

HIGH COURT OF MADHYA PRADESH : BENCH AT
INDORE
(SINGLE BENCH : HON. Mr. JUSTICE VIVEK RUSIA)

W.P. No. 11362 of 2019

(Kundan Mukati S/o. Badrilal Mukati. V/s. State of M.P. & others.)

Date : 07.04.2021 :

Petitioner by Shri Jitendra Verma, Advocate.

Respondents/State by Shri Prakhar Mohan Karpe,
Panel Advocate.

The respondents/State have filed an application (I.A. No.896/2021) for vacating the stay.

Instead of hearing on the application for vacating stay, both the parties have argued this petition finally. Accordingly, this petition is heard finally.

ORDER

The petitioner has filed the present petition being aggrieved by the order dated 21.5.2018 passed by the Prescribed Authority and Chief Executive Officer, Zila Panchayat Ujjain u/s. 92 of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as “the Adhiniyam, 1993”) and order dated 8.4.2019 passed by the appellate authority - Commissioner, Ujjain in the exercise of powers conferred u/s. 91 of the Adhiniyam 1993.

2. Facts of the case, in short, are as under :

An amount of Rs.12,51,000/- was sanctioned for Rajeev Gandhi Seva Kendra and Gram Panchayat Borkheda Pitramal was authorised as a construction agency. Out of Rs. 12,51,000/-, Rs.5,75,150/- was sanctioned by the MNREGA and Rs.1,00,000/- was sanctioned from the fund allocated to the Member of Parliament. Accordingly, Rs.6,75,150/- was transferred to the Account of Gram Panchayat.

On 28.2.2013 the construction work was started and closed on 13.6.2014. During this period, the work completed by the Gram Panchayat was measured and certified by the present petitioner who was posted as Sub Engineer of the Gram Panchayat. As per the MB/ valuation report, the work up to the plinth level valued at Rs.1,22,766/- was completed. The Gram Panchayat had withdrawn the excess amount of Rs.5,52,213/- for purchasing the steel, cement and other construction material and all the Bills/Vouchers were duly certified by the petitioner.

A complaint was made to the competent authority about the excess withdrawal of the amount by the Gram Panchayat . A two members committee was constituted to inquire about the illegality and irregularity in the construction of Rajeev Gandhi Seva Kendra as well as in withdrawal of the excess amount. The committee comprising of Project Officer, MNREGA and Account Officer, MNREGA, Zila Panchayat Ujjain visited the construction site on 19.12.2017 and found that only foundation work was completed. The documents and records pertain got construction work was demanded from Gram Rojgar Sahayak but the same was not available in the office of Gram Panchayat. Later on Lokendra Singh - Secretary of the Gram Panchayat

provided the Muster, sale & purchase register, measurement book, etc. to the committee. The committee found that the construction work valued at Rs.1,22,766/- was approved and certified by the present petitioner and payments were made to five agencies for the purchase of construction material valued at Rs.5,25,355/- and an amount of Rs.49,795/- was spent for payment of labour charges. The committee gave a report that an amount of Rs.4,27,364/- is liable to be recovered from the then Accounts Officer, Surpanch, Secretary and the Sub Engineer i.e. the present petitioner.

On the basis of the aforesaid report, a show-cause notice dated 13.9.2017 was issued to the petitioner by the Chief Executive Officer , Zila Panchayat Ujjain as to on what basis, the excess money was spent during his tenure. Similar notices have been issued to the Accounts Officer, Surpanch, Secretary and Assistant Engineer of the Gram Panchayat. The petitioner submitted the reply to the effect that he did certify the work of construction completed to the tune of Rs.1,22,937/- and for the rest of the amount, the Surpanch and the Secretary are responsible as they withdrew the amount and purchased the material.

After considering the reply submitted by the petitioner and recording his statement, vide order dated 21.5.2018, the Chief Executive Officer , Zila Panchayat has held that the amount of Rs.1,19,824/- is liable to be recovered from the petitioner and in the exercise of powers u/s. 92(2)(1) of the Adhiniyam, 1993 directed him to deposit the said amount within a period of 30 days failing which the process would be initiated for sending him to civil imprisonment.

Being aggrieved by the aforesaid order, the petitioner preferred an appeal u/s. 91 of the Adhiniyam, 1993 before the Commissioner, Ujjain and the same has been dismissed vide order dated 8.4.2019, hence the present petition before this Court.

3. Shri Jitendra Verma, learned counsel for the petitioner submits that the impugned orders have been passed without making any inquire as contemplated u/s. 89 and 92 of the Adhiniyam, 1993. Only a show-cause notice was issued to the petitioner, but no issues were framed and no evidence was recorded, therefore, the impugned orders are bad in law in the light of the judgment passed by this Court in the case of ***Roshan Nargave V/s. State of M.P. : 2017 (3) MPLJ 73***. It is further submitted that the petitioner being a Sub Engineer has inspected the site and certified the construction work completed by the Gram Panchayat to the tune of Rs.1,22,937/- and as per the duty job, the petitioner did not commit any illegality in giving the aforesaid report. It is also not in dispute that the aforesaid work was not done by the petitioner, therefore, no amount is liable to be recovered from the petitioner.

4. On the other hand, the learned Panel Advocate for respondents/State, opposes the prayer by submitting that the petitioner has not only certified the work done to the tune of Rs.1,22,937/- but he has also verified the bills for the purchase of the material worth Rs.5,52,213/- and as per the report given by two members' committee, no material was found on the spot and work up to plinth level was done. Therefore, the petitioner

is guilty of certifying the fake vouchers for the purchase of the material, hence more than the amount of Rs.1,19,824/- is liable to be recovered from the petitioner. However, the CEO has distributed the amount between all the responsible persons because it was a joint liability of all of them for payment of the amount. Therefore, there is no substance in this writ petition and the same is liable to be dismissed.

I have heard the learned counsel for the parties and perused the record.

5. That, amount of Rs.12,51,000/- was sanctioned for the construction of Rajeev Gandhi Seva Kendra and the Gram Panchayat Borkheda Pitramal was appointed as a construction agency. After the administrative approval, the amount of Rs.5,75,150/- was released by the MNREGA along with Rs.1,00,000/- i.e. the funds of Member of Parliament. Accordingly, an amount of Rs.6,75,150/- was transferred to the Account of the Gram Panchayat. The construction work was started on 28.2.2013 and the total period of completion was one year, but up to three years, only the work up to the plinth level valued at Rs.1,22,937/- was completed. It is correct that the petitioner being a Sub Engineer has valued the construction work, but the allegation and the findings are to the effect that the material worth Rs.5,52,213/- was purchased under the joint signatures of Secretary and Surpanch of the Gram Panchayat which was duly certified by the present petitioner. The petitioner has certified the aforesaid purchase, therefore, the excess amount was withdrawn from the Panchayat funds and

that was not utilised in the construction work. Being a Sub Engineer, it was the duty of the petitioner to see that the material was to be purchased in advance as per requirement in the construction. Here, the material worth Rs.5,52,213/- was purchased but utilised only Rs.1,22,937/-, on the spot, even the unutilised material was not found. The petitioner did not come up with a valid explanation as to why the construction of Rajeev Gandhi Seva Kendra was not completed within time even today . Being sub engineer of the Gram Panchayat it was his duty to get the work completed. Therefore, all the responsible office bearer, employees, secretary and engineers have misappropriated the funds as well as the material.

6. So far as an opportunity of hearing is concerned to the petitioner by Chief Executive Officer before passing the impugned order is concerned, the petitioner was served with the show cause notice, he filed his reply, and his statement was also recorded by the Chief Executive Officer, Zila Panchayat. Therefore, there is compliance with the principles of natural justice. In the present case, the entire case is based on documentary evidence. Before initiating the proceedings u/s. 92 of the Adhiniyam, 1993, a two members' committee was appointed, it conducted a detailed investigation and submitted its report and thereafter, show cause notice was issued to the petitioner.

7. The petitioner came up with the defence that he being a Sub Engineer had verified the construction work valued at Rs.1,22,937/-, therefore, there was no illegality or irregularity

on his part. But, when the Gram Panchayat was made as a construction agency, then Sub Engineer of the Gram Panchayat must see that the proper material be purchased at the proper time and the same should be utilised for the construction work for which it was being purchased. The Surpanch and the Secretary of the Gram Panchayat are not the technical persons, but the petitioner being a Sub Engineer is supposed to work on the field and see that the proper material is utilised at the relevant point of time. From 2013 to 2014, despite the availability of the funds, the construction work was not completed and on record, the entire material was purchased. Therefore, there cannot be a strict application of the Evidence Act in this case. The entire allegations have been proved by the documentary evidence and there is substantial compliance of principles of natural justice because he was served with a show-cause notice, he filed the reply, and his statement was recorded by the prescribed authority. Both the authorities have duly considered the case of the petitioner and there is no scope for interference by the High Court in a writ petition under Article 226 of the Constitution of India.

8. It is correct that in the number of cases this court has held that before initiating recovery under section 92 of the Panchayat Act an enquiry ought to have conducted under section 89 of the Act. In the case of Roshan Nargave (supra), straightway the notice u/s. 92 was issued, therefore, this Court has held that before issuing a notice u/s. 92, an inquiry ought to have been conducted u/s. 89 of the Adhinyam, 1993. Here in the present case, the notice was issued u/s. 92, and a detailed

inquiry was conducted by the Chief Executive Officer . Therefore, it can safely be held that the impugned order passed under section 92 is a composite order u/s. 89 and Section 92 both, because requirement u/s. 89 and 92 both have been fulfilled in it. Hence, the facts of the present case are distinguished from the facts of the case of Roshan Nargave (supra) and the matter is not liable to be remanded back to the authority. The impugned orders are just and proper and no interference is called for.

Accordingly, this petition fails and is hereby dismissed.

(VIVEK RUSIA)
JUDGE

Alok/-