. Panchayat by virtue of its resolution shall make such appointment within the specified time limit, on full time/part time or contract basis. Sarpanch shall issue appointment letter to selected person. Its copy shall be forwarded to the Chief Executive Officer, Janapad Panchayat, for record. Brief information about the 'Panchayat Karmi' shall be given therein. A register shall be maintained in the Janapad Panchayat and entries to this effect shall be made.

9. It will be clear from Clause 4,4 of the Panchayat Karmi Scheme quoted above that all applications for appointment of Panchayat Karmi will be placed before the General Body of the Gram Panchayat for consideration and the General Body of the Gram Panchayat, after consideration of the applications, shall select a candidate. It will be further clear from Clause 4.5 that after such selection is made by the Panchayat by a resolution, the Sarpanch of the Gram Panchayat shall issue an appointment letter to the selected person. In Black's Law Dictionary, First Edition, the expression 'resolution' has been described as 'a formal expression of the opinion or will of an official body or a public assembly, adopted by vote'. The resolution of the Panchayat is therefore a formal expression of opinion of the General Body of the Panchayat in favour of selection of a particular applicant as Panchayat Karmi. The letter of appointment issued by the Sarpanch to carry out the resolution of the General Body of the Panchayat is the order of appointment of Panchayat Karmi.

10. Obviously, the provisions of an Act cannot be interpreted by reference to the provisions of a scheme made by the Government to give effect to the provisions of the Act, but has to be interpreted by reference to the provisions of the Act. As we have seen, Section 70 of the Adhiniyam does not provide for appointment of a Panchayat Karmi by a resolution of the Panchayat. Hence, an appointment order

of a Panchayat Karmi issued by the Sarpanch of a Gram Panchayat can be challenged by way of appeal under Section 91 of the Adhiniyam read with the Rules of 1995. Section 91 of the Adhiniyam states that an appeal against an order of a Panchayat under the Adhiniyam shall lie to such authority and in such manner as may be prescribed. Rule 3 of the Rules of 1995 prescribes the 'Appellate Authority' and states that an appeal shall lie in the case of an order passed by the Gram Panchayat to the Sub-Divisional Officer. Thus, an order of appointment of a Panchayat Karmi issued by the Sarpanch pursuant to the resolution of the General Body of a Gram Panchayat is appealable before the Sub-Divisional Officer under Section 91 of the Adhiniyam read with Rule 3(d) of the Rules of 1995.

11. From the facts of the case in *Hem Lata v. State of M.P. and Ors.* (supra), it is not clear whether appointment of a Panchayat Karmi by resolution passed by the Gram Panchayat was challenged before the High Court. From the facts of the case as reported, a resolution passed by the Panchayat was challenged before the High Court and a preliminary objection was raised on behalf of the respondents that the writ petitioner had alternative remedy of challenging the resolution passed by the Panchayat under Section 91 of the Adhiniyam and a learned Single Judge of this Court held that Section 91 of the Adhiniyam provides that an appeal or revision shall lie against the order and the proceeding of a Panchayat and Rule 5 of the Rules of 1995 provided for revision against the proceeding of the Panchayat and therefore, revision would lie against the resolution passed by the Panchayat under Section 91 of the Adhiniyam.

12. In *Ram Charan Ahirwar v. Sub-Divisional Officer, Jatara* (supra), the question for determination before the Court was whether the resolution of the Gram Panchayat carrying out the motion of no confidence against Sarpanch could be challenged under Section 91 of the Adhiniyam and a learned Single Judge of this Court held that a motion of no confidence or a proceeding which was required to be passed by a resolution under Section 21 of the Adhiniyam could not be challenged by way of an appeal under Section 91 because the Act made a distinction between a resolution and order of a Panchayat and under Section 91, it is an order and not a resolution which can be challenged. This is not a case, therefore, where the question whether appointment of a Panchayat Karmi could be

challenged by way of an appeal under Section 91 of the Adhiniyam was before the Court. Moreover, as we have seen, Section 70 does not require that a Panchayat Karmi is to be appointed by a resolution of the Panchayat.

13. In *Ram Lakhan Rawat v. State of M.P. and Ors.* (supra), appointment of a Panchayat Karmi was first challenged in appeal before the Sub-Divisional Officer under Section 91 of the Adhiniyam read with Rule 3 of the Rules of 1995, but the Collector exercising the revisional powers under Section 91 of the Adhiniyam read with Rule 5 of the Rules of 1995 set aside the order passed by the Sub-Divisional Officer on the ground that an appeal was not available against the resolution of the Panchayat. The learned Single Judge held that from the scheme of the Adhiniyam, it is apparent that any resolution passed by the Panchayat is neither appealable nor revisable and the resolutions of the Panchayat cannot be set aside though orders passed by the Panchayat shall be appealable under Rule 3 of the Rules of 1995 and is revisable under Rule 5 of the Rules of 1995. What the learned Single Judge failed to appreciate is that under Sub-section (1) of Section 70 of the Adhiniyam an appointment of a Panchayat Karmi or any officer other than those mentioned in Section 69 of the Adhiniyam or any servant of the Panchayat is not required to be made by a resolution. It is only under the Panchayat Karmi Scheme as notified by the Government on 12-9-1995 that the Panchayat in General Body has to select a candidate from amongst the candidates for appointment as Panchayat Karmi and the letter of appointment has to be made by the Sarpanch. The view taken by the learned Single Judge in *Ram Lakhan Rawat v. State of M.P.* (supra), that no appeal is available against the appointment of Panchayat Karmi, thus, in our view, is not correct in law.

14. In *Hukumchand v. Dheer Ji and Ors.* (supra), orders passed on election petitions under Section 122 of the Adhiniyam were challenged and a learned Single Judge has taken a view that there was a clear departure in not providing any appeal or revision in so far as the cases under Section 122 are concerned. This is also not a case where the Court was called upon to decide whether an appointment of Panchayat Karmi under Section 70 of the Adhiniyam could be challenged by way of an appeal under Section 91 of the Adhiniyam.

15. In the Division Bench judgment in S.M. Sahakari Samiti, Seoni v. Chief Executive Officer, Janapad Panchayat, Seoni and Anr. (supra), the Standing Agricultural Committee of the Janapad Panchayat passed a resolution granting a contract for fisheries for three years for a reservoir situated in District Seoni in favour of the respondent in that case and the Division Bench held that since the State Government has not framed any rules by providing a forum before which the resolution could be challenged, the petitioner in that case could approach only the State Government under Section 85 of the Adhinyam. Thus, this is also a case where the Court was not called upon to decide whether appointment of a Panchayat Karmi could be challenged by way of an appeal under Section 91 of the Adhinyam read with Rule 3 of the Rules of 1995.

16. In the result, we hold that an appeal would lie against an order of appointment of Panchayat Karmi issued by Sarpanch of Gram Panchayat under Section 91 of the Adhinyam read with Rule 3 of the Rules of 1995. Obviously, while deciding the appeal, the Appellate Authority will have all necessary powers to grant relief in a case where he decides to allow the appeal and such powers will also include the power to decide whether the selection made by the Gram Panchayat by adopting a resolution was not correct either on facts or in law. The impugned order passed by the learned Single Judge is modified accordingly and the appeal stands disposed of.

17. The facts and circumstances of the case, parties to bear their respective costs.

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