

Rajesh Kumar Gupta Vs. the State of Madhya Pradesh, and ors.

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Court : Madhya Pradesh Jabalpur

Decided On : Aug-12-2010

Judge : Rajendra Menon, J.

Appeal No. : Writ Petition No : 12369 OF 2009.

Appellant : Rajesh Kumar Gupta.

Respondent : The State of Madhya Pradesh, and ors.

Advocate for Def. : Shri Puneet Shroti ; Shri Sankalp Kochar, Advs.

Advocate for Pet/Ap. : Shri Sushil Tiwari, Adv.

Judgement :

1. Challenging the order dated 10/11/09 passed by the Collector, Umaria, as contained in annexure P-17, in the matter of appointment of Panchayat Karmi in Gram Panchayat Majmani Kala, Tahsil Bandhavgarh, District Umariya, petitioner has filed this writ.

2. Facts that has come on record indicates that the Panchayat in question issued an advertisement on 08/09/07, inviting applications from eligible candidates for appointment on the post of Panchayat Karmi. Records indicated that in all about 8 applications were received. Petitioner Rajesh Kumar Gupta received 57.8% marks in the qualifying 10+2 examination and respondent Subhash Chandra Rai had received 55.6% marks in the said examination. Name of petitioner was placed at Sr.No.1 and that of respondent No.4 at Sr.No.2 in the list. However, when the

matter was placed before the Gram Panchayat, the Gram Panchayat considered the question and found that petitioner is not a resident of Gram Panchayat in question, he is a resident of village Nighari, his name does not appear in the voter list of Gram Panchayat in the year 2004 and, therefore, finding him ineligible for appointment in accordance to the policies and circulars, respondent No.4 was found eligible for appointment. Petitioner challenged the aforesaid resolution by filing a revision before the Sub Divisional Officer and the S.D.O. vide order annexure P-8 dated 16/02/09, cancelled the appointment of respondent No.4 and directed for appointment of the petitioner within three days, on the ground that petitioner is a local resident of the area. Records indicate that this order was not complied with, various correspondence took place and finally the matter came to this Court in a writ petition and this Court in the writ petition directed the Collector concerned to decide the revision in accordance with law and the Collector having decide the matter vide annexure P-17 dated 10/11/09, the matter is now came back to this Court. Even though various grounds being urged during course of this writ petition, but the only question warranting consideration now in this writ petition is; as to whether the Collector was right in reversing the order passed by the Sub Divisional Officer vide annexure P-8 dated 16/02/09 and directed for appointment of respondent No.4 Shri Subhash Chandra Rai.

3. Shri Tiwari, learned counsel for the petitioner by taking me through the documents filed by him available on record and the resolution of the Gram Panchayat tried to emphasize that the Gram Panchayat has rejected the claim of the petitioner in an illegal manner only because respondent No.4 happens to be a relative of Sarpanch. It is stated that even though overwhelming documents are available on record to show that petitioner is resident of Majmani Kala, his claim has been rejected by the Collector ignoring the material documents and, therefore, illegality has been committed. Inviting my attention to the policy of the State Government, as contained in annexure P-2 dated 27/01/06, learned counsel for the petitioner also submitted that requirement of being a local resident is not a mandatory requirement and by ignoring merit of petitioner, granting appointment to a less meritorious person is not proper. In support of his contention he has brought to the notice of this Court various judgments to contend that a less meritorious has to be granted preference in the matter of appointment. The judgment relied upon

are filed along with compilation submitted during course of hearing.

4. Shri Sankalp Kochar, learned counsel for respondent No.4 refuted the aforesaid contention and by filing a detailed return and documents along with same tried to emphasize that the findings of the Collector to the effect that petitioner is not a resident of the local area i.e. Gram Panchayat Majmani Kala is a finding of fact based on due appreciation of the material available on record and, therefore, the same does not warrant any interference now in this proceeding.

5. Having heard learned counsel for the parties and on perusal of the advertisement annexure P-1 issued by the Gram Panchayat, it is clear that in the advertisement under Clause-3, it is clearly stipulated that the candidate has to be a local resident of Gram Panchayat Majmani Kala. It is, therefore, clear that in the advertisement itself the condition is stipulated that the candidate should be a resident of local area. This stipulation in the advertisement is based on the policy and circular of the State Government, as contained in annexure P-2 dated 27/01/2006, wherein also it is stipulated that the candidate should be a local resident and this condition is incorporated as it facilitates proper functioning of the employee. Accordingly, there is no dispute in accepting proposition that the candidate to be appointed has to be local resident and even if meritorious candidate is available, but if he is not local resident, his candidature can be rejected by the Gram Panchayat. The judgment relied upon by Shri Tiwari with regard to preference being granted to meritorious candidate cannot be made applicable in the present case in the light of clear stipulation contained in annexure P-1 in Clause-3, which is in conformity with the requirement of policy annexure P-2, Clause-4(1). Accordingly, I proposed to consider the question on merit with regard to the dispute about the petitioner being a local resident or not, as this is the only dispute which is to be adjudicated now in this writ petition.

6. In support of his contention petitioner has filed a document at page 32, which is the certificate of resident issued to petitioner on 04/06/01, in this certificate petitioner is shown to be S/o. Shri Sudama Prasad Gupta, R/o. Village Majmani Kala, Tahsil Bandhavgarh. In this certificate six queries have been answered; this certificate is of the year 2001 and is issued about 6 years prior to the process of

selection initiated on 08/09/07. The other documents are the Khasra entries showing availability of land in the name of petitioner's father Shri Sudama Prasad Gupta in the village and the Rin Pustika. The only document apart from the one at page 32 available on record shown that petitioner is resident of the Gram Panchayat is at page No.40, which is an Identity Card issued by Election Commission of India, this is issued on 07/03/09 i.e. much after the process of appointment and selection took place. Thereafter the document at page 41, 42 & 43 are all voter list and other documents issued in the year 2009, after the process of selection was initiated. It is, therefore, clear that the document filed by the petitioner in this petition to show that he is resident of local area are mainly issued to him after the selection in question and the only document prior to the date of selection is residence certificate dated 04/06/01. As the original records of selection have also been produced, a perusal of the application submitted by the petitioner Shri Rajesh Kumar Gupta indicates that he submitted the application and enclosed 4 documents in support of his claim, the documents were :

1. Marksheet of 10th Class passed.
 2. Marksheet of 12th Class passed.
 3. Registration with the Employment Exchange, and
 4. Registration Certificate dated 04/06/06.
7. Apart from these four documents, he has not produced any documents along with his application to show that he is a resident of local area. When the matter was taken-up in the Gram Panchayat, in the meeting held on 26/09/07 the resolution of the Gram Panchayat indicates, with regard to the petitioner the members of the Panchayat raised four objections; the first objection was that the petitioner's application does not indicate as to for which Panchayat he has submitted the application. The second objection was that in the voter list of Gram Panchayat in the year 2004, his name is not available. It was pointed out by the Members of the Panchayat that petitioner has his own house in Nighari, he staying in village Nighari, he is not staying in the village Majmani Kala and, therefore, he is not suitable to be appointed, as he may not give appropriate time to work in

Panchayat. Even though Secretary of Gram Panchayat made a note in the proceeding that petitioner has filed a resident certificate dated 04/06/01, the Gram Panchayat held that he is not a local resident and rejected his claim. When the matter travel to the Sub Divisional Officer, the Sub Divisional Officer took note of all these factors and interfere in the matter only because name of the petitioner was incorporated in the voter list of village Majmani Kala in the year 2008. When the matter travel to the Collector, the Collector re-examine the entire material and found that upto the date of submission of the application and till the filing and the passing of resolution in September, 2009 in the voter list from 2004 onwards petitioner is not shown to be a resident of local area, he is shown to be residing in village Nighari and the Collector found that in the certificate issued by the Gram Panchayat Nighari it is indicated that petitioner is staying in Nighari for more than 8 years, he has constructed house in Nighari and he is local resident of Nighari. Finding that name of petitioner does not appear in voter list of Gram Panchayat Majmani Kala right from the year 2004 upto 20/09/07 and the documents relied upon by the Sub Divisional Officer are subsequent to the process of selection and date of appointment, the Collector has recorded the finding that petitioner is not a resident of local area and, therefore, the Collector has interfered in the matter. In doing so, I am of the considered view that the Collector has not committed any error warranting interference because the Sub Divisional Officer have recorded the finding with regard to the petitioner being a resident of the local area only on the basis of the voter list prepared in the year 2008 i.e. after the process of selection was held. So far as the petitioner is concerned, before the Gram Panchayat in the application and documents filed by him, he has only submitted a certificate issued in the year 2001 showing him to be a resident of the local Gram panchayat all other documents filed by him are of the year 2008 and 2009 subsequent to the date of selection. The Collector examined the entire matter in detail and found that in the voter list after 2004 name of the petitioner is not available and in the certificate issued by the competent authority of Gram Panchayat Nighari it is shown that petitioner is staying in the said Gram Panchayat for more than 8 years. That being so, the finding of the Collector is based on reasonable and due appreciation of the material available on record, it cannot be termed as perverse in any manner whatsoever. On the contrary the finding of the Sub Divisional Officer

is based on consideration of irrelevant material i.e. material subsequent to the date of selection and cannot be the basis for recording the finding. In that view of the matter in the light of the overwhelming material available on record, I am of the considered view that Collector has not committed any error in interfering in the matter and the reasoned order given by the Collector, reversing the finding of the Sub Divisional Officer does not warrant any interference.

8. So far as the allegation made with regard to respondent No.4 being relative of Sarpanch and, therefore, the selection being vitiated is concerned, except for making such allegation nothing is brought to the notice of this Court on the basis of which the said allegation can be accepted. A perusal of original records indicate that respondent No.4 has received 55.6% marks and as per merit he is at Sr.No.2 after petitioner, all other candidates have received less than 55.6% marks i.e. candidate who is at Sr. No.3 Shri Ram Narayan Kahar has received 51.84% marks and others have received less than the said marks. That being so, once it is found that petitioner is not resident of the local area and is not entitled to be considered for appointment, thus the next meritorious candidate i.e. respondent No.4 is entitled to be appointed and in so doing respondents have not committed any error, warranting interference.

9. Accordingly, finding no merit in the writ petition, the same is dismissed. The original record of selection produced by the State Government is returned back to the counsel.

10. The petition stands dismissed without any order so as to costs.

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