
(1977) 07 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ. Petition No. 244 of 1977

Gheesaram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 29-07-1977

Acts Referred:

Rajasthan Panchayat Act, 1953 — Section 21(4), 73

Citation : AIR 1979 Raj 52 : (1977) RLW 351 : (1977) WLN 368

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Advocate : J.S. Saluja, for the Appellant; D.Z. Mehta, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Gupta, J.—The case of the petitioner is that he was not afforded a proper opportunity of hearing before the order of supersession of the Panchayat Thepri was passed by the State Government. The second contention of the learned counsel is that in the circumstances of this case the State Government could not have passed an order of supersession of the aforesaid Panchayat within the provisions of Section 73 of the Rajasthan Panchayat Act, 1953 (hereinafter called "the Act").

2. The facts which have given rise to this writ petition may be briefly recounted in order to appreciate the submissions made by the learned counsel.

3. There is a Gram Panchayat of Thepri (hereinafter referred to as "the Panchayat") in the District of Nagaur within the State of Rajasthan. It is admitted by the parties that the whole number of Panchas, including the Sarpanch, as specified by the State Government u/s 4 of the Act in respect of the Panchayat, is 12. It is also not in dispute that the number of Panchas holding office in the Panchayat gradually went on diminishing on account of the fact that some of the Panchas either expired or were removed or had resigned. The result was that on

May 17, 1976, 9 Panchas out of 12 ceased to hold office of Panchas in the Panchayat. Under Sub- section (4) of Section 21 of the Act, one-third of the whole number of Panchas, including the Sarpanch, constitutes the quorum for holding a meeting of the Panchayat, at which any business of the Panchayat could be transacted.

4. As only three Panchas, including the Sarpanch, were holding office after May 17, 1976, the State Government gave notices to the Panchayat and the petitioner, who is the Sarpanch of the Panchayat, u/s 73 of the Act, to show cause why the Panchayat be not dissolved, as it was unable to transact any business in the absence of at least one-third of the whole number of Panchas, including the Sarpanch. The first notice was issued to the petitioner as Sarpanch, Gram Panchayat, Thepri, on August 11, 1976, by which he was asked to appear before the State Minister for Panchayat and Community Development on Sep. 2, 1976 for a hearing in the matter. The case of the petitioner is that this notice was received by him on September 6, 1976 and as such the petitioner was unable to appear before the Minister concerned on Sep. 2, 1976. This fact is not much in dispute. Thereafter another notice to the same effect was sent to the petitioner on Sep. 25, 1976 asking him to appear before the Minister concerned on Oct. 20, 1976, which was received by him on October 17, 1976, but the petitioner intimated to the State Government that he was unwell and as such he was unable to attend the hearing fixed for Oct. 20, 1976. A third notice was subsequently sent to the petitioner on Oct. 28, 1976 asking him to appear before the Minister concerned on Dec. 1st, 1976. The petitioner received this notice on Nov. 26, 1976, but his case is that he missed the train for Jaipur and informed the State Government by a telegram on Nov. 30, 1976 about the aforesaid fact, A copy of the telegram alleged to have been sent by the petitioner to the State Government has not been produced by him. A receipt of payment of Rs. 10/- as cost of an inland telegram booked at 20.45 hours at Nagaur has been produced, but it cannot be held on the basis thereof that the telegram in respect of which the receipt has been produced was sent by the petitioner and further that the same was sent by him to the State Government, The receipt may relate to some telegram, which might have been sent by some other person or the same might have been sent by the petitioner to some other person. It also does not appear that the last train for Jaipur leaves Nagaur before 8.45 p. m. As such, it is difficult to accept the contention of the petitioner that he missed the train and was unable to attend the hearing of the matter before the Minister concerned on December 1, 1976, Learned counsel also submits that the notice in question was insufficient as it was served on the petitioner on Nov. 26, 1976. I am unable to accept this contention as well, because there was sufficient time within which the petitioner could have reached Jaipur after the receipt of the aforesaid notice by him on Nov. 26, 1976 and he could have very well appeared before the Minister concerned on December 1st, 1976. In case the petitioner wanted further time to collect any information or documents, he could make a request for adjournment after appearing before the Minister concerned. Moreover, in the present matter,

the fact that 9 out of 12 Panchas had ceased to hold office at the relevant time is not contested and as such there was no apparent necessity of collection of any material or information on the part of the petitioner, for which the period of 4 days at his disposal might be considered to be insufficient.

5. As the petitioner failed to appear before the Minister concerned on Dec, 1, 1976, the State Government considered the matter *ex parte* and an order was passed on June 2, 1977 to the effect that as the Gram Panchayat, Thepri, was not competent to perform its duties, the State Government directed u/s 73 of the Act that the said Gram Panchayat was superseded for a period of one year. The facts, which I have adverted to above, go to show that three successive notices were given to the petitioner, two of which were actually received by him, but he failed to appear in response to these notices on one pretext or the other. There does not appear to be any reasonable ground for his not appearing before the Minister concerned on Dec. 1, 1976. As a reasonable opportunity was afforded to the petitioner for a hearing in the matter, yet he failed to appear before the Minister concerned on December i, 1976, it cannot be held that there was any lack of proper opportunity of hearing in this case. The contention of the learned counsel, therefore, cannot be accepted in these circumstances.

6. As for the second contention, subsection (1) of Section 73 of the Act provides the circumstances in which the State Government may dissolve or supersede a Panchayat. Sub-section (1) of Section 73 reads as under:

"Section 73: Power to supersede Panchayat in certain cases, (i) if at any time the State Government is satisfied that a 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 has exceeded or abused its powers thereunder, or persistently disobeys the lawful orders of the State Government or the Panchayat Samiti or the Officer-in-Charge of Panchayats, the State Government may, after giving such Panchayat an opportunity of being heard, and after consulting the Zila Parishad concerned by an order published in the official gazette -

(a) dissolve such Panchayat as from date to be specified in the order, or

(b) supersede such Panchayat for a period not exceeding one year from a specified date."

7. One of the circumstances in which a Panchayat could be dissolved or superseded by the State Government is that the Panchayat is not competent to perform its duties under the Act. In face of the admitted facts, as 9 out of 12 panchas had ceased to hold office, it cannot be said that the Panchayat could have performed any of the duties imposed upon it by the Act. For the conduct of the business of the Panchayat it is necessary to hold a meeting thereof and the quorum for such meeting of the Panchayat has been specified in Sub-section (4) of Section 21 of the Act, as one-third of the whole number of panchas, including the Sarpanch. The three panchas, including the Sarpanch, who are at present

holding office in Gram Panchayat, Thepri are, therefore, unable to carry on the business of the Panchayat in the absence of requisite quorum and as such they are unable to discharge any of the functions and duties of the Panchayat. In these circumstances, the State Government was perfectly justified in holding that the Panchayat was not competent to perform its functions, as it could not even hold any meeting of the Panchayat for lack of quorum. The learned counsel has referred to the decision of this Court in *Arjandas v. Government of Rajasthan*, 1962 Raj LW 532, wherein a similar expression used in Section 295 (1) of the Rajasthan Municipalities Act, 1959, was considered. In the aforesaid case, the argument advanced before their Lordships was that before a municipal board could be superseded, the State Government must be satisfied that it is blameworthy for some unsatisfactory conduct and that in the absence of such a conduct there could be no justification for ordering supersession. But this argument was repelled and it was held in that case that the expression "not competent to perform the duties imposed on it by or under this Act" does not necessarily connote the sense of blameworthy or discreditable conduct, but the expression has been used in a neutral sense and it could also be applied where the municipality concerned was unable to function because its term had expired. I am in complete agreement with the observations made by their Lordships. The expression "not competent to perform the duties imposed on it by or under this Act or any other law" could be made applicable to all those situations in which the local body may be unable to perform its duties and functions owing to a variety of circumstances and the use of this expression is not necessarily confined only to cases where the local body concerned is guilty of blameworthy or discreditable conduct. In *Arjandas's* case (*supra*) similar provision contained in Section 295 (1) of the Rajasthan Municipalities Act, 1959, was held to be rightly made applicable in the case, where the municipal board was unable to perform its duties because its term had expired and for some valid reason fresh elections were not possible and the State Government did not think it desirable or possible to give any extension⁷ or further extension to the existing municipality. In my view, the circumstances appearing in the present case are of a similar nature, because on account of the lack of quorum the Panchayat was unable to perform its duties and functions, as only three out of the whole number of 12 panchas, including the Sarpanch, were holding office at the relevant time. In these circumstances until the existing vacancies are not filled in, in accordance with law, it would not only be difficult, but improper as well to leave the administration of the Panchayat in a lurch and the State Government could not be an idle spectator in such a situation. I am of the opinion that the State Government acted rightly in superseding the Panchayat and appointing an Administrator in the present case, so as to provide for the proper functioning of the Panchayat during the intervening period. The provisions of Section 73 of the Act were clearly attracted to the facts of this case and the petitioner can have no grievance on this score.

8. Another contention advanced by the learned counsel was that although the

notice given to the petitioner u/s 73 of the Act directed him to show cause why the Panchayat should not, be dissolved, but by the order dated 2-6-1977 the State Government has superseded the Panchayat for a period of one year. In my view, the petitioner should not have any complaint in this matter as on account of the dissolution of the Panchayat the petitioner would have lost his office as Sarpanch, but by super-session the functioning of the Panchayat and of the petitioner as a Sarpanch thereof has only been suspended for a period of one year. The State Government, after considering the whole matter and after consulting the Zila Parishad concerned, thought it proper that instead of dissolving the Panchayat, the situation caused on account of lack of quorum, could be met with by only superseding it for a period of one year, probably in the hope that by that time the vacancies in the Panchayat could be filled in and then the Panchayat may be able to function actively with the requisite quorum.

9. No other point was argued before me.

10. In view of the aforesaid discussion, the writ petition fails and is dismissed.