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Court : Rajasthan

Decided On : May-20-2008

Reported in : RLW2008(4)Raj3404

Judge : Mohammad Rafiq, J.

Appellant : Balbir Sharma

Respondent : State and ors.

Judgement :

Mohammad Rafiq, J.

1. Heard learned Counsel for the parties.
2. This writ petition seeks to challenge the order dated 24.3.2004 by which petitioner was removed from the post of Sarpanch on the allegation of financial irregularities and recovery of a sum of Rs. 4,39,787- was directed to be made from him.
3. Learned Counsel for the petitioner has not pressed the writ petition in so far as removal of the petitioner from the office of Sarpanch is concerned because the term of 5 years for which he was elected to that office has itself come to an end and therefore the petition on that aspect has become infructuous. Learned Counsel however has assailed the validity of that part of the order of the Additional

Divisional Commissioner whereby, District Collector Bharatpur has been directed to recover the aforesaid amount solely from the petitioner. Learned Counsel argued that so-called enquiry conducted by the Additional Divisional Commissioner was in fact no enquiry as petitioner was merely issued a show cause notice to which he submitted reply on 22.9.2003 which was then followed by the impugned order passed on 24.3.2004. No enquiry in the terms provided by Rule 22 of the Rajasthan Panchayati Raj Rules, 1996 (for short, the 'Rules of 1996') was conducted inasmuch as, petitioner was not associated with the civil construction work which was got executed by the respondents through their Engineers and none of the witnesses including the Engineers were produced in enquiry. Learned Counsel submitted that though in terms of Sub-rule (4) of Rule 12, Enquiry Officer was required to consider the evidence, oral as well as documentary, and the petitioner should have been given opportunity to cross examine them, it was not done. Learned Counsel submitted that payment of the aforesaid sum was made after the work had been verified by the concerned Engineers and therefore, even otherwise, if the work was sub-standard or of lesser value, liability for recovery of the, entire amount could not be fastened on the petitioner. Learned Counsel in support of his argument referred to the grounds raised in support of the petition from paras (A) to (C).

4. On the other hand, learned Deputy Government Counsel opposed the writ petition and submitted that a notice was served upon the petitioner and on receipt of reply, impugned order was passed. It was argued that the evidence in the matter proved charges against the petitioner and when the charges of misappropriation of funds were proved, recovery thereof was inevitable consequence. Petitioner failed to give any satisfactory explanation as to how bills of higher amount were raised and the money withdrawn when value of the work which was executed was less.

5. On consideration of the arguments aforesaid and perusal of the material on record, I find that the petitioner categorically raised argument with regard to infraction of Sub-rule (4) of Rule 22 of the Rules of 1996, which respondents in their reply countered in terms that grounds raised by the petitioner in Grounds (A) to (J) of the petition are not sustainable in the eye of law therefore need no specific

reply. Such a plea can not be appreciated. Rule 22 of the Rules of 1996 categorically requires that an enquiry, envisaged thereunder has to be proceeded by a preliminary enquiry report of which shall be sent to the government. The government on receipt of such report of the preliminary enquiry frame definite charges and call upon the member of the Panchayati Raj Institution concerned to submit his written-statement within one month either admitting or denying the allegations and give his defence. Sub-rule (3) of Rule 22 of the Rules of 1996 requires that State Government may after expiry of prescribed period and considering such written statement, appoint an enquiry Officer and also nominate any person to present the case before Enquiry Officer on behalf of the State. It is thereafter that the enquiry officer shall prepare enquiry report and giving findings on every charge, proved or partly proved and submit the same to the State Government for consideration. Sub-rule (6) of Rule 22 of the Rules of 1996 provides that provisions of the Rajasthan Disciplinary Proceedings (Summoning of witnesses and production of documents) Act, 1959 (Rajasthan Act No. 28 of 1959) and the rules made thereunder shall also apply mutatis mutandis to enquiries being conducted against the Chairperson, the Deputy Chairperson or member of Panchayati Raj Institution as the case may be, under these rules.

All these safeguards have been deliberately engrafted into the Rules with a view to ensuring compliance of the principles of natural justice.

In the present case, respondents have not been able to prove to the satisfaction of the Court that whether in fact the requirements of the said rules were adhered to or not or the petitioner was associated in completion of the civil work done which was actually executed through their Engineers and payment was also released on verification by them.

In the circumstances, therefore, the Impugned order to the extent it has directed recovery of a sum of Rs. 4,39,787/- from the petitioner is liable to be set-aside.

7. In the result, the writ petition is allowed in part and the impugned order dated 24.3.2004 is quashed and set-aside and the matter is remitted back to the Additional Divisional Commissioner for fresh enquiry on that aspect strictly in accordance with the procedure prescribed by Rule 22 of the Rules of 1996 and for

passing an appropriate order thereafter afresh.

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