
(1977) 01 CAL CK 0029
In the Calcutta High Court
Case No : Civil Rule No. (W) of 1977

Debi Prosad Singha Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-01-1977

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Panchayat Act, 1956 — Section 30, 67

Citation : AIR 1977 Cal 117

Hon'ble Judges : M.N. Ray, J

Bench : Single Bench

Advocate : Maitra, for the Appellant;

Final Decision : Dismissed

Judgement

1. In this application, the petitioner, who is an elected member of the Kankuria Anchal Panchayat (hereinafter referred to as the said Panchayat), has impeached an order dated December 31, 1976 (Annexure B), whereby in terms of a notification issued u/s 67 of the West Bengal Panchayat Act, 1957 (hereinafter referred to as the said Act), the said Panchayat has been superseded for a period of one year from January 3, 1977. The said order was made on the basis of and under an order dated December 21, 1976 (Annexure "A"), which the petitioner has also challenged.

2. Admittedly the petitioner is not the elected Prodhan of the said Panchayat and he has contended that because of abscondence of the erstwhile Prodhan of the said Panchayat and two other members, the same has suffered much and in fact such sufferings continued till the election of one Shri Pasupati Tah, Respondent No. 7 as Prodhan on the basis of a meeting convened in March 1972 with the prior approval and sanction in terms of law. He has stated that on such election the said Panchayat resumed its due functions with effect from March 31, 1972. As such, the petitioner has contended that since then he along with other members of the said Panchayat were discharging their functions duly. In fact the

petitioner has contended that the administration and acts of the said Panchayat have been duly appreciated by the authorities concerned. Such appreciation, the petitioner has contended was made and received after an inspection on January 19, 1974 by the Panchayat Extension Officer, Kalna I.

3. Thereafter, there was another inspection of the said Panchayat by the said Panchayat Extension Officer and Block Development Officer, Kalna I. on November 30, 1976 and it was found and recorded by them that the Prodhan of the said Panchayat was not competent and authorised to spend any money on repair of bridges and as such the said expenditure should be reported to the said Panchayat at its next meeting. It was also recorded that the said Shri Tah (Respondent No. 7), the elected Prodhan made over the charge of his office to the petitioner along with Rs. 3,491.91 paise. Apart from the above, the working of the said Panchayat was otherwise found to be satisfactory. It has further been contended by the petitioner that he was duly elected by the other members of the said Panchayat to carry out the duties and functions of a Prodhan in the temporary absence on leave of the duly elected Prodhan viz., Respondent No. 7. It has been contended by him that even in spite of overall improvements of the said Panchayat and its commendable performances that by a notification dated December 21, 1976 (Annexure "A"), the Governor was pleased to record his satisfaction on the report of the prescribed authority under the said Act and appointed for the purpose of Section 67 of the same that the said Panchayat was not competent to perform and was guilty of default in the performance of duties under the said Act and as such in exercise of powers under the said Section 67, the said Panchayat should be superseded for a period of one year from the date of publication of the notification and the impugned order in Annexure "C", particulars whereof have been mentioned earlier, was issued on December 31, 1976, directing thereby that during the period of supersession of the said Panchayat, all powers, duties and functions of the same shall be exercised by the Extension Officer of Panchayats, Kalna I, Development Block.

4. The order of supersession has been contended by the petitioner to be bad, void, illegal, irregular, unauthorised and against principles of natural justice. It was contended that at no point of time the said Panchayat was even given any notice or informed of any unsatisfactory work or any irregular or illegal act or action on their part. It has further been contended that such supersession has cast a stigma, an aspersion on the work and dealings of the said Panchayat and as such the same should have been given an opportunity to explain and that fact or failure alone would be enough to hold and find violation of principles of natural justice. Mr. Maitra appearing in support of the application further took me through Sections 67 and 68 and submitted that on the admitted facts of the case, read along with those sections, the petitioner should be deemed to be successful in establishing a prima facie case for a Rule and the corresponding order of injunction in terms of prayer (d) of the petition. Since point whether the petition at the instance of the petitioner and not the Anohal Panchayat concerned which u/s 30 of the said Act, is a body corporate having perpetual succession and

a common seal and can sue or be sued in its corporate name and that too because of the nature of the impugned order of supersession, would be maintainable, arose, Mr. Maitra submitted that since the petitioner has a right to hold the office of the Pro-dhan of the said Panchayat, he must be considered to be a person aggrieved and as such entitled to maintain the petition and that too because his right to the office was jeopardised by the patent illegal order of supersession. He submitted that since the effect of supersession of the said Panchayat would ultimately affect the petitioner's right to hold the office, he must also be deemed to be the person aggrieved and to maintain the petition. He submitted further that the office of the Pro-dhan is not an office of profit but one of prestige and when such right has been threatened or sought to be interfered with, although indirectly, the petition at the instance of the petitioner would be maintainable, the more so when other members of the said Panchayat have been impleaded as party respondent. It may be necessary here to mention also that the said Panchayat, which is not only a proper but a necessary party, in view of the incorporation, has not been impleaded either as a petitioner or as respondent. In support of his contentions that any person having a legal right to enforce any obligation or law, can apply for appropriate writ or writs under Article 226 of the Constitution of India Mr. Maitra first relied on the case of *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, . It has been held in that case that :

"Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that person other than those claiming fundamental rights can also approach the High Court seeking a relief thereunder.

Article 226 in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The existence of the right is the foundation of the exercise of jurisdiction of the High Court under Article 226. The legal right that can be enforced under Article 226, like Article 32, must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified."

5. Mr. Maitra, thereafter relied on the case of *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, , wherein it has been held that :

"A petitioner who seeks to file an application under Article 226 of the Constitution should "ordinarily" be one who has a personal or individual right in the subject-matter of the petition. A personal right need not be in respect of a proprietary interest : it can also relate to an interest of a trustee. That apart in exceptional cases, as the expression "ordinarily" indicates, a person who has been

prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof."

6. Mr. Maitra then referred to the case of *Makhan Lal Chakraborty Vs. S.K. Chatterjee and Others*, wherein it has been held that :

"following the usual procedure applicable to motions the position is as follows : (1) In an application under Article 226, all persons must be made parties, who are or are likely to be affected by the issue of a writ or order. In the case of mandamus or prohibition all parties must necessarily be before the Court who are required to obey the directions of the writ, or whose presence is necessary to make such directions effective. (2) The artificial rules under the English practice, where in certain cases such writs can be made *ex parte* in the first instance, do not prevail in Courts of India. (3) Any party likely to be affected by a writ or order, may appear at the hearing (or make a prior application), and ask for leave to join the proceedings, or to have the rule served upon it. (4) The Court may order that a petition used as grounds for the issue of a rule nisi be amended and/or a rule nisi be amended, by the addition of parties. (5) If a necessary party or a party likely to be affected by the writ or order, or a party whose presence may be necessary to make the writ effective is not before the Court, the Court may, either upon an application made for that purpose, or of its own motion direct that such a party be added and the rule nisi served upon him or even that he may be allowed to be present at the hearing without being served with a rule nisi. In such a case, the person served with the rule nisi or permitted to attend the hearing, would be deemed to be a party and be entitled to show cause or support or oppose a cause already shown. (6) Such amendments should ordinarily be done upon notice to the party proposed to be added or served. There is however no rule of law which prevents an *ex parte* order being made in a suitable case. (7) Upon such an amendment being effected, directions should be given for the use of affidavits and/or additional affidavits."

and contended that since all the other members of the said Panchayat have been impleaded as party respondent, the application should not be dismissed and at least a Rule should be issued 39 there is a strong *prima facie* case for the same end the question of locus standi of the petitioner should not at this stage stand in the way of issuing the Rule, the more so when all the necessary parties are before the Court on being impleaded as Respondents. In support of such contentions, Mr. Maitra relied on the case of *Jivandas Khimji Vs. Smt. Narbada Bai*, where it has been observed on the question as to who is a necessary party that :

"the position in law undoubtedly is that in the absence of necessary parties a decree will not be made in favour of the plaintiff. The question as to what parties are necessary is often not easy to determine. One test which has all along: been recognised as of great importance is that when in the absence of a party the Court cannot give an effective remedy, that party is a necessary party."

In order that a party may be considered a necessary party defendant, two conditions must be satisfied, first, that there must be a right to some relief against him in respect of the matter involved in the suit; and second, that his presence should be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit."

7. Mr. Maitra then referred to the prayers in the petition which include prayers for the issue of both the writs of Mandamus and Certiorari and submitted that if the prayer was only for Mandamus, then perhaps and if at all, the petition would not have been maintainable at the instance of the petitioner because the grant of the same is, as a general rule, a matter for the discretion of the Court and not an order granted as of right and is also not issued as a matter of course. He submitted that accordingly, the Court may refuse the order, not only upon merits, but also by reason of the special circumstances of the case. Even then it was submitted by Mr. Maitra that the Rule at the instance of the petitioner should be issued because such power to issue a Rule and the writs asked for can be exercised for a two-fold purpose, viz., (1) the enforcement of (a) fundamental rights, as well as of (b) non-fundamental or ordinary legal rights and the more so and particularly when there is a prayer for Certiorari, which is a writ of course when the authorities concerned, having the legal authority to determine questions affecting the right of subjects and having the duty to act judicially, fail or refuse to act duly. Hence such writ is also available against quasi-judicial orders, which according to Mr. Maitra was one in the instant case and this it was submitted that a Rule at least for the prayer of certiorari should be issued. To substantiate his contentions that the order in the instant case was quasi-judicial, reliance was placed by Mr. Maitra on the case of *A.N. Tendulkar Vs. C.F. Mathias and Another*. In that case, the State Government, by an order dated July 16, 1964, in exercise of the powers u/s 23(7) of the Bombay District Municipal Act, 1961, removed the petitioner from the office of the President and it has been observed that the order passed by the State Government under the provisions as aforementioned removing the said President on the ground of neglect and incapacity in performing his duty properly, viz., his failure in disallowing the resolution passed by the members for suspending certain Councillors and thus preventing, them from participating in a meeting, was a quasi-judicial one. It may be mentioned that the petitioner in that case was the President of the Municipality in question.

8. The propositions as submitted by Mr. Maitra are sound but still then the question is whether at the instance of the petitioner, who has just claimed to be the Pradhan of the said Panchayat, although the members of the same and not the said Panchayat, which u/s 30 of the said Act has a juristic character, have been impleaded as respondents. The said Panchayat which has a juristic character and has been superseded, in view of its incorporation, according to me is not only a relevant but also a necessary and proper party because the right of the same has primarily been infringed or prejudiced by the order of supersession. The petitioner, if at all, has some indirect right and such right

cannot be claimed directly and in the absence of the said Panchayat, because his right, if any, is subject to the life of the same. Article 226 of the Constitution of India as has been observed by me in the case of *Ganesh Chandra Das v. Director of Rationing* (1977) 1 Cal LJ 60 :

"Article 226 of the Constitution does not say anything about the person by whom an application for relief can be made but it does indicate the purpose for which writs, directions and orders can be issued and obtained. Under that Article, such writs etc. can be obtained only for enforcement of fundamental rights and for any other purpose. It follows therefore that the relief that may be sought for under the said Article can only be had if such relief is based on the existence of a right. The powers under the Article can normally be invoked only by a person whose personal rights or interests are adversely affected by any impugned law or Order. Hence the right which may be the basis of an application under Article 226 must be a personal and individual right. The person who complains of any infringement as the basis of his writ application must prove and establish either that he himself has been victim or that an action has been taken by any authority to his prejudice. Thus, the rights that can be enforced in writ petitions must ordinarily be the rights of the petitioners themselves."

In the view as aforesaid, although the order in the instant case was quasi-judicial, the application at the instance of the petitioner and in the absence of a relevant and proper party viz., the said Panchayat, would not be maintainable even though the other members of the said Panchayat have been impleaded as respondents.

9. The cases as cited by Mr. Maitra are distinguishable in the facts and circumstances of the present one. In the case of *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, the Company itself moved against the impugned action and the point arose whether the petition at the instance of the Company was maintainable. There the Company itself was directly affected by the order in question and that was not a case of indirect effect as in the present one. A person who is directly affected by an order as in the present case can certainly throw a challenge but the position would be different if he himself is not directly involved by the impugned order because he cannot claim the right in the absence of the source of such right. If anybody who is interested in the said source of the right in the case is the said Panchayat and none else. As such, the petition, in the absence of the said Panchayat, in my view would not be maintainable. If Mr. Maitra's submissions are accepted then that would create greater chaos and difficulty. If his contention are accepted then why a Prodhan, a petition would also be maintainable at the instance of any employee as after all he also be affected by the order of supersession as his terms of service or conditions of employment may in any way or adversely affected by the order. The right of a Prodhan or the members of a Panchayat being dependent on the existence of a Panchayat, if any one would be interested in such right is the Panchayat concerned and as such any petition without the Panchayat, in this

case the said Panchayat, which as a juristic character under the said Act, would not be maintainable. The view which I have taken would also distinguish the case of Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, and furthermore when it is not apparent from the said determination whether the Panchayat concerned was a party respondent in the said proceedings. The case of Makhan Lal Chakraborty Vs. S.K. Chatterjee and Others, is also distinguishable on the admitted position that the said Panchayat has not been impleaded as party and the same view would also be applicable in the case of Jivandas Khimji Vs. Smt. Narbada Bai, .

10. In view of the above, I hold that the petition in the facts and circumstances of the case to be not maintainable in the absence of the said Panchayat which have a juristic character.

11. The petition is thus rejected.