

**The High Court of Madhya Pradesh
WP 6031/2018
Ramswaroop Singh Gurjar vs. State of MP & Ors.**

Gwalior , dtd. 25/10/2018

Shri Gaurav Mishra, counsel for the petitioner.

Shri Vivek Jain, Government Advocate for the respondents No. 1 to 3/ State.

Shri Tapendra Sharma, counsel for the respondent No. 4.

Shri Anil Kumar Saxena, counsel for the respondent No.5.

This petition under Article 226 of the Constitution of India has been filed, calling in question the order dated 06/03/2018 (Annexure P/1) passed by the Commissioner, Chambal Division, Morena, by which the appeal filed by the respondent No.5 has been allowed and the order passed under Section 40 of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 [in short " the Act, 1993"] has been set aside.

The necessary facts for the disposal of the present petition in short are that the respondent No.5 was elected as Sarpanch of Gram Panchayat Jaderu, Janpad Panchayat Pahadgarh, District Morena. Certain complaints were made against the respondent No.5 and other employees of the Gram Panchayat with regard to financial irregularities and a discreet enquiry was conducted against the respondent No.5. It is also undisputed that no opportunity of hearing was given by the enquiry officer while conducting the discreet/preliminary enquiry. Thereafter, on 17/04/2017, a show cause notice was issued to the respondent No.5 as to why he may not be removed from the post of Sarpanch by

exercising the power under Section 40 of the Act, 1993. The allegations were that a total amount of Rs.4,770/- was misappropriated by the respondent no.5. It appears that thereafter, further notices were sent to the respondent no.5 and a last notice was sent on 26/10/2017 and accordingly, the respondent No.5 submitted his reply on 07/11/2017. Thereafter, by order dated 16/11/2017, the respondent No.3 (Chief Executive Officer, Zila Panchayat, Morena) by relying upon the enquiry report submitted against the respondent No.5, came to the conclusion that the reply submitted by the respondent No.5 is not satisfactory as in the enquiry report, the enquiry officer has given a clear finding that financial irregularities have been committed and an amount of Rs.4,770/- has been misappropriated, therefore, the respondent no.5 was removed from the post of Sarpanch by exercising power under Section 40 of the Act, 1993.

Being aggrieved by the order of removal dated 16/11/2017, the respondent no.5 filed an appeal before the respondent No.2/Commissioner, Chambal Division, Morena and the respondent No.2 by order dated 06/03/2018 came to the conclusion that the discreet enquiry/preliminary enquiry was conducted behind the back of the respondent no.5 and no opportunity of hearing was given and thus, the principles of natural justice were grossly violated and accordingly, set aside the order dated 16/11/2017 passed by CEO, Zila Panchayat Morena.

Challenging the order passed by the respondent No.2/Commissioner, Chambal Division, Morena, it is submitted by the counsel for the petitioner that it is incorrect to say that the respondent no.5 was not given a reasonable opportunity of hearing and further after coming to a conclusion that the

principles of natural justice have been violated, then the respondent no.2 should not have quashed the entire proceedings but should have remanded the case back to the CEO, Zila Panchayat, Morena.

The counsel for the respondent No.5 submitted that the discreet enquiry/preliminary enquiry was conducted behind the back of the respondent No.5 and the respondent No.5 was not given a reasonable opportunity of hearing by the CEO, Zila Panchayat, Morena and, therefore, the respondent No.2 was right in holding that the principles of natural justice have been violated and under these circumstances, the respondent No.2 did not commit any mistake in quashing the entire proceedings.

Heard the learned counsel for the parties.

So far as the question of violation of principles of natural justice is concerned, it is submitted by the counsel for the petitioner that initially, the complaint was got enquired from one Shri Neeraj Shrivastava, APO and since it was a preliminary enquiry/ discreet enquiry, therefore, it was not necessary for the enquiry officer to give an opportunity of hearing to the respondent No.5. Accordingly, a show cause notice was issued and after receiving the reply from the respondent no.5 on 07/11/2017, the respondent No.3/ CEO, Zila Panchayat, Morena passed the final order on 16/11/2017, thereby removing the respondent no.5 from the post of Sapranch. There is nothing on record to show that any enquiry was conducted by CEO, Zila Panchayat, Morena before passing the order of removal. The respondent No.3 had relied upon the enquiry report submitted by APO and there is nothing on record to suggest that the copy of the said enquiry report was ever given to the respondent No.5

inviting his objection or explanation. Even otherwise, the APO had also also not given any opportunity of hearing to the respondent No.5. Thus, it is clear that the finding recorded behind the back of the respondent no.5 was used by the respondent no.3 and without giving him an opportunity of filing his objection or explanation to the said enquiry report, the final order was passed.

This Court in the case of **Rajendra Singh Raghuvanshi vs. State of MP and Others**, reported in **2004 (4) MPLJ 6** has held that when an enquiry report has been relied upon by the competent authority without furnishing the copy of the same to the outgoing office-bearer, then the enquiry would be vitiated because of failure of principles of natural justice.

In the case of **Babita Lihare vs. Surendra Rana & Others**, reported in **(2004) 1 MPLJ 27**, this Court has held that in the proceedings for removal of a Sarpanch, the witnesses must be examined and the Sarpanch should be given an opportunity to cross-examine those witnesses.

In the case of **Manita Jaiwar vs. State of MP & Others** reported in **(2009) 3 MPLJ 370**, it has been held that where the proper enquiry has not been conducted by a competent authority before passing order of removal, then the case has to be remanded back to the competent authority to conduct the enquiry afresh.

In the case of **Smt. Phool Bai vs. State of MP and Others** reported in **(2009) 2 MPHT 68**, it has been held that where the officers had prepared the enquiry report, did not appear for cross-examination, yet the prescribed authority proceeded to hold the office-bearer guilty of charges on the basis of same enquiry report, then it is not fair trial and the

order of removal passed by such defective enquiry cannot be given a stamp of approval.

In the case of **Mango Bai vs. State of MP and Others**, reported in **2003(2) MPLJ 40**, it has been held that secret enquiry/preliminary enquiry alone is not enough and the prescribed authority should hold the enquiry according to law.

Under these circumstances where the consequences are penal in nature as not only the office-bearer would be removed from his office but shall also be disqualified for a period of six years, to be elected under this Act, this Court is of the considered opinion that the manner in which the order was passed by the CEO, Zila Panchayat, cannot be given a stamp of approval because the order dated 16/11/2017 was passed completely in violation of principles of natural justice. Thus, the findings given by the respondent no.2 with regard to violation of principles of natural justice are affirmed.

The next question for determination would be that where the proceedings have been quashed on the ground of violation of principles of natural justice, then whether the matter should be remanded back to the prescribed authority for deciding it afresh, in accordance with law or the entire proceedings should be quashed.

It is submitted by the counsel for the respondent No.5 that it is well-established principle of law that where an office-bearer has been elected by the residents of the locality, then he should not be removed on trivial charges and under these circumstances, the Commissioner, Chambal Division, Morena did not commit any mistake in quashing the entire proceedings.

Considered the submissions made by the learned

counsel for the respondent no.5 as well as the counsel for the petitioner.

The question is that whether the charges framed against the respondent No.5 were trivial in nature or not and whether the respondent No.5 is liable to be removed on the basis of those charges, would come into play only when the charges alleged against the respondent are proved.

The Supreme Court in the case **Canara Bank and Others vs. Debasis Das and Others** reported in **(2003) 4 SCC 557** has held as under:-

".....Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left open. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated. "

Thus, it is clear that when the order is set aside on the ground that the manner in which the findings have been given, cannot be approved, then the only option available with the appellate authority is to remand the matter back to the prescribed authority for deciding it afresh on the basis of the allegations. Accordingly, this Court is of the considered opinion that the respondent No.2 while quashing the order dated 16/11/2017 should have remanded the matter back to the respondent No.3 for deciding it afresh after giving a reasonable opportunity of hearing. As per the show cause notice which was given to the respondent no.5, the allegations are that a total amount of Rs. 4,770/- has been misappropriated by the respondent No.5 and other office-bearers of Panchayat. Where an office-bearer has been elected by the citizens, then he should not be removed in unceremonious manner. The mistakes which are minor in

nature, should not be made basis for removal of an elected office-bearer. Thus, it is believed that in case if the respondent no.3 comes to a conclusion that an amount of Rs.4,770/- was misappropriated by three persons, including the petitioner, then he would take into consideration the fact that the said amount has already been deposited by the Secretary, Gram Panchayat.

Accordingly, the order dated 06/03/2018 passed by the respondent no.2 is affirmed with a modification that the matter shall stand remanded back to the CEO,Zila Panchayat Morena for holding the enquiry afresh in accordance with law after giving a reasonable opportunity of hearing, as held by this Court on various occasions.

The petition is partially **allowed**.

(G.S.Ahluwalia)
Judge