
(1970) 10 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition Case No. 106 of 1969

Champalal

APPELLANT

Vs

The State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 07-10-1970

Acts Referred:

Madhya Pradesh Panchayat Act, 1962 — Section 20, 21, 22, 22(3), 26

Citation : AIR 1971 MP 88 : (1977) ILR (MP) 101 : (1971) JLJ 45 : (1973) 18 MPLJ 643 : (1971) MPLJ 97

Hon'ble Judges : Shiv Dayal Shrivastava, J; S.M.N. Raina, J

Bench : Division Bench

Advocate : G.P. Patankar, for the Appellant; R.S. Bajpai, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Shiv Dayal, J.

This is a petition under Article 226 of the Constitution for a writ of mandamus to hold the election of 5 Panchas of the Gram Panchayat, Piprai, and not to give effect to the order of the Collector dated November 4, 1969, whereby the notification calling the election was cancelled.

Under the M.P. Panchayats Act, 1962, election to the Gram Panchayat, Piprai, was held and the petitioner was elected a Panch from ward No. 3. The Panchayat consists of 18 elected and 3 selected Panchas.

Komalchand Jain was elected Sarpanch u/s 21 of the Act, but on June 22, 1967, he resigned. He, however, continued to work upto July 31, 1967. On the last mentioned date, the charge was handed over by Komalchand Jain to the Up-Sarpanch Ejaz Ahmed. Ejaz Ahmed acted as Sarpanch exactly for one year.

On July 31, 1968, a fresh election of the Sarpanch was held. The petitioner was elected the Sarpanch.

On September 2, 1968, the election of Champalal as Sarpanch was notified.

On September 18, 1968, however, the Collector directed that Champalal should not be given charge of the Sarpanch.

On October 14, 1968, the Collector revoked his order and directed that the charge of Sarpanch be given to Champalal.

On October 17, 1968, the Collector's order reached the Gram Panchayat.

On October 30, 1968, a formal charge was handed over by Ejaz Ahmed to Champalal.

However, in the meantime, on October 15, 1968, 10 Panchas resigned their office by giving notice in writing to Ejaz Ahmed. This is the bone of contention.

When Champalal came to know that certain Panchas had resigned, he tried to find out the resignations, but he could not lay his hands on the resignation papers in the office and he was told that the papers had been sent to the Collector. He wrote to the latter to send the resignations to the Panchayat office but they were not returned. Champalal then wrote to the Panchas to confirm their resignations. Five of them confirmed their resignations but the other five informed Champalal that they had not resigned. Those who confirmed their resignations had been elected from wards Nos. 1, 4, 9, 14 and 15. Champalal, therefore, on December 26, 1968, requested the Collector to hold an election to fill the vacant seats of the Panchas who had confirmed their resignations. The Collector then by his order dated October 14, 1969, fixed the programme for the election, the date of polling being November 19, 1969. He also prescribed the location of polling booths for the election.

However, on November 4, 1969, the Collector cancelled his previous order dated October 14, 1969, on the ground that the resignations could not be given effect because they were not submitted to the Sarpanch. The petitioner challenges the order of the Collector cancelling the election.

All these facts are not in dispute. The only question for determination is whether on October 15, 1968, when the resignations were submitted to Ejaz Ahmed, Champalal was the Sarpanch or Ejaz Ahmed was the Sarpanch within the meaning of Section 26 of the Act.

The relevant provisions in the Panchayat Act may be recapitulated. Section 11 of the Act provides for the constitution of a Gram Panchayat. Section 12 provides for making rules for the election and co-option of Panchas of a Gram Panchayat. Section 18 provides for the term of office of the Panchas. It reads thus :--

"The Panchas of a Gram Panchayat shall, save as otherwise provided in this Act, enter upon their offices with effect from the date of the first meeting of the Gram Panchayat fixed under Sub-section (2) of Section 19 and hold office for a term of five years :

Provided that the term of office of the outgoing Panch shall be deemed to extend to and expire on the day preceding the date of the first meeting of the succeeding Gram Panchayat under Sub-section (2) of Section 19:

Provided further that the State Government may, by notification, extend the term from time to time for a total period not exceeding one year in the aggregate."

It is then enacted in Section 19 that as soon as may be after every general election, the prescribed authority, with the prior approval of the Collector, call a meeting of the elected members for the purpose of co-opting members as required by Section 11.

Sub-section (2) of Section 19 reads thus:--

"(2) The first meeting shall be held within one month of the date on which the election, appointment or co-option, as the case may be, whichever was last declared."

It is at the first meeting which has to be held as required by Section 19 (2) that a Sarpanch and Up-Sarpanch must be elected.

Section 21 reads thus :--

"21 (1) Every Gram Panchayat shall at its first meeting elect from amongst its members a Sarpanch and an Up-Sarpanch.

(2) If the Gram Panchayat fails to elect a Sarpanch or an Up-Sarpanch in accordance with this section, the Collector may, by order, direct the Gram Panchayat to elect the Sarpanch or the Up-Sarpanch within the period specified therein and on failure of the Gram Panchayat to do so, appoint any person eligible under Sub-section (1) to fill the vacancy.

(3) The State Government may make rules for regulating the mode and time of election or appointment of the Sarpanch and the Up-Sarpanch."

Section 20 of the Act enacts that every election, appointment and co-option of a Panch, Sarpanch and Up-Sarpanch shall be notified by the Collector in the prescribed manner.

Under the above provisions, Champalal was elected Sarpanch on July 31, 1968.

Shri Patankar's contention is that although Champalal was elected Sarpanch on July 31, 1968, he did not enter upon his office because charge was not handed over to him as required by Section 22 (3) of the Act. Since Ejaz Ahmed continued to hold the charge, the resignations submitted to him became effective.

Now, it is enacted in Section 22 as follows:--

"22 (1) The term of office of the Sarpanch and Up-Sarpanch shall be conterminous with the term of office of the Panchas of the Gram Panchayat.

(2) After the expiry of the term of his office, the Sarpanch shall continue to carry

on the current duties of his office until such time as the election or appointment of his successor is notified.

(3) (a) As soon as may be after the election or appointment of a new Sarpanch is notified, the outgoing Sarpanch shall hand over to him the charge of office.

(b) If the outgoing Sarpanch fails or refuses to hand over charge of his office as required under clause (a) the prescribed authority may, by order in writing, direct the outgoing Sarpanch to hand over forthwith charge of his office and all papers and property in his possession as such Sarpanch, to the new Sarpanch.

(c) If an outgoing Sarpanch to whom a direction has been issued under clause (b) fails to comply with the direction, he shall on conviction be punished with fine which may extend to one hundred rupees and shall be ejected forcibly if necessary, from the office by such officer as may be empowered by the prescribed authority in this behalf,"

The first sub-section enacts that the term of office of a Sarpanch is conterminous with the term of office of the Panchas of the Gram Panchayat. The panchas of a Gram Panchayat enter upon their office on the date of the first meeting of the Gram Panchayat fixed u/s 19 (2), that is, the first meeting held u/s 21 of the Act. But by virtue of Sub-section (2) of Section 22, the outgoing Sarpanch, even after the expiry of the term of his office, continues to carry on the current duties of his office until the election of the new Sarpanch is notified. The cumulative effect of Sub-sections (1) and (2) of Section 22 is that the outgoing Sarpanch goes out of office as soon as the election of the new Sarpanch is notified.

The provisions make it abundantly clear that the entering into office by the now Sarpanch is simultaneous with the cessation of the continuance by the outgoing Sarpanch to carry on current duties of his office. There is no gap between the two. As soon as the election of the new Sarpanch is notified, the outgoing Sarpanch ipso facto ceases to have any power to carry on current duties of the office; so also the newly elected Sarpanch ipso facto enters upon his office. The provisions which relate to handing over of the charge of office by the outgoing Sarpanch to the newly elected Sarpanch, are in relation to the formal and physical handing over of the charge as contradistinguished from the assumption of office. The word "office" is used in different senses and in each case that meaning must be assigned to it which conforms with the language used in the enactment and its object. In 67 CJS 90, it is stated :--

"The word "office" in one sense, is defined as meaning the building, room, or department in which the clerical work of an establishment is done. In a different sense, the word is defined as meaning that which is performed, or intended to be done, by a particular thing; that which anything is fitted to perform; proper action; function."

And, at page 96, there is the following statement:--

"The term "Office" has various meanings and has been defined as a duty or

charge, a place of trust, or a right to exercise a public or private employment and to take the fees and emoluments thereof. An office may exist although there is no incumbent thereof or emoluments attaching thereto.....a position or station in which a person is employed to perform certain duties, or by virtue of which he becomes charged with the performance of certain duties, public or private.....It has, however, been said that the intrinsic meaning of the word "office" is well expressed by the old English word "place" and the figurative terms "incumbent", "swearing in," "entering upon", "vacating" constantly applied to offices, have the same radical idea."

Under Sub-section (3), the outgoing Sarpanch is required to hand over forthwith charge of his office and all papers and property in his possession as such Sarpanch to the new Sarpanch. Here, the word "office", in our opinion, is used in the tangible sense. This is fortified by the language of clause (c) of Sub-section (3). If the outgoing Sarpanch, after directions having been given to him, does not comply with the directions, he can be punished with a fine and "shall be ejected forcibly, if necessary, from the office by such officer as may be empowered by the prescribed authority in this behalf". The expression "ejected forcibly from the office" necessarily refers to office in the tangible sense. If it refers merely to a position or place to which certain duties are attached, the words "ejected forcibly" will be inept. There is no statutory definition of "office". As remarked by Lord Wright in *McMillan v. Guest*, (1942) AC 561

"The word "office" is of indefinite content. Its various meanings cover four columns of the New English Dictionary." In a word, we may say that "office" as used in Sub-sections (1) and (2) of Section 22, refers to "capacity to function", but in Sub-section (3), it refers to "a place for the transaction of business". To construe otherwise will mean that the outgoing Sarpanch can, as a usurper, delay the functioning by the new Sarpanch, until he is forcibly ousted under Sub-section (3). That does not appear to be either the policy of the law, nor does it fit in with the scheme of the language of these provisions.

The result of the above discussion is that:-- (1) A Sarpanch newly elected u/s 21 of the Act enters upon his office not by virtue of the "declaration" of the result of his election u/s 21, but on his election being "notified" u/s 20. (2) As soon as his election is notified, there is ipso facto assumption of office by the new Sarpanch. (3) Although the term of office of the outgoing Sarpanch also comes to an end as soon as the election of new Sarpanch is "declared", he continues to carry on the current duties of his office until the election of the new Sarpanch is "notified." But as soon as the election of the new Sarpanch is notified, the outgoing Sarpanch becomes *functus officio* completely. (4) The charge which has to be handed over by the outgoing Sarpanch to the new Sarpanch u/s 22 (3) is a formal and physical charge of office in the tangible sense along with all papers and property in his possession as such Sarpanch. The assumption of office by the new Sarpanch is not dependent on the handing over of the charge under Sub-section (3). (5) The word "office" in Section 22 (3) refers to the place where

business is transacted, the charge of which has to be handed over by the outgoing Sarpanch to the new Sarpanch. (6) This construction alone will be harmonious and consistent with the scheme and provisions of the Act, according to which at no particular moment should there be two Sarpanchas functioning; nor should there be a vacuum. The assumption of office by the new Sarpanch must be simultaneous with the outgoing Sarpanch becoming functus officio completely.

However, we cannot accept the contention of the learned Additional Government Advocate that because Champalal entered upon his office on September 2, 1968, the notices of resignations given to Ejaz Ahmed on October 15, 1968, were ineffective. The peculiarity of the present case is that Champalal, the new Sarpanch, was by virtue of the order of the Collector dated September 18, 1968, not allowed to function. In other words, he was incapacitated. Section 26 lays down the procedure for resigning office of a Panch. It reads thus:--

"26. A Panch of a Gram Panchayat may resign his office by giving notice in writing to that effect to the Sarpanch and such resignation shall take effect from the date of its receipt by the Sarpanch."

The notice of resignation has to be given to the Sarpanch. It was an argument that where the Sarpanch cannot discharge the functions of the Sarpanch, either because of his absence, or for any other reason, it must be deemed to be his "absence" within the meaning of Section 35 (1) of the Act. That sub-section reads thus:--

"35 (1) The Sarpanch shall be directly responsible for carrying out the resolutions of the Gram Panchayat passed by it for the purpose of carrying out the provisions of the Act and shall exercise such powers and perform such duties of the Gram Panchayat, as may be prescribed and in the absence of the Sarpanch, the powers and duties of the Sarpanch shall, subject to such conditions and restrictions, as may be prescribed, be exercised and performed by the Up-Sarpanch."

In our opinion, it is not necessary to probe into the meaning of the word "absence" as employed in Section 35 (1), because the problem is solved by Sub-section (2) of that section. The relevant portion reads thus :--

"(2) Subject to the provisions of this Act and the rules made thereunder:--

(i) x x x x x (ii) the Up-Sarpanch shall--

(a) in the absence of the Sarpanch preside over and regulate the meeting of the Gram Sabha and the Gram Panchayat;

(b) exercise such of the powers and perform such of the duties of the Sarpanch as the Sarpanch may, from time to time delegate in writing to him;

(c) pending the election of the Sarpanch or in case the Sarpanch has been continuously absent from the village for more than fifteen days or is incapacitated, exercise the powers and perform the duties of the Sarpanch."

(Underlined by us).

By virtue of the above provision, where a Sarpanch is incapacitated, the Up-Sarpanch "shall" exercise the powers and perform the duties of the Sarpanch. It must, therefore, be held that the resignations of the Panchas delivered to Ejaz Ahmed, Up-Sarpanch, took effect from that date.

Learned Additional Government Advocate then urged that Champalal ceased to be incapacitated as soon as the Collector passed his order dated October 14, 1969. We are unable to accept this contention. That order was actually communicated to the Panchayat on October 17, 1969. An order must be notified to the parties before it comes into effect. When the parties have prior intimation of the date on which the order is to be passed, it becomes their duty to find out themselves what order is passed. Here, it is nobody's case that the Panchas who resigned were either present on the date of the order or had prior intimation of the date on which the order was to be passed.

Leaving aside the fact that it was on October 30, 1968, that Ejaz Ahmed handed over the charge to Champalal, it cannot be said that the order of the Collector dated September 18, 1963, by which Champalal was incapacitated, became ineffective before October 17, 1968.

Resignation of a Panch of a Gram Panchayat is valid and effective if he gives a notice in writing to that effect to the Sarpanch. A Panch may resign whenever he chooses to relinquish his office. The only requirement of the law is that he must give a notice of his resignation to the Sarpanch. As soon as the Sarpanch receives it, the resignation takes effect. It would be substantial compliance of Section 26, if the resignation is addressed to the Sarpanch and is left in the office of the Sarpanch. The delivery of the resignation to the person who is functioning as the Sarpanch is sufficient. It cannot be legitimately argued that the panch must enter into an enquiry and decide whether the person who is functioning is functioning validly or not. It is stated in 77 CJS 311 :--

" "Resignation" is a term of legal art, having legal connotations which describe certain legal results. It is characteristically the voluntary surrender of a position by the one resigning, made freely and not under duress, and the word is defined generally as meaning the act of resigning or giving up, as a claim, possession, or position."

From the facts before us, it is incontestable that Ejaz Ahmed was functioning as Sarpanch on October 15, 1968.

The result of the above discussion is that the Collector was right in his order dated October 14, 1969, but his order dated November 4, 1969, cancelling the notice calling the election and fixing its programme, was erroneous.

The petition is allowed. The order of the Collector, Guna, dated November 4, 1969, (by which he cancelled his previous order dated October 14, 1969) is quashed. A mandamus shall go to the Collector to give effect to his order dated

October 14, 1969, and to hold a fresh election after fixing a fresh programme.

Having regard to the facts and circumstances of the case, we direct that the parties shall bear their own costs. The outstanding amount of security shall be refunded to the petitioner.