

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE ANAND PATHAK**

**ON THE 22<sup>nd</sup> OF SEPTEMBER, 2023**

**WRIT PETITION NO. 24255 of 2023**

**BETWEEN:-**

**SMT. SAROJ YADAV W/O SHRI HEM SINGH YADAV,  
AGED ABOUT 38 YEARS, OCCUPATION: EX-  
SARPANCH R/O GRAM PANCHAYAT GHADOR, TEHSIL  
JOURA, DISTT. MORENA (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI PRATIP VISORIYA - ADVOCATE)***

**AND**

- 1. STATE OF MADHYA PRADESH THROUGH ITS  
PRINCIPAL SECRETARY, DEPARTMENT OF  
PANCHAYAT AND RURAL DEVELOPMENT, VALLABH  
BHAWAN, BHOPAL (MADHYA PRADESH)**
- 2. LOKPAL -1  
MAHATMA GANDHI NATIONAL RURAL  
EMPLOYMENT SCHEME, RAMKRISHANA MISSION  
ASHRAM PARISAR THATIPUR, GWALIOR (MADHYA  
PRADESH)**
- 3. ADDITIONAL CHIEF SECRETARY, PANCHAYAT AND  
RURAL DEVELOPMENT DEPARTMENT VALLABH  
BHAWAN, BHOPAL (MADHYA PRADESH)**
- 4. CHIEF EXECUTIVE OFFICER, ZILA PANCHAYAT  
MORENA DISTRICT MORENA (MADHYA PRADESH)**
- 5. CHIEF EXECUTIVE OFFICER, JANPAD PANCHAYAT  
PAHADGARH, DISTRICT MORENA (MADHYA  
PRADESH)**
- 6. RAKESH SINGH S/O SONERAM YADAV R/O VILLAGE  
GHADOR, TEHSIL JOURA, DISTRICT MORENA  
(MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI VISHAL TRIPATHI – GOVERNMENT ADVOCATE)***

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*This petition coming on for admission this day, the court passed the*

*following:*

**ORDER**

1. The instant petition under Article 226 of the Constitution is preferred by the petitioner seeking following reliefs:
  - “1. That, the order dated 06-02-2023 (Annexure -P/1) passed by respondent No.2 may kindly be quashed.
  2. That, any other relief including the cost of petition may kindly be given.”
2. As submitted, petitioner at the relevant point of time was Sarpanch of Gram Panchayat Ghador, Janpad Panchayat, Pahadgarh (Morena) and facing the wrath of proceedings initiated by Ombudsman (MGNREGA), Gwalior whereby petitioner is being saddled with the liability as referred in the impugned order and recovery is directed to be made from the petitioner.
3. Precisely stated facts of the case are that one Rakesh Singh -respondent No.6 preferred a complaint before the Ombudsman, Gwalior in relation the work done by the petitioner in the Gram Panchayat Ghador. Upon the said complaint, notice has been issued by the Ombudsman against the petitioner of which reply has also been submitted by the petitioner. The Ombudsman after considering the allegations, reply and the material available on record, passed the impugned order Annexure P/1.
4. In exercise of powers conferred by sub-section (1) of Section 32 of the Mahatma Gandhi National Rural Employment Guarantee Adhiniyam, 2005, Rules known as Mahatma Gandhi National Rural Employment Guarantee (Appointment, Powers and Duties of the Ombudsman) Madhya Pradesh Rules, 2013 have been framed (hereinafter referred to as “the Rules of 2013”).

5. Learned counsel for the petitioner raised three fold submissions:
  - i. As per the Rules of 2013, Office Bearer has been defined in rule 3(g) of the Rules of 2013 and scheme worker or authority has been defined in rule 3(i) of the Rules of 2013. As per rule 8, any person who has grievance against the concerned authority or worker, may make complaint in writing or oral to the Ombudsman. Here, petitioner does not fall under the definition of **scheme worker or authority** because she is Officer Bearer as per rule 3(g) of the Rules of 2013, therefore, said rules are not applicable over her. Ultimately, no proceedings could have been initiated against him as per rule 8.
  - ii. Complainant of the case did not appear despite intimation given for producing evidence.
  - iii. No reasonable opportunity of hearing was provided to the petitioner and therefore, it is contrary to the judgment of Apex Court in the case of **Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra, (2013) 4 SCC 465**.
6. Learned counsel for the respondents/State opposed the submission and submitted that the Rules of 2013 includes Sarpanch and therefore, Ombudsman has rightly initiated the proceedings against the petitioner. After giving due opportunity of hearing to the petitioner which is reflected from the impugned order itself, recovery has been ordered. Conduct of petitioner was such which caused dent to the State exchequer and construction work conducted was of inferior quality. Therefore, recovery has rightly been ordered against her. He also submits that her misconduct deserves reprimand. He defended the impugned order.
7. Heard.
8. This is a case where petitioner who was Sarpanch at the relevant

point of time is crestfallen by the order of Ombudsman, Gwalior. So far as submission of learned counsel for the petitioner regarding point No.1 is concerned, perusal of Rules of 2013 makes the picture clear. Said Rules are annexed with the petition as Annexure P/5 and it defines different authorities. Office Bearer is defined in rule 3(g). Same is reproduced as under:

*“3(g). "Office bearer" means a panch, sarpanch or up-sarpanch of any Gram Panchayat under the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (No. 1 of 1994)”*

Similarly, scheme worker or authority also been defined in rule 3(i) which is reproduced as under:

*“3(i). "Scheme worker or authority" means a person or person entrusted with powers and duties under the Scheme”*

9. Rule 2 of the Rules of 2013 refers application and the said rule is applied for the grievances received under rule 7. Rule 7 in Chapter IV is an all encompassing set of subjects. Rule 7 is reproduced as under:

*7. Subjects of the grievances:- A grievance pertaining to any one or more of the following subjects alleging deficiency in the implementation of the Scheme may be filed with the Ombudsman:-*

- (i) The Gram Sabha;*
- (ii) Registration of households and issue of job cards;*
- (iii) Custody of job cards;*
- (iv) Demand for work;*
- (v) Issue of dated acknowledgment against submission of application for work;*

- (vi) *Payment of wages;*
- (vii) *Payment of unemployment allowance;*
- (viii) *Discrimination on the basis of gender;*
- (ix) *Work-site facilities;*
- (x) *Measurement of work;*
- (xi) *Quality of work;*
- (xii) *Use of machines;*
- (xiii) *Engagement of contractors;*
- (xiv) *Operation of accounts in the bank or post offices;*
- (xv) *Registration and disposal of grievances;*
- (xvi) *Verification of muster rolls;*
- (xvii) *Inspection of documents;*
- (xviii) *Use of funds;*
- (xix) *Release of funds;*
- (xx) *Social audit;*
- (xxi) *Maintenance of record.*

10. A grievance pertaining to any one of the said subjects alleging deficiency in the implementation of scheme may be filed before the Ombudsman. Rule 7(x) Measurement of work, rule 7(xi) Quality of work and rule 7(xviii) Use of funds are such subjects which can be invoked by any person. Therefore, submission of learned counsel for the petitioner in respect of point No.1 is misconceived.
11. As per rule 3(i) Scheme Worker or Authority is defined as person or persons entrusted with powers and duties under the scheme. This definition takes Sarpanch, Up-sarpanch, Panchayat Secretary or Gram Rojgar Sahayak into its fold because all these persons are entrusted with powers and duties under the scheme.
12. One point deserves consideration is that apparently for the first time under **rule 7(xx) “Social Audit”** has been contemplated. Social Audit

has wider connotation. Since MGNREGA is meant to address the rural employment and construction activities conducted in pursuance thereof, therefore, it is prerogative of any member of vicinity or any member of the said society to raise grievance against the office bearer, scheme worker or authority by himself or through his authorized/competent representative. Such concept of Social Audit is meant to ensure Democratic Accountability of office bearers of Local Self Government i.e. Sarpanch in the present case. Sarpanch and other office bearers have been bestowed with certain privileges by way of Constitutional status by the Constitutional Amendment (The Constitution 73<sup>rd</sup> Amendment Act, 1992) in Article 243 of the Constitution of India and privileges preceded by responsibilities and accountability.

13. In Democratic setup where office bearers of Local Self Government are public servants, meant to serve the public at large cannot wriggle out from their Democratic Accountability. Therefore, on this count also, arguments of petitioner lacks merit, thus rejected.
14. So far as non appearance of complainant is concerned it does not alter the nature of allegations in any manner. After complaint being received, notices were issued to the erring officers/office bearers and their statements were recorded. Evidence was led by the parties. Thereafter, detail discussion was carried out by the Ombudsman and thereafter, impugned order has been passed. Pertinent to mention here that despite continuous requisition being made for more than four years from the Chief Executive Officer, Janpad Panchayat, Pahadgarh District Morena about his opinion and to requisition the record, but the then Chief Executive Officer, Janpad Panchayat Pahadgarh did not bother to bring the record before the Ombudsman, therefore,

rightly adverse inference was drawn by the Ombudsman. Said procedure is provided in proviso attached to the sub-rule (3) of rule 5 of the Rules of 2013. Relevant provision is reproduced as under:

*“5. Powers of the Ombudsman: (1) The Ombudsman of the Scheme shall have the following powers, namely :-*

- (a) to receive grievances from Scheme workers and other person on any one or more issues specified in rule 7;*
- (b) to consider the grievances and facilitate their disposal in accordance with these rules.*

*(2) The Ombudsman of the Scheme shall have the powers namely :-*

- (a) summoning and enforcing the attendance of any person the from any part of the State and examining him on oath;*
- (b) requiring the discovery and production of any document;*
- (c) receiving evidence on affidavits;*
- (d) receiving any public record or copy thereof from any office;*
- (e) issuing commission for examination of witnesses and documents.*

*(3) The Ombudsman may require the Scheme authority to provide any information and to furnish certified copies of any document relating to the subject matter of the grievance which is or is alleged to be in his possession:*

*Provided that in the event of failure of such authority to comply with the requisition without any sufficient cause, the Ombudsman of the Scheme may, if he deems fit, draw the inference that the*

*information, if provided, or copies, if furnished, would be unfavorable to the concerned Scheme Authority.*

*(4) The Ombudsman may issue direction for conducting spot investigation.*

*(5) The Ombudsman may Initiate proceedings suo motu in the event of any circumstances arising within his jurisdiction that may cause any grievance.*

*(6) The Ombudsman may engage experts for facilitating the disposal of grievance.*

*(7) The Ombudsman may investigate into a complaint and report its finding to the State Government and may also recommend disciplinary and punitive action, if deems appropriate.”*

15. Sub-rule (5) of rule 5 of the Rules of 2013 delineated authority of Ombudsman whereby he may initiate proceedings *suo motu* in the event of any circumstances arising within his jurisdiction that may cause any grievance. Not only this, Ombudsman may engage experts for facilitating disposal of grievance. Therefore, powers of Ombudsman are all pervasive and it cannot be doubted in any manner. Ombudsman usually is an experienced person and judicious approach is reflected in the impugned order. After considering the rival submissions and appreciating the evidence, impugned order has been passed.
16. So far as point No.3 – reasonable opportunity of hearing is concerned, it also lacks merits. Impugned order indicates that petitioner was show caused and after appearance she filed her statement. That statement has been duly considered by the Ombudsman and thereafter impugned order has been passed. Opportunity of hearing is not an unruly horse and no straight jacket formula can be prescribed in this



regard.

17. The Hon'ble Apex Court in the matter of **Poonam Vs. State of Uttar Pradesh and others, (2016) 2 SCC 779** held that principle of *Audi Alteram Partem* has its own sanctity but the said principle of natural justice is not always put in straitjacket formula. That apart, a person or an authority must have a legal right or right in law to defend or assail. Natural justice is not an unruly horse. Its applicability has to be adjudged regard being had to the effect and impact of the order and the person who claims to be affected and that is where the concept of necessary party becomes significant. This aspect has also been taken care of by Division Bench of this Court {See: **Vikas Gupta Vs. Smt. Merra Singh and others, 2007(2) EFR 46**}.
18. The concept of principle of Natural Justice or audi alteram partem doctrine although is required to be complied with but at the same time it has some exceptions. In catena of judgments including the judgment rendered in **A.P. Social Welfare Residential Educational Institutions Vs. Pindiga Sridhar, (2007) 13 SCC 352, Haryana Financial Corpn. Vs. Kailash Chandra Ahuja, (2008) 9 SCC 31, State of Chhattisgarh Vs. Dhirjo Kumar Senger, (2009) 13 SCC 600, Indu Bhushan Dwivedi Vs. State of Jharkhand, (2010) 11 SCC 278, Natwar Singh Vs. Director of Enforcement, (2010) 13 SCC 255 and Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati and Ors, (2015) 8 SCC 519**, all discussed in detail on the different facets of said doctrine of Audi Alteram Partem, Principle of Natural Justice/Opportunity of Hearing quotient and discussed the exceptions also in detail.
19. Petitioner in the present case is facing the allegation of corruption and misappropriation of fund while working as public representative. Allegations are serious in nature. Public representatives/office bearers

specially of Local Self Government directly serve the rural people. Therefore, they are constitutionally obliged to be more sensitive towards the cause of people rather than becoming their Masters. Since record has not been sent by concerned C.E.O. Janpad Panchayat and opinion has not been given, therefore, adverse inference can always be drawn by the Ombudsman in such facts and circumstances of the case.

20. Concept of Social Audit is a recently evolved concept and it is befitting the democratic aspiration of common people. By this mechanism, person residing in the Gram Panchayat can evaluate the quantity and quality of work assigned to the Gram Panchayat because in the present era when Local Self Governments are bestowed with such powers, people cannot lie at the mercy of lustful behaviour of the office bearers of Gram Panchayat.
21. In fact at times, Sarpanch, Panchayat Secretary and Gram Rojgar Sahayak try to block the development instead of developing the block. Therefore, the concept of Social Audit emerges with the *suo motu* powers given to the Ombudsman. Incidentally, the Rules of 2013 gave powers to the Ombudsman to call for experts opinion also.
22. Therefore, the picture emerges is that Ombudsman can take cognizance of any irregularity on complaint or *suo motu*. Then he can call experts opinion over the quality of construction and Social Audit can help in reaching to the conclusion about the work done and its quality. Therefore, if Chief Executive Officer, Janpad Panchayat does not cooperate then also hands of Ombudsman are not tied, he cannot wait till eternity for such misconduct of Janpad Panchayat officers. Therefore, the principle of reasonable opportunity of hearing

is to be seen in that perspective also.

23. In cumulative analysis, no case for interference is made out and petition preferred by the petitioner sans merits, therefore, admission declined and petition is hereby **dismissed**.
24. Before parting, this Court is at pains to know that during pendency of complaint before the Ombudsman, Chief Executive Officer, Janpad Panchayat, Pahadgarh did not bother to submit opinion and produce the record before the Ombudsman. Such non-compliance amounts to arbitrariness and guided by malice. It appears that Chief Executive Officer, Janpad Panchayat, Pahadgarh wanted to conceal certain facts from perusal of Ombudsman which otherwise would have prejudiced the case of petitioner. Such default cannot be brushed aside lightly and therefore, Commissioner, Chambal Division and Collector Morena are directed to seek explanation from the concerned Chief Executive Officer(s), Janpad Panchayat, Pahadgarh who was/were posted at the relevant point of time when such mischief occurred and start enquiry against him/them for his/their alleged misconduct while not supplying the record and furnishing opinion to the Ombudsman.
25. Chief Secretary, Government of Madhya Pradesh, Principal Secretary, Panchayat and Rural Development and Commissioner, MGNREGA are directed to take such default seriously and issue circular immediately to all officers concerned upto the level of Chief Executive Officer, Zila/Janpad Panchayats to obey the command of Ombudsman regarding requisition of record and furnishing of opinion. All such officers are duty bound to produce the record immediately before Ombudsman and concerned authority. If required, suitable training be imparted to the concerned officers so that fountain of Local Self Government may not be polluted by the

misdeeds of such office bearers of Local Self Government like present petitioner.

26. Copy of the order be sent to the Chief Secretary, Government of Madhya Pradesh, Principal Secretary, Panchayat and Rural Development, all Ombudsmen of each District, Commissioner, MGNREGA and all District Collectors for ensuring compliance regarding providing record and opinion in case same are requisitioned by Ombudsmen.
27. **Dismissed.**

(ANAND PATHAK)  
JUDGE

Anil\*