

(1957) 10 RAJ CK 0013
In the Rajasthan High Court
Case No : Writ Petition No. 167 of 1956

Banshilal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-10-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Panchayat Act, 1953 — Section 73(1), 77

Citation : AIR 1958 Raj 119

Hon'ble Judges : K.N. Wanchoo, C.J;D.S. Dave, J

Bench : Division Bench

Advocate : Ratan Lal, for the Appellant; Kansingh, for the Respondent

Final Decision : Allowed

Judgement

D.S. Dave J.

1. This is a writ application by Banshilal and 9 others under Articles 226 and 227 of the Constitution of India arising out of the following circumstances:

2. In exercise of the powers conferred upon non-petitioner No. 1, i.e. The Rajasthan State, u/s 3 of the Rajasthan Panchayat Act, 1953, a Gram Panchayat was constituted for Kanod in Udaipur District. The election of the Panchas of the said Panchayat was held on 5-8-1955. The Petitioners were declared to be duly elected panchas in the said election by notification No. 31541/42 dated 30-9-1955. The petitioner No. 1, Banshilal, was elected as Surpanch, petitioner No. 2, Madanlal was elected as Upsarpanch and the remaining 8 were elected as panchas. They took their oath of office and started working.

3. The petitioners' allegation is that since they were members of the Praja Socialist Party, the Congress Party first tried its best through Roshanlai, Vishvanath Vyas and Udailal to persuade them to join the congress party, but when they could not be persuaded to do so, Shri Udailal Vardia moved non-petitioners Nos. 1 and 2 for dissolving the Kanod panchayat on the basis of a few

false complaints. Non-petitioner No. 2, therefore, framed 5 charges against the petitioners and they were called upon to explain why the Kanod panchayat be not superseded u/s 73 of the Rajasthan Panchayat Act, 1953.

On receipt of the above charges the petitioners submitted their explanations wherein they denied all the allegations made against them. Even then the non-petitioner No. 2 made no enquiry into the charges. Thereafter, a notification was made on 22-10-1956, 5-11-1956, under the orders of the Rajpramukh to the effect that the Gram Panchayat Kanod was dissolved u/s 77 of the Rajasthan Panchayat Act, 1953 which will hereinafter be referred as the Act. It is contended by the petitioners that although action u/s 73 of the Act was started against them, the non-petitioners suddenly switched on to Section 77 of the Act and without giving any opportunity to the petitioners to explain their conduct, the Gram Panchayat was dissolved.

It is further pointed out that the charges which were initially levelled against the petitioners u/s 73 of the Act were so vague that except in respect of one of them no possible reply could be given and that when the non-petitioners found that they had no good grounds to proceed u/s 73, they suddenly turned "to Section 77 and passed the impugned order just to oust the petitioners from the gram panchayat. It has been strenuously contended that the action taken by the non-petitioners Nos. 1 and 2 under S, 77 is grossly unjust, illegal and against the principles of natural justice, and since there is no other remedy available to the petitioners which is equally speedy, convenient, beneficial and efficacious, this Court should issue a writ, direction or order quashing the order of the non-petitioner No. 1 dated 22-10-1956, 5-11-1956.

4. Before going through the reply of the non-petitioners, it would be proper to mention here the charges which were levelled against the petitioners when an action u/s 73 of the Act was proposed to be taken Against them.

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?2? iapk;r us vius fu.kZ; dh izfrfyih iapk;r foHkkx ds }kjk vkns"k gks tkus ij Hkh nsus esa vis{kk dh A

?3?iapk;r }kjk rglhy iapk;r ds vkns"kkSa dk le; ij ikyu u djuk vkSj mu felykSa dks tks ogka ij ekStwn gSa mUgSa Hkh rglhy iapk;r dh ekax ij ugha Hkstuk A

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5. In reply, it has been admitted by the non-petitioners that the above charges were served upon the petitioners because several complaints were received against them. It is denied that the non-petitioners were guided by any political considerations. On the other hand, it was asserted that on the receipt of several complaints-against the petitioners a preliminary enquiry was made by the Divisional Panchayat Officer, Udaipur, and on his report the Government felt satisfied that there was a good case against the petitioners and hence a charge-sheet was served on the panchas and they were asked to show cause why the panchayat should not be superseded.

The petitioners were further given a chance to appear personally before the Deputy Minister Local Self-Government, but they did not care to appear. After considering their reply, the Government was satisfied that the Panchayat had failed to perform the duties imposed upon it by law & that it had also abused its powers and hence the order, which has been questioned by the petitioners, was passed by the Government. It is contended that it was for the Government to form its own opinion about the work of the Panchayat, that the order which has been impugned, has been passed on the executive side and the petitioners are not entitled to challenge its validity in this Court. It has, therefore, been prayed that the application be dismissed.

6. Now so far as the charges Nos. 1, 2, 3 and 5 are concerned it would appear from their mere perusal that they are so vague that no reply except a bare denial could be given in respect of them. For instance, in charge No. 1 it was not mentioned at all as to which of the orders of the Collector and the Commissioner were ignored or disobeyed by the panchayat and what were those unconstitutional activities on the part of the panchayat which could lead to communal troubles. Similarly, in charge No. 2 it was alleged vaguely that the panchayat failed to supply a copy of its decision in spite of its being ordered to do so by the Panchayat Department, but it was not mentioned as to which decision of the panchayat was asked for when did the Panchayat Department write to the Gram Panchayat and in which month or year that order was ignored or disobeyed.

Again, in charge No. 3 it was alleged that the panchayat had failed to obey the orders of the Tehsil Panchayat passed at different times and that the files were not sent to the Tehsil Panchayat on requisition. It is clear that no mention was made regarding any particular order of the Tehsil Panchayat which was said to have been disobeyed by the Gram Panchayat, Kanod. It was also not mentioned which particular file was called at a particular time and the petitioners failed to send it. In charge No. 5, it was stated that the panchayat was abusing the powers vested in it and that it was unfit to carry on the work of the panchayat.

It is obvious that this charge was also very indefinite because not a single instance was cited in which the panchayat had abused its powers. Similarly, it was not pointed out to the panchayat that it had failed to discharge any particular responsibility imposed upon it by law. It was only charge No. 4 which

was somewhat definite.

Therein, it was alleged that one Mohansingh Babel was removed from service in the past by Gram Panchayat Loonda on a charge of embezzlement, but the Gram Panchayat, Kanod employed the same person and this was unconstitutional. It was further alleged that Mohan Singh was ordered to be dismissed since he failed to realise a court-fee of Re. /8/- but that order was ignored. It appears from the reply filed by the petitioners, a copy of which has been produced by the non-petitioners also, (at page 55 of the paper book) that the Gram Panchayat denied this allegation.

It was stated by the Gram. Panchayat in its reply that Mohan Singh Babel was never dismissed from the service of the Gram Panchayat Loonda on a charge of embezzlement. His services were terminated in the ordinary course of business. His appointment in the Gram Panchayat Kanod on a part-time basis was, therefore, quite in consonance with the provisions of the Act and the Rules made thereunder. He had committed a mathematical error in totalling the deposits and as soon, as this error came to light, Re. -/8/- were credited in the Cash Book of the Panchayat according to the orders of the Divisional Panchayat Officer, Udaipur dated 5-1-56. Learned Deputy Government Advocate has himself very candidly conceded that charges. Nos. 1, 2, 3, and 5 were very vague and it could not be possible for the Gram Panchayat to meet them.

It is also not contested by him seriously that if the government had proceeded to take action against the petitioners u/s 73 of the Act, it could not be defended, because under that section it was necessary to give to the panchayat an opportunity of being heard before an order for the supersession of the panchayat could be passed and in view of the vague charges it cannot be said that the panchayat was given proper opportunity of hearing. It is, however, urged that the Kanod Panchayat has not been superseded u/s 73, but it has been dissolved by the State Government in exercise of its administrative powers u/s 77 of the Act and that under that section it was not necessary for the Government to give any hearing to the panchayat. In order to appreciate and discuss the argument raised by the learned Deputy Government Advocate, it seems proper to reproduce below Section 73 and the relevant portion of Section 77:

"73, Power to supersede in case of incompetency, default of abuse or power -- (i) If a Panchayat or a Tehsil Panchayat is not competent to perform or persistently makes default in the performance of the duties imposed on it by or under this Act or by or under any other law for the time being in force or exceeds or abuses its power, the State Government, may, after giving such Panchayat or Tehsil Panchayat as the case may be an opportunity of being heard, declare by an order which shall be published in the Rajasthan Gazette along with the reasons for making it, such Panchayat or Tehsil Panchayat to be incompetent or in default or to have exceeded or abused its powers, as the case may be, and supersede it.

(2) When a Panchayat or Tehsil Panchayat is so superseded, the following

consequences shall ensue:

(a) The Sarpanch and all the Panchas shall from the date of the order vacate their office;

(b) all its powers and duties may during the-period of supersession, be exercised and performed by any other person or persons in that behalf, and

(c) all property vested in it shall, during the period of supersession, vest in the State Government subject to all rights, duties, liabilities and obligations if any, affecting such property.

(3) On supersession, within a period not exceeding two months, the Panchayat or Tehsil Panchayat shall be reconstituted by re-election or re-appointment and the persons who vacated their office under Clause (1) of Sub-section (2) shall not be deemed disqualified for election or appointment "

"77. Inspection and enquiry by Government. "The State Government may-

(a).....

(b).....

(c).....

(d).....

(e).....

(f) dissolve any Panchayat or Tehsil Panchayat if in its opinion such Panchayat or Tehsil Panchayat has failed to perform the duties imposed on it by the Act or any rule made thereunder, or if it abuses its power grossly or if in the opinion of the State Government there is any other reason of a like nature for the dissolution. The State Government shall, however, reconstitute a panchayat or a Tehsil Panchayat so dissolved, within a period not exceeding six months from the date of the dissolution."

7. It is contended by learned Deputy Government Advocate that in Section 73 it is specifically provided that the State Government will pass its order after giving such Panchayat or Tehsil Panchayat as the case may be, an opportunity of being heard but these words are absent in Sub-section (f) of Section 77 and therefore, it was not necessary for the non-petitioners Nos. 1 and 2 to inform the petitioners of the allegations which were made against them and to give them an opportunity of being heard about those allegations.

The non-petitioners Nos. 1 and 2 were satisfied that the Gram Panchayat had failed to perform certain duties which were imposed upon it, that it had abused its powers in certain matters and therefore it was dissolved for reasons given in the order dated 22-10-1956/5-11-1956.

8. The question for determination before us, therefore, is whether the State

Government may dissolve any panchayat or Tehsil Panchayat u/s 77 (f) for reasons given therein without giving any opportunity of hearing to such panchayat.

9. We have given our earnest consideration to the argument raised by the learned Deputy Government Advocate, but we have not been able to follow how the State Government can condemn a Gram Panchayat or tehsil panchayat and dissolve the same u/s 77 without giving it any opportunity to give its explanation regarding the allegations made against it. We have not been able to appreciate any difference between Ss. 73 and 77 in this respect.

In order to analyse and understand the provisions of Ss. 73(1) and 77(f), it would be proper to put "them in juxta-position to see how much is common between the two and in what respects they really differ:

Section 73 (i) Section 77 (f)

If a Panchayat or Tehsil Panchayat

(a) (i) is not competent to perform

or

The State Government may dissolve any Panchayat or Tehsil Panchayat if in its opinion such Panchayat or Tehsil Panchayat

(ii) persistently makes default in the performance of the duties imposed on it by or under this Act or by or under any other law for the time being in force.

or

(a) has failed to perform the duties imposed on it by the Act or any rule made thereunder,

or

(b) If it abuses the power grossly.

(b) (i) exceeds or

(ii) abuses its power the State Government may after giving such Panchayat of Tehsil Pan-chayat as the case may be, an opportunity of being heard, declare, by an order which shall be published in the Rajasthan Gazette along with the reasons tor making it, such Panchayat or Tehsil Panchayat to be incompetent or in default, or to have exceeded or abused its powers, as the case may be and supersede it.

(c) if in the opinion of the State Government there is any other reason of a like nature tor the dissolution.

10. It would thus appear from a comparison oi the provisions of the two sections as analysed above that there is not much difference between the grounds

mentioned in both the sections on the basis of which the State Government may supersede or dissolve a panchayat or tehsil panchayat. The language of portions marked (a) and (b) In both the sections is slightly different, but in substance the distinction is not very material.

It is only in portion (c) In Section 77 (f) that the State Government has been given slightly wider power inasmuch as if in its opinion there is some other reason for the dissolution, then too it can proceed to take that step. But here also the power is not quite unfettered, because other reasons, if any, should be of the same nature as pointed out in portions (a) and (b).

It is clear that whether it be a case of supersession or dissolution of a panchayat or Tehsil Panchayat, the State Government must come to the conclusion that the Panchayat has either been negligent in carrying out the duties and responsibilities imposed upon it or it has exceeded or abused its powers given by the Act or the Rules thereunder. In other words it is obvious that even if the State Government proceeds to take action u/s 77(f), it cannot do so arbitrarily, but it has to satisfy itself that the Panchayat or Tehsil Panchayat has been guilty of neglect or abuse of powers as provided therein.

11. We have now to see whether it was meant by the legislature that the State Government should be able to dissolve any Panchayat or Tehsil Panchayat for reasons given in section 77(f) without giving any hearing to it. Learned Deputy Government Advocate has not been able to give any satisfactory explanation why the legislature considered it necessary that the Panchayat should be given a hearing before its supersession and why it should not be given the same opportunity before its dissolution.

It has been urged by him that in case of supersession of a panchayat u/s 73 although the Sarpanch and the Panchas vacate their office from the date of the order, the powers and duties of the Panchayat or Tehsil Panchayat may be exercised and performed by any other person in that behalf during the period of supersession, that all property vested in the panchayat vests in the State during this period and the Panchayat has to be reconstituted within a period not exceeding 2 months by elections or reappointment.

In case of dissolution, the panchayat itself is dissolved and it, has to be reconstituted within a period not exceeding 6 months from the date of its dissolution. It is true that Section 73(2) has not been repeated after Section 77 (f) but so far as the position of the members is concerned, the distinction pointed out by the learned Deputy Government Advocate is not very material except in one respect. In case of supersession, the panchayat has to be reconstituted within 2 months; while in case of dissolution the maximum period prescribed for reconstitution is 6 months.

This distinction instead of supporting the learned Deputy Government Advocate appears to go against him in our opinion. In case of supersession the members of the Panchayat are deprived of their office only for a period of 2 months and

still the legislature thought it necessary that the panchayat must have an opportunity of being heard before it is superseded. It may also be pointed out here that Section 73(3) clearly provides that the members who vacate their office under Clause (a) of Sub-section (2) are not disqualified for election or appointment. In case of dissolution the members may remain out of office for 6 months. This shows that in the case of dissolution of the panchayat its members are more seriously affected and there is all the more reason that they should have a chance of being heard before this penalty is imposed upon them.

12. Learned Deputy Government Advocate has next urged that in similar enactments made by other States in India the State Governments have boon given power of dissolving the panchayats without giving them any chance of Searing. For instance, it has been pointed out that in the Bombay Village Panchayat Act, 1933 Section 102 provides for dissolution or supersession of Panchayats and there is no provision therein for giving any hearing to them.

Similarly, in Section 95 of U. P. Panchayat Raj Act, 1947, there is no provision that the Gram Panchayat or the Panchayat Adalat will be given an opportunity of being heard. It is true that there is no such express provision of giving an opportunity of hearing in Section 102 of the Bombay Village Panchayat Act, 1933 or Section 95 of the U. P. Panchayat Raj Act, 1947 or Section 128 of the Madhya Pradesh Panchayat Act, 1946, and Section 103 of the Punjab Gram Panchayat Act, 1952.

But it may be that such an express provision was not made in these Acts because the legislature might have thought it proper not to do so believing that the Government would not condemn the Panchayat without giving hearing to it even on the principles of natural justice; It would not be proper for us to comment on the provisions of the Acts of other States. It would suffice to say that in none of these Acts we have been referred to any provision whereby it may have been laid down that an opportunity of hearing would be given in case of supersession but not in case of dissolution.

In all the Acts pointed out above, either there is provision for supersession or for dissolution or for both, but in no case a distinction has been made between the two powers of the Government in the matter of giving a hearing to the Panchayat. On the other hand, we may point out that in similar Acts of other States a provision has been made for giving a hearing to the Panchayat both in case of supersession and dissolution.

For instance, in the Assam Rural Panchayat Act, 1948, Section 125 gives power of dissolution of a Panchayat or Panchayati Adalat to the State Government. In this section there is no provision for supersession and still it has been provided that the Government would proceed to dissolve such panchayat after giving sufficient opportunity to the panchayat concerned to show cause to the contrary.

Similarly, in the Madras Village Panchayat Act, 1950, Section 48 gives powers of supersession and dissolution of Panchayats to the Government. Sub-section (3)

of this section provides that before publishing a notification under Sub-section (1) (which relates to both supersession and dissolution) the Government shall communicate to the Panchayat the grounds on which they propose to do so, fix a reasonable period for the panchayat to show cause against the proposal and consider its explanation and objections if any.

13. In the same way, Section 41 of the Travancore-Cochin Panchayat Act, 1950 gives powers of dissolution and supersession of Panchayats to the Government and Sub-section (2) of that section is in the same language as Sub-section (3) of Section 48 of the Madras Village Panchayat Act, 1950. The only exception made there is about disobedience of an order passed by the Government u/s 35 and in that case it has been provided that the Government shall not be bound to follow the procedure laid down in this Sub-section. Thus, it is clear that in the Acts prevailing in the State of Assam, Madras and Travancore-Cochin, where express provision has been made for giving a hearing to the Panchayat, no distinction has been made in the matter of supersession and dissolution.

14. It appears that in the Rajasthan Panchayat Act, 1953, the legislature did not consider it necessary to repeat the provisions about giving an opportunity of hearing to the panchayats, in Section 77(1) because an express provision to that effect was already made in Section 73 for similar circumstances. In our opinion this omission in Section 77 was made not to give unfettered powers to the Government, but only to avoid repetition. We are unable to find any reasonable explanation why the legislature should have thought of depriving the panchayat of a chance of being heard in case of dissolution in circumstances similar to those appearing in Section 73.

15. Moreover, it may be pointed out that it is an elementary principle even of natural justice that no person must be condemned unheard. A panchayat is an elected body consisting of persons who represent public opinion. We do not think that the legislature meant by Section 77 (f) to empower the State Government that it could dissolve such a body by forming an opinion behind its back to the effect that it had failed to perform duties or that it had abused its powers grossly, without giving any chance to that body for an explanation and for satisfying the Government that its opinion was not well founded.

The dissolution of a panchayat on the ground that it has neglected to perform the duties imposed upon it by the Act or the Rules made thereunder or on the ground that it has abused its powers grossly, is a serious matter and the dissolution of such a body on these grounds means its public condemnation and casts a slur on the members comprising that body. It is unthinkable that a panchayat which is required by the Act to dispense justice to others should itself be denied justice, and fair play by refusing to it even a chance of hearing before its condemnation.

In *Narainsingh v. State of Rajasthan*, ILR (1953) Raj 93 (A) the Municipal Board of Kotah was superseded by a notification saying that it had exceeded and

abused its powers. It was held in that case that

"dissolution or supersession of a Municipal Board for maladministration and so on is a very serious matter. The Legislature obviously intended that the executive, when it decides to supersede or dissolve a Board, should justify _ its action by giving reasons in the order of dissolution or supersession so that the public of the place may know why and how their chosen representatives have been found wanting in the discharge of their duties. Supersession or dissolution also casts a slur on the members of the Board, and is a sort of penal action against them?"

It may be observed that in the above case the notification was defective inasmuch as the reasons for making the declaration were not given and the question of giving a hearing in that case did not arise, but the observations made with regard to the seriousness of the matter of dissolution or supersession or a public body applied to the present case with full force.

In the present case, we find that the petitioners had denied all allegations embodied in the charge-sheet which was given to them. In their reply they made it clear that there was no ground for proceeding against them u/s 73 of the Act and that they were prepared even to appear before the Deputy Minister, Local-Self Government, if provision was made for expenses of their journey to Jaipur and back. When the Government did not proceed u/s 73 after this reply, the presumption is that it was not quite satisfied about the allegations on the basis of which the charges were framed.

Instead of proceeding u/s 73 the non-petitioners Nos. 1 and 2, however, proceeded u/s 77; but in all fairness the petitioners ought to have been informed of other allegations, if there were any and they should also have been given a chance of satisfying the Government that they were not well founded. We should not be understood to mean that we are expressing any opinion about the correctness or otherwise of the allegations made against the petitioners in Order No. 15673/F. 1 (o) (30L. S. G./56 dated 22nd October/5th November, 1956), whereby the Kanod Panchayat was dissolved. It will be for the proper authority to enquire into them and decide the matter after giving a chance of hearing to the petitioners. We only mean to say that the order of dissolution of the Panchayat without giving it an opportunity of hearing even u/s 77 (f) is against the provisions of law and therefore it cannot be maintained.

16. We, therefore, allow the petitioners' application and hold that the order regarding the dissolution of the Gram Panchayat, Kanod, dated 22nd October/5th November, 1956 is illegal. We, therefore, direct the non-petitioners not to enforce that order. The petitioners will get their costs from the non-petitioners.