

(1988) 04 PAT CK 0019
In the Patna High Court
Case No : CWJC No. 3638/87

Bhola Choudhary and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-04-1988

Acts Referred:

Bihar Panchayat Samiti and Zila Parishad Act, 1961 — Section 5

Citation : (1988) 36 BLJR 607 : (1988) PLJR 692

Hon'ble Judges : S. Ali Ahmad, J; Ram Nandan Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ram Nandan Prasad, J.—The prayer in this application for issuance of a writ of quo-warrant to or any appropriate direction for removing respondent No. 3, Shri Shambhu Tiwary from functioning as the Mukhiya of the Dhobni Ramauli Gram Panchayat within the Lauria block in the District of West Champaran and also from the post of Pramukh of the Lauria Panchayat Samiti.

2. Dhobni Ramauli Gram Panchayat consisting of seven villages namely Dhobni, Ramauli, Sisai, Belwa, Nanhkar, Pakri and Lakar was established on 15-6-1960 under a duly promulgated notification of the Government of Bihar.

3. The last election of this Gram Panchayat, as well as of most of the other Gram Panchayats in the State of Bihar, was held in June, 1978 in which respondent No. 3 was elected Mukhiya and one Kari Mahra was nominated as Up-Mukhiya of the Gram Panchayat and an Executive Committee of the Gram Panchayat was also duly constituted in accordance with the Provisions of the Bihar Panchayat Raj Act (hereinafter referred to as the Act). By virtue of being Mukhiya, respondent No. 3 automatically became a member of the Lauria Panchayat Samiti as provides u/s 5 of the Bihar Panchayat Samitis and Zila Parishads Act 1961, Act 8 of 1962 (hereinafter referred to as the Panchayat Samiti Act). Further, it appears that in due course respondent No. 3 was elected as Pramukh of the Panchayat Samiti as

provided u/s 8 of the Panchayat Samiti Act. It is the admitted position that after the election in June, 1978 there has been no fresh election in the Gram Panchayats, including the Gram Panchayats under Lauria Prakhand, in the State of Bihar and as such the persons holding the post of Mukhiya on the basis of the last election, including respondent No. 3, are continuing on the said post in accordance with sub-section 2 of Section 11 of the Act which provides that the term of office of the Mukhiya shall be for five years and shall include any further period which may "elapse between expiration of the said five years and the date on which another Mukhiya assumes charge of his office.

4. In October, 1985 the Government issued a notification (annexure-5 to the supplementary affidavit of petitioners, which is the same as annexure-D of counter affidavit of respondent No. 3) indicating its intention to alter the territorial area and local limits of the Dhobni Ramauli Gram Panchayat by taking out from its jurisdiction five villages namely Sisai, Belwa, Nanhkar, Pakri and Lakar and in compliance of the proviso to Section 3 (3) of the Act, invited objections, if any, in respect of such alteration. Thereafter notification No 2805 GP dated 16th April, 1986 (annexure-2) was issued modifying the original notification of the 60 by which the Dhobni Ramauli Gram Panchayat had been established, and thereby it was notified that the altered Gram Panchayat will continue to have its name as Dhobni Ramauli and will consist of two villages Dhobni and Ramauli. The other particulars relating to boundaries, population etc. of the altered Gram Panchayat have also been mentioned in this notification. By a subsequent notification bearing No. 2806 GP dated 16th July, 1986 (annexure-1) it was notified that a new Gram Panchayat bearing the name Sisai Gram Panchayat and consisting of the five villages, which were deleted from the Dhobni Ramauli Gram Panchayat, was established. In this notification also the other particulars namely boundaries, population etc. were mentioned.

5. The contention of the petitioners is that on account of bifurcation, the old Dhobni Ramauli Gram Panchayat is no longer in existence, and by operation of law two new Gram Panchayats have been established namely Dhobni Ramauli Gram Panchayat and Sisai Gram Panchayat and as such the old Mukhiya and other office bearers of the old Dhobni Ramauli Gram Panchayat had no legal existence and therefore, respondent No. 3 by continuing on the post of Mukhiya of the new Dhobni Ramauli Gram Panchayat is an usurper and is not legally entitled to function as such, and further since he no longer remains the Mukhiya, he automatically ceases to be a member of the Panchayat Samiti. Hence the prayer for a writ of quo-warranto for his removal from the posts of Mukhiya and Pratinikh.

6. The establishment of a Gram Panchayat and alteration in the local limits of any Gram Panchayat are done in accordance with the provisions of Section 3 of the Act. Section 3 is as follows :--

(1) "For every village or part of different villages, the Government may, by notification, establish a Gram Panchayat.

Provided that the Government may, if it think fit, establish one Gram Panchayat for a group of contiguous villages or more than one Gram Panchayat in a big village consisting or several Tolas.

(2) The Government shall specify the name and the local limits of the jurisdiction of Gram Panchayat in the notification mentioned in Sub-section (1).

(3) The Government may, by notification in the official Gazette, alter the local limits of the jurisdiction of any Gram Panchayat by including therein, or excluding therefrom, any village or part of a village and also alter the name of such Gram Panchayat :

Provided that before making any alteration in the local limits of the jurisdiction of any Gram Panchayat, the Government shall in the prescribed manner, ascertain the views of the people or the area affected by such alteration.

(4) Upon the issue of a notification under Sub-section (2), the Gram Panchayat shall be deemed to have been established under Sub-section (I) with its local limits so altered.

(5) When any village or part of any village is included under Sub-section (2) within the local limits of the jurisdiction of a Gram Panchayat, any notification or order made and anything done or any action taken under the provisions of this Act or the rules made thereunder, in respect of the Gram Panchayat before such inclusion shall so far as may be, apply to the village or part of a village so included.

(6) Where any village or part thereof is excluded from a Gram Panchayat and is included in other Gram Panchayat, the District Magistrate or any other gazetted Officer authorised by him in writing in this behalf may, by order, transfer such portion or the assets and liabilities of the former Gram Panchayat to the latter as he may deem proper.

Sub-section (1) of section (3) empowered the Government to establish a Gram Panchayat consisting of several villages or even part of such villages. Sub-section (3) empowers the Government to alter the local limits or the jurisdiction of any existing Gram Panchayat by including therein or excluding therefrom any village or part of a village. In the present case, the alteration in the local limits of the old Dhobni Ramiuli Gram Panchayat has been done by the notification dated 16th April, 1986 (annexure-2). Sub-section (4) of section (3) lays down that up in the issue of such a notification the Gram Panchayat shall be deemed to have been established under Sub-section (I) with its local limits so altered. The contention of the petitioners is that the provisions of Sub-section (4) indicate that the altered Gram Panchayat is also a new Gram Panchayat established under Sub-section (1) and therefore, by legal implication the old Gram Panchayat must be deemed to have become non-existent. The argument is that Sub-section (1) of section (3) of the Act speaks about the "establishment" of a Gram Panchayat, which means that a new Gram Panchayat is established under its provision and it

does not speak of continuation of an existing Gram Panchayat in altered form. On this basis, it has been urged that the old Dhobni Ramauli Gram Panchayat must be deemed to have lost its identity and existence, and the Dhobni Ramauli Gram Panchayat established under the notification dated 16th April, 1986 must be treated as a new Gram Panchayat. It is argued that if this be the position, then it follows that the office bearers of the old Dhobni Ramauli Gram Panchayat automatically ceased to hold the posts of which they were elected or nominated when the old Gram Panchayat was in existence, and the election of the new office bearers has to take place in accordance with the provision of the Act and Rules framed thereunder.

7. There can be no doubt that if the altered Dhobni Ramauli Gram Panchayat notified on 16th April, 1986 has to be regarded as a newly established Gram Panchayat than the contention of the petitioners must be upheld. In my opinion, however, this is not the correct legal position, as I shall presently, indicate. The argument advanced on behalf of the petitioners in effect amounts to saying that once the territorial area of any existing Gram Panchayat is altered (either by inclusion of some villages or exclusion therefrom) the existing Gram Panchayat automatically gets dissolved and ceases to exist. In my opinion, the provision of sections (3; of the Act do not have such an implication, if the legislature intended that any alteration would lead to dissolution of the Gram Panchayat, this could have been expressly and specifically mentioned in this section, and obviously there could be no difficulty, in doing so. The intention of the Legislature is further ascertainable from looking into some other provision of the Act. Sub-section (2) of section (11) lays down the term of the Mukhiya and states that it shall be for five years with effect from the date of his election unless determined u/s (13) or section (79-B), Section (13) of the Act lays down the various grounds and circumstances under which the Mukhiya may be removed or may cease to hold the post; this section does not provide that in the event of alteration of the local limits of an existing Gram Panchayat the Mukhiya shall cease to hold office. Section (79) of the Act lays down the grounds for disqualification of the Mukhiya, Sarpanch etc. Sub-section (1) enumerates these grounds and lays down that if any of these apply to a person he shall be disqualified for election, nomination or appointment as the Mukhiya etc. This means that the person suffering any such disqualification shall not be eligible for election to the post of Mukhiya. Sub-section (2) of section (79), however, stipulates that if any person who has already been elected to the post of Mukhiya etc incurs the disqualification subsequently then in that event he shall cease to hold the office to which he was elected or appointed. If the alteration in the territorial area of a Gram Panchayat meant that the existing Gram Panchayat gets dissolved and loses its identity, perhaps it would be reasonable to expect that mention would have been made in Sub-section (2) of section (79) of the Act that in such an event also the existing Mukhiya shall cease to hold office as such. Section (79-B) of the Act provides for another situation when the post of Mukhiya ceases to be operational. u/s (79-A) of the Act the Government has been given the power to dissolve or supersede

the Executive Committee under certain circumstances, namely incompetence, default or abuse of power and section (79-B) lays down the consequences of such dissolution or supersession. One of the consequences is that the Mukhiya and the members of the Executive Committee shall vacate their offices from the specified date. It may be legitimately argued that if the alteration in the territorial area of a Gram Panchayat would involve its dissolution, the Statute would have specifically mentioned that the existing Mukhiya or members of the Executive Committee shall cease to hold their respective offices. Of course this has not been done.

8. Section 3-B of the Act, provides under certain conditions for holding of a mid term election in a Gram Panchayat if some new area has been added to it, in order to give due representation to the villagers of the newly added territory, there is no similar provision of a mid term election for the Gram Panchayat from which some territory has been deleted. It may well be that in the residuary Gram Panchayat the Mukhiya or the Sarpanch may be from wards constituting the deleted villages or part of them, still the Legislature did not consider it necessary to provide for a mid term election so that the Mukhiya and Sarpanch and other elected office bearers could truly represent the members of the altered Gram Panchayat, The rationale is obvious. The Mukhiya, Sarpanch or other elected office bearers, on being elected represented the entire territory of the Gram Panchayat as it stood before alteration including the territory which after alteration remains as residue, it cannot, therefore, be said that the villages which are retained in the old Gram Panchayat after the alteration, are not having their elected representatives in office. Further, from the practical point of view, the mere deletion of a part of its territorial area, does not give rise to such an exigency as to necessitate mid term election of the Gram Panchayat. It may be examined from another angle also The alteration in the local limits of jurisdiction of a Gram Panchayat will take place under two circumstances (i) by addition of territory or (ii) by deletion of territory but in either case it means alteration. If alteration in the territorial area ipsa facto implies dissolution of the old existing Gram Panchayat, then this would be so also in respect of the Gram Panchayat to which some territory has been added. If this were the implication, then obviously Section 3-B would be redundant because the Gram Panchayat to which some territory has been added will also have become non-existent and as such there can be no question of holding mid term general election. In my opinion, therefore, the argument advanced on behalf of the petitioners is quite misconceived,

9. Another reason why the contention of the petitioners cannot be accepted, is that the very concept of alteration or amendment implies that the old existing unit does not vanish or become non-existent but it retains its identity with certain changes. There is no reason why this common sense approach should be regarded as not applicable in the event of some alteration in the territorial area of an existing Gram Panchayat. Indeed, the various notifications issued by the Government themselves show that the old existing Dhobni Ramauli Gram

Panchayat was not to become non existing after the alteration. The first notification (annexure-5) was issued on 5th October, 1985 u/s (3) (3) of the Act indicating the proposal of the State Government to alter the local limits of the Dhobni Ramauli Gram Panchayat. In column No. 7 (remarks column) of this Notification it is mentioned that the villages listed under column No. 5 will take out from the Dhobni Ramauli Gram Panchayat for inclusion in the Sisai Gram Panchayat and the remaining villages will continue to be part of the original Gram Panchayat." "Shesh Gaon Poorva Ki Bhanti Mool Panchayat Ke Sath Rahenge."

The second notification dated 16th April 1986 (annexure-2) to the writ application issued under Sub-section (2) of section (3) of the Act for specifying the name and local limits of the altered Dhobni Ramauli Gram Panchayat. It mentions that this notification is being issued in modification of the Original Notification of 1960 whereby the old Dhobni Ramauli Gram Panchayat had been established if the alteration in area was to imply the dissolution of the previously established Dhobni Ramauli Gram Panchayat, then this notification would have superseded the earlier notification and not merely modified it. A further perusal of this notification makes the point all the more clear. The various particulars relating to the Gram Panchayat are given under different columns. In column No. 1 the heading is "Name of the Gram Panchayat which is proposed to be" altered"" and column No. 5 the heading is "Name of the amended (altered) Gram Panchayat. Thus this notification itself clearly lays down that the old Dhobni Ramauli Gram Panchayat has merely undergone some alteration or amendment with regard to its territorial jurisdiction and there is no basis for saying that this notification will have the implication of establishing a new Gram Panchayat though it may bear the same old name. The proviso to section (10) of the Act stipulates that until elections take place in a newly constituted Panchayat, the Collector may on the recommendation of the State or of the Block Development Committee, nominate the Mukhiya and members of the Executive Committee. It appears that besides Sisai Gram Panchayat, two other Gram Panchayats namely Gonauli and Medihwara Durara were newly constituted. Memo No. 98 dated 3rd June 1987 sent by the Collector of West Champaran to the Project Executive Officer Lauria (annexure-4 to the writ application) shows that the Collector made nomination of the Mukhiya and the members of the Executive Committee for these three newly constituted Gram Panchayats. Dhobni Ramauli Gram Panchayat is not included therein. Thus the relevant notification of the Government and the memo sent by the Collector West Champaran clearly indicate that the Executive authority never contemplated that the alteration in question would land to dissolution or disappearance of the old Dhobni Ramauli Gram Panchayat and would establish in its place a new Gram Panchayat. In the light of the above discussion, I think it may be justly said that neither the Legislature, nor the Executive Authority which is responsible for establishment and functioning of the Gram Panchayats in the State, appears to have ever contemplated the situation which the petitioners have urged before us.

10. The substance of the petitioners argument is that since the altered Gram

Panchayat is also given its legal status u/s 3 (1) of the Act, it must be deemed to be a newly established Gram Panchayat, because Section 3 (1) is the provision under which a Gram Panchayat comes into existence. This contention is not acceptable because it ignores the fact that when a new Gram Panchayat is established something which was not in existence has come into being, but in the other case an already existing Gram Panchayat continues but merely with some alteration in area. It has not been suggested or argued that the alteration in area (by addition or deletion of territory) would in any way affect the legal attribute of the institution i.e. the Gram Panchayat. What Sub-section (4) of section (3) of the Act does is to provide that the old Gram Panchayat, inspite of pome alteration in territorial jurisdiction, would have the same legal attributes as it had at the time of its inception when it was originally established u/s 3 (1) of the Act. It is in this context of leaving the legal attributes unaffected that Sub-section (4) states that on issuance of the notification under Sub-section (3) (whereby legal recognition is afforded to the alteration in territorial area) the Gram Panchayat shall be deemed to have been established u/s 3 (1) of the Act. This in my view would be the only proper and rational interpretation of the different provisions of Section 3 of the Act, more so when it is considered in the context of some of the other sections of the Act as already indicated above. In this view of the matter, the contention put forward on behalf of the petitioners must be held to be untenable.

11. Now, if the position is that even when some alteration in territorial jurisdiction takes place, the old Gram Panchayat continues as before so far as its legal personality and legal attributes are concerned, it follow that the Mukhiya or other elected representatives of the Gram Panchayat will remain unaffected and due to the alteration in area they will not suffer any disability or disqualification. Of course, due to alteration in area the wards may have to be reorganised but this reorganisation will not affect the legal status of the elected representatives until the next general election is held Hence, there is absolutely no illegality if respondent No. 3 who is the elected Mukhiya of the old Dhobni Ratnaali Gram Panchayat, is continuing as such even after the reorganisation of this Panchayat. Since he legally and validly continues to be the Mukhia of the reorganised Dhobni Ramauli Gram Panchayat, it follows that his membership of the Panchayat Samiti remains unaffected and it consequently also follows that his continuation on the post of Pramukh of the Panchayat Samiti to which he was duly elected, remains unaffected. Of course, on having been elected as the Pramukh, respondent No. 3, in accordance with Sub-section (3) of section (8) of the Panchayat Samiti Act, has not been functioning as Mukhiya for the time being and, as stated in the counter affidavit, the Up-Mukhiya is temporarily functioning as Mukhiya. But this is a different matter. So far his status as the elected Mukhiya of the Dhobni Ramauli Gram Panchayat is concerned, it remains unaffected even after the reorganisation of this Gram Panchayat.

12. For the reasons stated above, I find no merit in this writ application and the same is hereby dismissed.

S. Ali Ahmad, J.

13. I agree