

(1957) 09 RAJ CK 0001
In the Rajasthan High Court
Case No : Civil Writ Case No. 107 of 1956

Dalelsingh

APPELLANT

Vs

Tehsildar of Chhoti Sadri and Others

RESPONDENT

Date of Decision : 12-09-1957

Acts Referred:

Rajasthan Panchayat Act, 1953 — Section 14, 15, 17, 17(2), 17(3)
Rajasthan Panchayat Rules, 1954 — Rule 12, 18

Citation : AIR 1958 Raj 81 : (1958) RLW 224

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

Bench : Division Bench

Advocate : U.M. Trivedi, for the Appellant; Kansingh, Deputy Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Wanchoo, C.J.—This is an application by Dalelsingh under Article 226 of the Constitution challenging the holding of a by-election for the office of Sarpanch of Gram Panchayat of Samarthali on the ground that the seat of the applicant, who had elected barpanch in December 1955, had become vacant.

2. The case of the applicant is briefly this. He was elected Sarpanch of the Gram Panchayat of Samarthali in December 1955. The result of the election was notified in accordance with Section 14 of the Rajasthan Panchayat Act, 1953 (Act No. 21 of 1953) (hereinafter called the Act) on 16th of June 1956. The applicant says that thereafter he went to the Tehsildar to take the oath of office, as required by Section 15 of the Act. He was then told that his seat had become vacant u/s 17 (2) of the Act and a by-election had been ordered to be held in August 1956. Consequently, the applicant made the present application challenging the holding of the by-election on the ground that his seat had become vacant.

3. The main ground on which the applicant contends that his seat had not become vacant is that the Panchayat can only come into being after the

notification u/s 14 has been issued and as this notification was issued in June 1956, he could not incur any disqualification if unauthorised meetings of the Panchayat were held between December 1955 and June 1956. He, therefore, prays that the Court should direct that his seat had not become vacant and that no by-election should be held.

3a. The application has been opposed on behalf of the State. The State contends that the provision of Section 14 of the Act is only directory and the Panchayat can function as such even before the names of the Panchas are published u/s 14. It is also said that oath was administered to the applicant and other Panchas by the Tehsildar on 9th of December 1955 immediately after the election. The Panchayat thus came into existence after the administration of the oath and was functioning thereafter and a number of meetings were held, The applicant was continuously absent from these meetings numbering more than five between 30th of January 1956 and 21st of May 1956 "without giving any information to the Panchayat and, therefore, his seat became vacant u/s 17 (2) and consequently, by-election had to be ordered. It is also said that the reason why the applicant absented himself was that he had been arrested on 5-1-1956 in connection with Bhooswami agitation and was sentenced to imprisonment and was only released from Jail on 22-5-1956. Apparently, he sent no information from Jail to the Panchayat that he could not attend the meetings.

4. The main question which falls for consideration in this case is whether a notification u/s 14 of the Act is necessary before a Panchayat can start functioning. We may, in this connection, refer to the following sections of the Act:

"14. Every election or appointment of a Sarpanch, Upsarpanch and a Panch shall be notified in the Rajasthan Gazettee in accordance with rules made under this Act.

15. Every Panch or Sarpanch shall, as soon as possible after his election or appointment, as the case may be, make in the prescribed manner the prescribed oath or affirmation of his office and, unless this is done, shall not perform any of his functions under this Act.

17(2) If any Panch, Sarpanch or Upsarpanch during the term of his office, absents himself from five consecutive meetings of the Panchayat without giving information in writing to the Panchayat he shall cease to be such Panch, Sarpanch, or Upsarpanch and his seat shall become vacant.

(3) If any Panch or Sarpanch fails to make the prescribed oath or affirmation of his office within three months from the date of notification u/s 14, his seat shall be declared by the State Government to have become vacant."

5. We may also here refer to certain rules which have a bearing on the point raised before us. Relevant part of rule 18 of the Rajasthan Panchayat Election Rules, 1954 (hereinafter called the Rules) is as follows:

"Upon receipt of the report under Rule 17, the Chief Panchayat Officer shall, as

soon as possible notify the names of the Panchas, Sarpanch and Upsarpanch so elected or appointed."

"Rule 19. The validity of the election of any Panch, Sarpanch or Up-sarpanch may be challenged by a petition presented by a defeated candidate or by any ten duly qualified electors to the Collector within 15 days from the date of the notification under rule 18....."

"Rule 41. The Returning Officer shall, after declaring the result of election, put the accepted and rejected ballot papers in separate packetsThese Packets shall remain in the safe custody of the Tehsil for three months from the publication of the result of election in the Rajasthan Gazette....."

"Rule 47. Every Panch or Sarpanch of a Panchayat or Tehsil Panchayat elected or appointed under the Act and these rules shall, before entering upon his office as such, take in the presence of the Tehsildar the oath of his office in the following form:..... .."

6. The first question, therefore, is whether Section 14, to carry out which Rule 18 has been framed, is merely directory or mandatory. Our attention in this connection was drawn to Poonma v. Gram Panchayat of Koselao ILR (1954) Raj 230 (A) where a somewhat similar provision under the Rules in the Marwar Panchayat Act was held to be directory. Whether a provision like Section 14 is mandatory or directory depends upon the scheme of the particular Act In which it is to be found and a decision on one Act cannot be an authority for the interpretation of the nature of a section like Section 14 in another Act. Looking, therefore, to the provisions of the Rajasthan Panchayat Act, we must come to the conclusion that Section 14 is mandatory and cannot be held to be merely directory. Our reasons for this conclusion may be briefly stated. Section 17 (3) of the Act lays down a period of three months after the publication u/s 14 for taking the oath, after which the seat becomes vacant in case the oath is not taken.

Rule 19 of the Rules lays down that an election petition can be filed within fifteen days of the notification under Rule 18, which rule has been framed to carry out the purpose of Section 14. Again, under Rule 41, the Tehsildar has to preserve the ballot papers etc. for three months after the notification in the Rajasthan Gazette, the notification, of course, being u/s 14. Therefore, so far as the Act is concerned, notification u/s 14 has a purpose behind it, the most important of which is that an election petition can only be filed after the notification u/s 14 has been made and within 15 days of such notification.

Therefore, it cannot be held that Section 14 of the Act is merely directory. In the setting in which it appears, it must be held to be mandatory, for certain other provisions in the Act and Rules depend on the notification having been first made.

7. This, however, does not dispose of the matter. What the applicant wants us to hold is not only that Section 14 is mandatory, but that it has to be read to mean that unless the notification u/s 14 is issued, the Panchayat is not con-stituted

and cannot begin to function. Now, there is nothing in Section 14 itself which lays down that the Panchayat would be constituted only after the notification has been issued under that section.

Where the intention is that an elective body would come into existence after a certain notification, the law generally makes specific provision for that. We may, in this connection, refer to Section 73 of Representation of the People Act, 1951 (Act No. 43 of 1951) where it is specifically laid down that the Assembly or the Parliament would be constituted after the Election Commission has declared the result of the elections in the Government Gazettee.

Section 14 of the Act, however, merely lays down that a notification shall be made; but it does not lay down further that until such notification is made, the Panchayat is not constituted and cannot function. Therefore, even though Section 14 may be mandatory for certain purposes, it cannot be read to mean that Panchayat cannot function until such a notification is made.

8. So far as the functioning of the Panchayat is concerned, we have to look to Section 15. That section provides that every Panch or Sarpanch shall take the oath of office as soon as possible after his election or appointment and unless this is done, shall not perform any of his function under the Act. It follows from this that as soon as the Panch and Sarpanch have taken the oath of office, they can perform all their functions under the Act and the Panchayat comes into existence.

It is, however, urged that Section 15 should be read subject to Section 14 and that the oath prescribed u/s 15 cannot be taken unless and until the notification u/s 14 has been made. Now Section 15 follows immediately on Section 14 and if the intention of the legislature was that the oath u/s 15 cannot be taken until the notification u/s 14 has been issued, there was nothing to prevent the legislature from saying u/s 15 that every Panch and Sarpanch shall, as soon as possible after the notification u/s 14, take the oath of office; but the legislature did not say so.

It laid down that every Panch or Sarpanch shall take the oath of office as soon as possible after his election or appointment. Now, the election of a Panch or Sarpanch is complete under Rule 12 immediately after the Returning Officer declares the result of the election. Similarly, the appointment is complete as soon as the Chief Panchayat Officer or the Government makes the appointment u/s 8 or Section 9. Notification comes in after the election is over or the appointment has been made.

Section 15 provides that the oath of office shall be given as soon as possible after the election or appointment and not after the notification u/s 14. There is, in our opinion, no reason, to read into Section 15 something which is not there. The two sections, namely Sections 14 and 15 can exist independently and it is not necessary to read Section 14 into Section 15 and to hold that a Panchayat cannot come into being unless the notification is made.

The notification u/s 14 may be necessary for certain purposes, as already pointed out by us; but it is not necessary to constitute a Panchayat and bring it into existence. For that, all that is necessary is that the Panch and Sarpanch should take oaths of office as soon as possible after their election or appointment. If that has been done, the Panchayat comes into existence and the Panchas and Sarpanch can function and they need not wait for the notification u/s 14. We see no inconsistency in holding this.

9. It has been urged that Section 17(3) shows that the intention of the legislature must have been that the Panchayat should come into existence after the notification u/s 14. Section 17(3) provides that if a Panch or Sarpanch fails to take the oath within three months from the date of notification u/s 14, his seat shall be declared vacant by the State Government.

It is said that if the intention was that the Panchayat could begin functioning even before the notification u/s 14 was made, there was no point in giving three months' time to take the oath after the notification. Section 17(3) again is not a section which says anything as to when the Panchayat is to come into existence. It only lays down a certain disqualification which may be incurred by a Panch or Sarpanch if he does not take the oath. The time up to which a Panch or Sarpanch can take the oath of office is fixed under this sub-section with reference to the notification u/s 14.

Thus, a Panch or Sarpanch can take oath u/s 15 immediately after the election; but if he has not done so, his seat cannot be declared vacant till three months have elapsed after the notification u/s 14. The Panch or Sarpanch is thus given an extended time within which to take the oath of office. But it does not follow from this that we should read into Section 15 more than what it says and hold that a Panchayat cannot function till a notification u/s 14 is made.

10. It was next urged that there would be contradiction between Sub-sections (2) and (3) of Section 17 on the interpretation which we have given. It is enough to say that we do not see any contradiction. Sub-sections (2) deals with the situation after the oath of office has been taken by a member and he has begun functioning, while Sub-sections (3) deals with the situation before the oath of office is taken and before the member begins functioning. The two sub-sections deal with two different matters and the interpretation we have put on Section 15 does not, in our opinion, lead to any contradiction or anomaly.

11. Lastly, it was urged that Rule 18 enjoins on the Chief Panchayat Officer to notify the names of the Panchas etc. as soon as possible, after he receives the report of the Returning Officer. Section 15 also provides for oath of office being taken as soon as possible after the election.

Therefore, the intention of the legislature must have been that the oath of office u/s 15 should be taken after the notification u/s 14. We cannot see how this inference can be drawn because Rule 18 also provides that the Chief Panchayat Officer shall notify the result of the election as soon as possible after he gets the

report of the Returning Officer. The rule cannot control the section and if the Tehsildar, who has the power to administer oath under Rule 47, does so immediately after the election is over, there is nothing, in our opinion, in Section 15 which prevents him from doing so.

He is not bound to wait, in view of the words of Section 15, for the notification of the Chief Panchayat Officer. Howsoever, therefore, we look at Section 15, we are of opinion that we must give effect to its plain words and in so doing, we are not creating any anomalies.

We, therefore, hold that though Section 14 is mandatory for certain purposes, it cannot be read to lay down that until a notification thereunder is made, the Panchayat cannot come into existence. We are further of opinion that it is Section 15 which lays down when a Panchayat comes into existence and that a notification u/s 14 is not the sine qua non without which the Panchayat cannot come into existence.

12. Applying these principles to the facts of the present case, we find that the Tehsildar administered the oath of office to the Sarpanch and Panchas on the 9th of December 1955. Thereafter, there were a number of meetings of the Panchayat from 30-1-1956 to 21-5-1956. The number of these meetings was more than five.

The applicant, was continuously absent from these meetings. Even if he was in jail, he could have sent information to the Panchayat through the Jail and that would have saved his seat from becoming vacant u/s 17(2). He did nothing of the kind. In these circumstances, he had incurred the disqualification u/s 17 (2) even before 16-6-1956 when the notification u/s 14 was published. In these circumstances, the by-election was rightly ordered to be held.

13. There is no force in this petition and it is hereby dismissed; but in view of the circumstances, we pass no order as to costs.