



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

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 11th OF FEBRUARY, 2025

WRIT PETITION No. 137 of 2020

DR. KRISHAN MURARI DWIVEDI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri K. C. Ghidyal – Senior Advocate with Shri A. S. Thakur – Advocate for the petitioner.

Shri Sumit Raghuwanshi – Government Advocate for the respondents / State.

WITH

WRIT PETITION No. 26163 of 2021

DR. KRISHAN MURARI DWIVEDI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri K. C. Ghidyal – Senior Advocate with Shri A. S. Thakur – Advocate for the petitioner.

Shri Sumit Raghuwanshi – Government Advocate for the respondents / State.

ORDER

As the issue involved in the aforesaid both writ petitions is identical, therefore, these petitions are being heard together and disposed of by this common order.



2. For the sake of convenience, the facts of W.P. No.137/2020 are taken up. This petition has been filed seeking the following reliefs :-

(i) A writ, order or direction in the nature of certiorari thereby quashing the impugned order dated 20/09/2019 (Annexure-P/11) issued by respondent No. 4 and order dated 13/12/2019 issued by respondent No. 5 (Annexure-P/14).

(ii) Any other appropriate writ, order or direction which the Hon'ble Court may deem just and proper in the nature and circumstances of the case.

3. Challenge in this petition is made to an order dated 20.9.2019 passed by respondent no. 4 directing recovery of Rs.24,58,173/- from the petitioner towards full satisfaction of the execution proceeding pending before the Additional District Judge, Bhopal in Case No. Ex-AB/0000082/2019 and thereafter, consequential order dated 13/12/2019 passed by respondent no. 5, whereby recovery of the aforesaid amount is directed to be made from the petitioner as revenue recovery.

4. It is the case of the petitioner that the petitioner was holding the substantive post of Principal, High School in the School Education Department. He was posted as District Project Coordinator under Sarva Shiksha Abhiyan in Zila Shiksha Kendra, Singrauli on deputation from 26.9.2008 to 8.3.2010. While posting as DPC in Zila Shiksha Kendra, Singrauli, the petitioner disseminated the copy of the instructions issued by Rajya Shiksha Kendra relating to the purchase to be made in Kasturba Gandhi Girls School / Girls Hostel to all the Wardens of Hostel falling within its area. In terms of the said instructions, a meeting of the Palak



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Shikshak Sangh to determine the requirement of the items to be purchased was organized and thereafter, forwarded the purchase orders to Zila Shiksha Kendra. The purchase orders received from the Wardens were collected and complied at Zila Shiksha Kendra and the same was placed before the respondent no. 4 – Collector, District Singrauli for his approval. It is after due approval of respondent no. 4, the requisition was sent to the Madhya Pradesh Power Loom Bunkar Sahakari Samiti, Burhanpur and Madhya Pradesh Laghu Udyog Nigam, Bhopal vide requisition letter dated 5.2.2010. Thereafter, the petitioner was transferred from Zila Shiksha Kendra, Singrauli and no further action was taken in the matter as he was transferred from the relevant place. No items were received till the petitioner was posted at the relevant place. In place of the petitioner, one Rohini Prasad Pandey was posted in Zila Shiksha Kendra, Singrauli w.e.f. 9.3.2010. He got some of the supply orders cancelled on the ground that it had exceeded the budgetary provisions. The supply was made by the supplier from 3.6.2010 to 24.6.2010. However, despite cancellation of the some of the orders, the supply was received and physical verification was carried out. The supply items were received and physically verified and were used in the hostels. After receiving the supply, vide letter dated 25.10.2010 Rohini Prasad Pandey approached the respondent no. 3 intimating absence of allocation of funds, for which, the payments to the supplier could not be made, hence, he sought further guidance. A show cause notice dated 31.10.2011 was issued to Rohini Prasad Pandey seeking explanation that as to how the items were received after cancellation of the purchase order and on whose permission, the said items were received. Another show cause notice



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dated 13.4.2011 was issued to Rohini Prasad Pandey and Shri C. L. Singh, Assistant Project Coordinator (finance) Zila Shiksha Kendra, Singrauli asking as to why the disciplinary action be not taken against them for purchasing the items beyond the budgetary limits to the extent of Rs.7,81,165/- despite the orders having been cancelled by the Collector. Thereafter, on 3.4.2012 charge sheet was issued to Rohini Prasad Pandey levelling the allegation that he in the capacity of DPC approved the dues to be paid to the supplier in respect of the items whose purchase orders were cancelled and he also requisitioned the meeting of the purchase committee for making purchase beyond the budgetary limits. After conclusion of the inquiry, he was punished with penalty of withholding of two increments without cumulative effect vide order dated 27.5.2017 by the respondent no. 2. The petitioner herein was issued a charge sheet by respondent no. 2 on 3.4.2012 and a reply to the same was submitted by the petitioner on 11.12.2012. No action was taken on the said charge sheet. Subsequently, another charge sheet was issued to the petitioner by respondent no. 2 on 16.6.2017. Disciplinary Enquiry was initiated against the petitioner and the examination of the witnesses was carried out. However, the disciplinary enquiry proceeding was not finalized till date which goes to show that till date the charges levelled against the petitioner were not found to be proved, therefore, the petitioner cannot be held guilty of the alleged charges levelled against him.

5. It is argued by learned Senior Advocate appearing on behalf of the petitioner that as the payment of supplies made by M/s. Himalaya House was not made, the firm instituted the arbitration proceedings before the Madhya Pradesh Sookshm Aur Laghu Udyam Facilitation



Council, Bhopal against District Project Coordinator, Zila Shiksha Kendra Singrauli, President, Palak Shikshak Sangh, Kasturba Gandhi Balika Vidyalaya, Chitrangi / Padari / Godbahara / Bagaiya / Barka, District Singhrauli and Managing Director, Madhya Pradesh, Laghu Udyog Nigam Limited, Bhopal claiming a sum of Rs.4,88,844/- on the ground that the payment was not made in lieu of the supplies made by them. DPC, Singrauli admitted the claim of M/s. Himalaya House and it was admitted that the supplies were received from the supplier and put to use. However, it was also conceded that the supplies received were as per the standard norms. It was fairly admitted that the payment could not be made to the supplier due to non-availability of funds and assured that the payment will be made as soon as the budget is received in the Zila Shiksha Kendra. During the said proceedings, it was noticed by the Council that the claim regarding cancellation of the purchase orders could not be established by the DPC, Singrauli because no such order cancelling the purchase order could be placed on record. Final award was passed on 11.9.2014 wherein M/s. Himalaya House was held entitled to receive Rs.4,88,844/- along with Rs.3,51,153/- till 18.7.2014 from the respondents and the payment was directed to be made within a period of 30 days, failing which, the compound interest on monthly basis will be levied. As the said amount was not paid despite the award being passed, M/s. Himalaya House initiated execution proceedings. After institution of execution proceedings, respondent no. 4 issued an order dated 20.9.2019 addressed to respondent no. 5 whereby a sum of Rs.24,58,173/- is directed to be recovered from the petitioner towards satisfaction of the execution proceedings pending in the court of Additional District Judge,



Bhopal. It is argued that initial award amount was Rs.4,88,844/- (Principal amount) + Rs.3,51,153/- (interest) which has not been paid by the DPC, Singrauli for a period of 5 years despite issuance of RRC dated 16.6.2015, therefore, the amount increased to Rs.24,58,173/-

6. It is the case of the petitioner that he cannot be held responsible for making such payments. It is argued that the petitioner was posted out of Zila Shiksha Kendra, Singrauli on 8.3.2010. The entire supplied was received after posting of the petitioner. The petitioner is never held guilty in any of the disciplinary proceedings initiated against him in pursuance to the said sale and purchase of the articles. Respondent no. 5 vide letters dated 23.12.2015 and 20.7.2016 addressed to respondent no. 4 has clearly stated that the petitioner is not responsible for any lapse. It is argued by learned senior counsel for the petitioner that the petitioner cannot be held responsible for making payments for the reason that he has never received the articles. On the contrary he was posted at some other place and was replaced by another DPC who has ordered for cancellation of articles owing to shortage of fund. Even otherwise, the petitioner has ordered such articles which were duly approved by the Collector-respondent no. 4 and only thereafter, the orders were placed. Therefore, the petitioner cannot be held responsible for the same. Therefore, he has prayed for quashment of the impugned orders directing for recovery to be made from the petitioner.

7. Second petition is filed assailing the orders dated 21.9.2021, 27.10.2021 and 18.11.2021 passed by the respondent no. 8, respondent no. 2 and respondent no. 6 respectively, whereby recovery to the tune of Rs.24,58,173/- is directed to be made from the petitioner and to furnish



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the compliance report to the Directorate / Lokayukt office in pursuance to the execution proceedings which are pending before the Additional District Judge, Bhopal, pointing out the fact that initial action initiated by the authorities against the petitioner was subject matter of challenge in Writ Petition no. 137/2020 is still pending consideration wherein vide order dated 13.1.2020 as a matter of interim relief it was directed that no recovery can be made from the petitioner in pursuance to the impugned orders. It is argued that once there is an interim order granted in the writ petition is still in existence as the writ petition is still pending consideration, no such order directing for recovery from the petitioner can be issue. The said action of the authorities in issuing subsequent order of recovery is virtually a contemptuous in nature as the same is violating the directions given by this Court in W.P.No.137/2020 vide order dated 13.1.2020. All other grounds to challenge the impugned orders in the writ petition are virtually the same as the grounds taken in WP No.137/2020.

8. On notice being issued, a detailed reply is filed by the authorities contending therein that it was the petitioner who was posted as District Project Coordinator, Zila Shiksha Kendra, Singrauli from 26.9.2008 to 8.3.2010 and during his tenure, purchase order of certain items for Kasturba Gandhi Girls Hostel was made which is not within the power of the petitioner. The purchase order made by the petitioner was beyond the permissible limits as caused financial loss to the public exchequer coupled with the fact that in pursuance to the purchase order, supplies of articles were made by M/s. Himalaya House and the same was duly received. As no payment was made to M/s. Himalaya House, therefore, arbitration proceedings were initiated and an award was passed on



11.9.2014. This order has been passed in pursuance to the execution proceedings initiated by M/s. Himalaya House. It is further contended that in pursuance to the said proceedings, the petitioner was charge sheeted on 16.6.2017 in terms of M.P. Civil Services (Conduct) Rules, 1965 and a detailed inquiry was conducted in the matter and the charges levelled against the petitioner were found proved. Inquiry report is dated 13.6.2016. It was found in the enquiry that the petitioner had issued purchase order beyond the permissible limits; therefore, recovery is directed to be made from the petitioner. The inquiry report is not the subject matter of the petition and is never put to challenge. Therefore, impugned orders directing recovery from the petitioner have rightly been passed and it does not call for any interference in the present petition.

9. Similar reply is filed in second Writ Petition no. 26163/2021. He virtually adopted the return filed in the earlier round of writ petition. He only made an attempt to clarify the position that as there is a contempt petition filed by the petitioner alleging violation of the order passed in WP No.137/2020 vide order dated 13.1.2020. It was clarified that impugned order is being passed only on the instructions of Lokayukt Department. However, it was made clear that the Lokayukt has only written a letter to the Commissioner, Public Instructions, for personally remain present which is an internal communication between the departments. No fresh order of recovery is issued against the petitioner as the impugned recovery order is the subject matter of WP No.137/2020.

10. Heard learned counsel for the parties and perused the record.

11. From perusal of the record it is clear that the petitioner was posted as DPC, Zila Shiksha Kendra, Singrauli from 26.9.2008 to



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8.3.2010. He had issued an order of purchase of certain items for Kasturba Gandhi Girls School / Hostel to all the Wardens of Hostel falling within its area. The said order has been placed with M/s. Himalaya House after seeking due approval from the Collector i.e. respondent no. 4. Thereafter, on 5.2.2010 the petitioner was transferred from Zila Shiksha Kendra, Singrauli and was succeeded by one Rohini Prasad Pandey and he was posted as DPC w.e.f. 9.3.2010. A specific ground is taken by the petitioner that the successor has sent a letter on 30.3.2010 for cancelling all the orders placed owing to the fact that it has exceeded the budgetary limits. However, the articles which were ordered were duly received by his successor Rohini Prasad Pandey and not by the petitioner. M/s. Himalaya House has supplied the articles despite cancellation made by the successor DPC. The articles were supplied between 3.6.2010 to 24.6.2010 despite cancellation of the orders. Inquiry report which is heavily relied upon by the respondents is Annexure-R/1 filed along with the return. Paragraphs no. 15, 16, 17, 18 and 19 of the inquiry report are relevant and from perusal of the aforesaid paragraphs, it is clear that as soon as the factum of illegal orders being placed by the petitioner came to the notice of Rohini Prasad Pandey, immediate steps were taken by him to get the orders cancelled. There is a specific observation made in the inquiry report regarding the fact that the petitioner was responsible for making wrong purchase orders. But the fact remains that the learned Collector has given approval for cancellation of the purchase orders but despite of cancellation of purchase orders, the articles were supplied by M/s. Himalaya House. The articles were received by the then DPC after due verification. The inquiry report does not speak about the fact that the



petitioner is the person who has received the said articles at the relevant time. Under these circumstances, the petitioner cannot be held responsible for the articles which were supplied by M/s. Himalaya House because the orders which were made by him were subsequently cancelled. The arbitration proceeding which was initiated and the award passed therein does not clearly establish that it was the petitioner who was responsible for the entire purchase as the purchase orders were made after due approval from the Collector i.e. respondent no.4 and the purchase articles were received at the concerning Center after the petitioner was transferred from the Center. These articles were never received by the petitioner. On the contrary, there was cancellation of the purchase orders by the Collector in pursuance to the information given by the subsequent DPC who was successor of the petitioner, but despite of the same, the articles were supplied and duly received. Under these circumstances, the petitioner cannot be held responsible for recovery of the amount in terms of the impugned orders for purchase of the said articles.

12. Moreover, there is nothing on record to place apart from the inquiry report in terms of the final order passed by the authorities to show that it is the petitioner who is held guilty for making purchase orders and receiving the articles. In absence of any final order passed by the authorities holding the petitioner guilty, the RRC issued in pursuance to the arbitral award cannot be executed against the petitioner.

13. Second petition is filed owing to the order passed by the authorities directing recovery of Rs.24,58,173/- towards the arbitral award and the RRC issued in pursuance to the execution proceedings



initiated against the petitioner. However, prior to passing such an award and prior to issuance of RRC, no opportunity of hearing was provided to the petitioner. Principles of natural justice have not been followed in the matter.

14. Under these circumstances, impugned orders under challenge in both the petitions directing for recovery of Rs.24,58,173/- from the petitioner are unsustainable and they are hereby **quashed**. No recovery can be made from the petitioner. However, the authorities are at liberty to execute the RRC from the funds of the State Government.

15. With the aforesaid, both writ petitions are allowed and disposed of.

(VISHAL MISHRA)
JUDGE

JP