

(2025) 05 RAJ CK 0584

In the Rajasthan High Court, Jaipur Bench

Case No : Civil Writ Petition No. 4993 Of 2025

Lal Chand Asopa

APPELLANT

Vs

State Of Rajasthan, Through Director And Special Secretary
Local Self Department

RESPONDENT

Date of Decision : 01-05-2025

Acts Referred:

Citation : (2025) 05 RAJ CK 0584

Hon'ble Judges : Anoop Kumar Dhand, J

Bench : Single Bench

Advocate : Shobit Tiwari

Final Decision : Dismissed

Judgement

Dinesh Mehta, J

1. Feeling aggrieved of the order dated 17.02.2025 (Annexure-6), issued by the Chief Executive Officer, Zila Parishad, Bikaner, whereby the petitioner has been declared to have been removed from the post of Pradhan in light of the provisions contained in Section 101(2)(d) of the Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act of 1994'), the petitioner has invoked writ jurisdiction of this Court.

2. Briefly narrated, the facts apropos the challenge laid are that the petitioner - a resident of village-Napasara contested the election for the post of member of Panchayat Samiti, Bikaner from ward no.9.

3. After being declared winner from Ward No.9, he contested election for the post of Pradhan of the Panchayat Samiti and was declared elected on 10.12.2020.

4. Before petitioner could complete his term of 5 years, a notification dated 07.11.2024 came to be issued by the State Government in exercise of powers under Section 3(1)(a) read with Section 329 of the Rajasthan Municipalities Act, 2009 (hereinafter referred to as 'the Act of 2009') and Article 243Q of the

Constitution of India, pursuant whereof, Gram Panchayat, Napasar was declared as Municipal Board.

5. Consequent upon declaration of Gram Panchayat, Napasar to be a Municipal Board, the respondent - State issued an order dated 28.11.2024 and declared that all the elected members from the Panchayati Raj Institutions of revenue village-Napasar shall be deemed to have been removed.

6. Following the order aforesaid, the Chief Executive Officer, Municipal Board, Bikaner passed the order impugned and declared that the post of Pradhan of the Panchayat Samiti, Bikaner has become vacant, as the petitioner had been removed as a member from Ward No.9 of said Panchayat Samiti.

7. Mr. Punia, learned senior counsel appearing for the petitioner argued that the petitioner was elected on the post of Pradhan of Panchayat Samiti, Bikaner after having won from ward no.9 comprising of Village-Napasar and simply because Gram Panchayat, Napasar has been declared a Municipal Board, neither his membership from ward no.9 of Panchayat Samiti, Bikaner can be interfered with nor can his post of Pradhan be declared vacant.

8. Learned senior counsel developed his argument by submitting that he had contested and won election for member of Panchayat Samiti from ward no.9, in his individual capacity and then was elected as Pradhan of Panchayat Samiti. He vehemently argued that simply because the Gram Panchayat, Napasar has been declared as Municipal Board, his right to continue as Pradhan does not cease.

9. He also argued that definition of 'member' as given in Section 2(1)(xiii) of the Act of 1994, defines that "a member means a member of Panchayati Raj Institution and includes a 'Sarpanch'".

10. His argument in other words has been that consequent to the declaration of Gram Panchayat as Municipality, status of members of said Gram Panchayat alone will be altered and not of other members, whose elections had no direct nexus or co-relation with such Gram Panchayat. It was emphasised that the petitioner had contested election from ward no.9 (Village-Napasar) of Panchayat Samiti, Bikaner and not from Gram Panchayat, Napasar.

11. Learned senior counsel further submitted that Section 3(1) (iii) of the Act of 2009 saves the term and tenure of members of Gram Panchayat in case of delimitation or creation of Municipalities and therefore, petitioner's tenure as Pradhan of Panchayat Samiti, Bikaner is also saved. It was argued by Mr. Punia that it is arbitrary and unreasonable to declare that the petitioner has ceased to remain as a member and Pradhan of Panchayat Samiti, when the members i.e. Sarpanch, Up-sarpanch of Gram Panchayat, Napasar have been allowed to continue and treated to be Chairperson, Vice-Chairperson and members of Municipal Board, Napasar by way of notification dated 07.11.2024.

12. Learned senior counsel relied upon the interim order dated 07.02.2023, which has been passed by the Jaipur Bench of this Court in the case of Smt.

Rasnam Bai Vs. State of Rajasthan (S.B. Civil Writ Petition No.2501/2023) and prayed that impugned orders dated 28.11.2024 and 17.02.2025 be stayed while informing that the said interim order has been affirmed by the Division Bench.

13. It was also argued by Mr. Punia that one Dalip Kumar who was elected from ward no.9 of Panchayat Samiti, Khajuwala is still continuing as a member regardless of the fact that said Panchayat Samiti, Khajuwala too has been declared a Municipality.

14. Mr. Rajesh Panwar, learned senior counsel and Additional Advocate General on the other hand submitted that Section 3(1) (iii) of the Act of 2009 saves the term and tenure of members of Gram Panchayat which has been converted to a Municipal Board but since the petitioner was not a member of concerned Panchayati Raj Institution namely, Gram Panchayat, Napasar which has been converted to Municipal Board, Napasar, he cannot claim that his tenure too is required to be saved.

15. He added that the petitioner was elected from ward no.9 which comprised of Village-Napasar, and since Village-Napasar is no more a Gram Panchayat, he cannot continue as a member from such ward. He added that since the petitioner has ceased to be member, he cannot continue as Pradhan.

16. It was argued that upon conversion of Gram Panchayat, Napasar to a Municipality, said area has ceased to continue as a 'revenue village' and has become 'urban area', per force declaration issued under Section 3 of the Act of 2009.

17. It was also submitted that immediately on issuance of notification under Section 3 of the Act of 2009, not only the members of the Panchayat Samiti, Napasar but all other members elected from revenue village-Napasar have discontinued as members of respective Panchayati Raj Institution.

18. Learned Additional Advocate General relied upon the Division Bench judgment dated 07.08.2023 passed in the case of Bheenwaram Vs. State of Rajasthan (D.B. Civil Writ Petition No.12152/2023) in order to explain the effect of the provisions of Section 3, more particularly, sub-section(8) of Section 3 of the Act of 2009.

19. In response to contention of Mr. Punia in relation to Dalip Kumar of Khajuwala, learned Additional Advocate General literally conceded that said Dalip Kumar cannot continue as a member of Panchayat Samiti and the State is in the process of terminating his membership.

20. Heard learned counsel for the parties and perused the relevant material, including the statutory provisions.

21. Before advertng to the rival contentions, it will not be out of place to reproduce the relevant provisions of the Act of 2009:-

Sub-section (1) of Section 3.

Delimitation of Municipalities. - (1) The State Government may, by notification published in the Official Gazette, declare any local area not included within the limits of a Municipality to be a Municipality, or include any such area in a Municipality, or exclude any local area from a Municipality, or otherwise alter the limits of any Municipality and when

(a) any local area is declared as, or included in, a Municipality, or

(b) any local area is excluded from a Municipality, or

(c) the limits of a Municipality are otherwise altered, by amalgamation of one Municipality into another or by splitting up a Municipality into two or more Municipalities, or

(d) any local area ceases to be a Municipality, the State Government

may, notwithstanding anything contained in this Act or any other law for the time being in force, by an order published in the Official Gazette provide,-

(i) in a case falling under clause (a), that the election of the members for the area or the additional area shall be held within a period of six months from the appointed day;

(ii) in a case falling under clause (b), that the members who in the opinion of the State Government represent the area excluded from the Municipality shall be removed;

(iii) in a case falling under clause (c), that until the term of the Municipality in which another Municipality is amalgamated expires under this Act, the Chairperson, Vice-Chairperson and members of such another Municipality shall be deemed to be the members of the Municipality in which such another Municipality is amalgamated and where a Municipality is split into two or more Municipalities, that the members representing the area included in the newly constituted Municipality shall be deemed to be the members of such new Municipality and such new Municipality shall continue, unless dissolved sooner, until original Municipality would have continued; (iv) in a case falling under clause (d), that the Municipality shall be dissolved. Explanation. - In this sub-Section, "appointed day" means the day from which a change referred to in any of the clauses (a) to (d) takes effect.

Sub-section (8) of Section 3:-

(8) When an area comprised in a village is specified as, or when any area is excluded from the village and included in a municipal area, then with effect from the date on which such area is so specified or is so included, the following consequences shall ensue, namely: -

(a) such area shall cease to be a village;

(b) the Municipality in which such area is included or the Municipality declared for such area shall exercise jurisdiction over such area and the panchayat

established for such area shall cease to function therein;

(c) until elections are held under sub-Section (1) or the term of the Municipality expires under this Act, whichever is earlier, the Sarpanch, Up-Sarpanch and the panch or panchas representing the area of the village so included in, or declared as a Municipality shall be deemed to be the additional members of the Municipality in which such area of the village is included or the Chairperson, Vice-Chairperson and the members respectively of the Municipality declared for such area, as the case may be;

(d) the whole of the assets vesting in, and of the liabilities subsisting against, the panchayat so declared to be a Municipality or in case where only a part or whole of a village is so included in a Municipality, such portion of the said assets and liabilities as the State Government may direct, shall devolve upon the Municipality declared for such area or upon the Municipality in which such area of the village is so included;

(e) the Municipality so established by the inclusion of any area of a village therein or by the declaration of a village as a Municipality, shall levy or continue to levy such of the taxes as are lawfully imposed under this Act;

(f) any such area shall cease to be subject to all rules, notifications, orders and bye-laws made under the Rajasthan Panchayati Raj Act, 1994 (Act No.13 of 1994).

22. Following provisions of the Act of 1994 also have a bearing on the instant case, hence they are being reproduced:-

Section 2(1)(ii) - "Block" and "Panchayat Circle" shall respectively mean the local area over which a Panchayat Samiti, or, as the case may be, a Panchayat exercise its jurisdiction;

Section 2(1)(xiii)- "Member" means a member of a Panchayati Raj Institution and includes a Sarpanch;

Section 2(1)(xvi)- "Panchayat Area" or "Panchayat Circle" means the territorial area of a Panchayat;

Section 10. Establishment of Panchayat Samiti- (1) The State Government may, by notification in the Official Gazette, declare any local area within the same district to be a block and for every block declared as such there shall be a Panchayat Samiti having jurisdiction, save as otherwise provided in this Act, over the entire block excluding such portions of the block as are included in a Municipality or a cantonment board constituted under any law for the time-being in force:

Provided that a Panchayat Samiti may have its office in any area comprised within the excluded portion of the Panchayat Samiti.

(2) Every Panchayat Samiti shall by the name notified in the Official Gazette, be a

body corporate having perpetual succession and common seal and shall, subject to any restrictions and conditions imposed by or under this Act or any other law, have power to acquire, by purchase, gift or otherwise, to hold, administer and transfer property, both movable and immovable, and to enter into any contract and shall, by the said name, sue and be sued.

(3) The State Government may, at any time, after one month's notice published in the prescribed manner either on its own motion or at the request of the Panchayat Samiti or of the residents of any area within the block of the Panchayat Samiti, and by notification in the official Gazette change the name or place of office of any such Panchayat Samiti.

Section 13. Composition of a Panchayat Samiti- (1) A Panchayat Samiti shall consist of –

(a) directly elected members from as many territorial constituencies as are determine under Sub-Sec. (2)

(b) all members or the Legislative Assembly of the State representing constituencies which comprise whole or partly the Panchayat Samiti area

(c) chairpersons of all the Panchayats falling within the Panchayat Samiti] : Provided that the members referred to in [Clause (b) and (c)] shall have a right to vote in all meetings of the Panchayat Samiti except those for election and removal of the Pradhan or Up-Pradhan.

(2) The State Government shall, in accordance with such rules as may be framed in this behalf, determine the number of territorial constituencies for each Panchayat Samiti area and thereupon so divide such area into

single member territorial constituencies that the population of each territorial constituency is, so far as practicable, the same throughout the Panchayat Samiti area :

Provided that a Panchayat Samiti area having population not exceeding one lakh shall consist of fifteen constituencies and in case of a Panchayat Samiti area whose population exceeds on lakh, then for every fifteen thousand or part thereof in excess of one lakh, the said number of fifteen shall be increased by two.

Section 101. Alteration in the limits of a Panchayati Raj Institution- (1) The State Government may, at any time, after one month's notice published in the prescribed manner either on its own motion or at the request made in this behalf, and by notification in the Official Gazette-

(a) ***

(b) ***

(c) ***

(d) exclude the whole or a part of any local area from a Panchayat Circle, whether on its

ceasing to be a rural area or, as the case may be, for its being included within the limits of another Panchayat Circle.

(2) Upon any action being taken under Sub-sec. (1), the State Government

shall, notwithstanding anything contained in this Act or any other law for the time being in force, by an order published in the Official Gazette, make provision for the following, namely:-

(a) ***

(b) ***

(c) ***

(d) that, in a case falling under Clause (d), the Panchayat shall stand dissolved or, as the case may be, the members who, in the opinion of the State Government, represent the local area excluded from the Panchayat Circle shall stand removed.

Provide that for so long as a Panchayat or a new Panchayat is not established under Clause (a), or the case may be, under Clause (c), all powers and duties of the Panchayat shall be exercised and performed by such administrator as the State Government may appoint in this behalf :

Provided further that no act of a Panchayat shall be deemed invalid by reason of any vacancy of the members referred to in Clause (b).

23. Upon considering the submission made at the Bar and after wading through various provisions and scheme of the Act of 1994 and the Act of 2009, this Court finds a clear cut demarcation between the members of Gram Panchayat; Panchayat Samiti and Zila Parishad. A member who is eligible or entitled to be elected in one Panchayati Raj Institution from the Institution of lower hierarchy cannot claim continuation on such post, when the ward or Panchayati Raj Institution where he hails or from which he had contested the election has ceased to continue as a Panchayati Raj Institution.

24. The provisions of definition clauses (ii); (xiii); (xvi) and (xvii) of Section 2(1) and other provisions encapsulated in Sections 9, 10, 13 and 14 of the Act of 1994, clearly suggest that the Panchayati Raj Institutions have three hierarchical rungs, namely Gram Panchayat; Panchayat Samiti and Zila Parishad meant for Village; Block and District, respectively. A Panchayat Samiti comprises of different Gram Panchayats while Zila Parishad comprises of group of Panchayat Samities and accordingly, wards of Panchayat Samiti and Zila Parishad are formed.

25. Section 14(1) of the Act of 1994 provides that a Zila Parishad shall consist of directly elected members from as many territorial constituencies as are

determined under sub-section (2), while sub-section (2) of Section 14 provides that the State Government shall determine the number of territorial constituencies and thereupon divide the area into single member territorial constituencies.

26. At a first flush, the petitioner's contention appears to be appealing that since he had been elected as a member from ward no.9 of the Panchayat Samiti which comprises of village-Napasar, he cannot be declared removed, solely because, village-Napasar has been declared as Municipality. But a careful consideration of other relevant provisions, more particularly, clauses (a), (b) & (f) of sub-section(8) of Section 3 of the Act of 2009 clearly suggests that upon publication of a notification in the official gazette, when whole or any part of local area of panchayat circle is so specified or is excluded from the village and included in a municipal area, such area shall cease to be a rural area and the Municipality declared for such area shall exercise jurisdiction.

27. Following expression used in Section 10 of the Act of 1994, which deals with establishment of Panchayat Samiti, clearly provides that such portions of the Block as are included in a Municipality shall not be subject to jurisdiction of a Panchayat Samiti:-

"The State Government may, by notification in the Official Gazette, declare any local area within the same district to be a block and for every block declared as such there shall be a Panchayat Samiti having jurisdiction, save as otherwise provided in this Act, over the entire block excluding such portions of the block as are included in a Municipality or a cantonment board constituted under any law for the time-being in force."

28. Per force notification dated 07.11.2024, entire area of revenue village-Napasar (population of 22893) has been declared to be a Municipal Board, hence, Napasar has ceased to be a rural area. Therefore, by virtue of clause(f) of Section 3(8) of the Act of 2009, such area shall not be subject to the rules, notifications, orders and bye-laws made under the Act of 1994.

29. Clause (d) of sub-section (1) of Section 101 of the Act of 1994 provides that by way of notification published in the official gazette, the State Government can exclude whole or part of any local area from Panchayat Circle and/or declare that such local area shall cease to be a rural area.

30. As a consequence of what has been provided in clause (d) of sub-section (2) of Section 101 of the Act of 1994, in the event of entire Panchayat Circle ceasing to be a rural area, the concerned Panchayat stands dissolved and the member(s) who represent the local area, elected from such Panchayat Circle stand removed.

31. In the present case, since the entire Gram Panchayat, Napasar has been declared to be a Municipal Board, as a natural corollary such Gram Panchayat, Napasar stands dissolved and as a natural concomitant of the stipulation made in Section 101(2)(d) of the Act of 1994, members who represent the local area

stand removed.

32. Once a Panchayat Circle ceases to remain a Panchayati Raj Institution and becomes an urban area, the provisions of the Act of 1994 become inoperative. Simultaneously, such area ceases to be a village and the municipality declared for such area exercises jurisdiction, with the corresponding stipulation that Panchayat established over such area cease to function.

33. Similarly, according to clauses (a) and (b) of Section 3(8) of the Act of 2009, not only such area ceases to be a village, but also the Municipality declared for such area starts exercising jurisdiction over such area and as a result, Panchayat established for such area ceases to function.

34. Much emphasis has been laid by the petitioner upon clause

(c) of sub-section (8) of Section 3 of the Act of 2009 in order to contend that the tenure of the petitioner shall not end. But, according to this Court, clause (c) of sub-section (8) of Section 3 is confined to the members of Panchayat which has been converted to a Municipality. Publication of a notification under Section 3(8) of the Act of 2009 brings into being a new Municipality. This Court is clearly of the opinion that clause (c) of sub-section (8) of Section 3 has been enacted as a transitory provision, so as to ensure that the Municipality can function until the election of the Municipality are held.

35. Moving on to the facts of the case in hands, the entire area of revenue village-Napasar has been declared as Municipal Board and consequently, the area of Napasar which was earlier a rural area is no more a rural area. Resultantly, ward no.9 of Panchayat Samiti, Bikaner which was part of village-Napasar stood obliterated or wiped out for what has been contained in sub-section(1) of Section 10 of Act of 1994, which in express terms provides that the State Government may declare a local area within the District to be a block in which there shall be a Panchayat Samiti having jurisdiction over the entire block excluding such portions of the block as are included in a Municipality.

36. Upshot of publication of notification dated 07.11.2024 is, that the entire block of Gram Panchayat, Napasar stood excluded from Panchayat Samiti, Bikaner. There is no dispute about the fact that the Panchayat Samiti, Bikaner used to comprise of 21 wards, out of which ward nos.9 and 10 were from Gram Panchayat, Napasar. Since revenue area of Napasar itself has ceased to remain a revenue area or panchayat area and has become an urban area and declared as a Municipality, these wards (ward nos.9 and 10) have ceased to exist by operation of law.

37. Since the entire area of Gram Panchayat, Napasar has ceased to remain as panchayat area and converted to municipal area, Section 101(2)(d) of the Act of 1994 comes into play which correspond to clause(d) of sub-section(1) of Section 101 of the Act of 1994. A simple reading of such provision suggests that in such eventuality, the Panchayat shall stand dissolved and the members, who represent

the local area excluded from the Panchayat Circle shall stand removed.

38. The provision contained in Section 101(2)(d) not only deals with the members of a Gram Panchayat but also provides that the members who represent the local area excluded from Panchayat Circle shall stand removed. Hence, the petitioner who was elected from Ward No.9 so also other member, namely Kishan who was elected from Ward No.10 of such Panchayat Samiti (representing Napasar - excluded from Panchayat Circle) have to be given adieu, as a fallout of issuance of the impugned notification(s)/orders.

39. Petitioner's reliance upon clause(iii) of sub-section (1) of Section 3 of the Act of 2009 is totally misplaced and misconceived. A careful reading of Section 3 of the Act of 2009 unravels that present case falls within the ambit of clause (a) of Section 3(1) and thus, applicable provision is Section 3(1)(i). Section 3(1)(iii), which has been so zealously harped upon by Mr. Punia is applicable only in the contingency mentioned in clause (c) of sub-section (1) of Section 101 namely, alteration of Municipal limits of

amalgamation or splitting of a Municipality.

40. So far as cases covered under clause (a) of Section 3(1) of the Act of 2009 are concerned, the relevant provision - Section 3(1)(i) only provides that election of the member for that area shall be held within a period of six months. Such being the position, consequent to declaration of the Gram Panchayat, Napasar as a Municipality, it is incumbent upon the State to hold election of the members for the area or the additional area within six months from the appointed day.

41. In somewhat different factual backdrop, a Division Bench of this Court in the case of Bheenwaram (supra) had an occasion of interpreting sub-section (8) of Section 3 of the Act of 2009. The discussion or analysis done by the Division Bench in para nos.9 and 10 of the judgment calls for attention, and hence, those paragraphs are being reproduced hereinunder:-

9. Sub-section (8) of Section 3 provides that when an area comprised in a village is specified as, or when any area is excluded from the village and included in a municipal area, then with effect from the date on which such area is so specified or is so included, consequences as provided under Clauses (a) to (f) would follow. Amongst other provisions, Clause (c) thereof provides that until elections are held under sub-section (1) or term of the municipality expires under the Act, whichever is earlier, the Sarpanch, Upsarpanch, Panch and Panchas representing the area of the village so included in, or declared as municipality shall be deemed to be the additional members of the municipality in which such area of the village is included or the Chairperson, Vice- chairperson and the members respectively of the municipality declared for such area, as the case may be.

10. Therefore, the provisions contained in Section 3 sub-section (8) provide for consequences flowing by operation of law to the effect that the Sarpanch, Upsarpanch shall be deemed to be the Chairman, Vice-chairman, in case, village

area is declared as municipality. However, the aforesaid legislative scheme of the Act does not deal with all kind of situations.

42. This Court also does not find any substance in petitioner's contention based on clause (c) of sub-section(8) of Section 3 of the Act of 2009 that his term should also be saved. Section 3(8) (c), which is a transitory provision clearly confines its applicability to the Sarpanch, Up-sarpanch and the Panch or Panchas of the Gram Panchayat and provides that they shall be Chairperson, Vice-Chairperson and the members of the Municipality of such area. This provision does not apply to members of Panchayat Samiti and Zila Parishad at all. Since, neither any transitory provision of like nature could be made nor the same has been provided for Members and Pradhan of Panchayat Samiti, the petitioner cannot claim immunity from cessation of his term on the post of Pradhan.

43. The petitioner has claimed parity with one Dalip Kumar, who is a member of Gram Panchayat, Khajuwala and contended that since he has been continued, the petitioner should also be continued. While observing that the petitioner stands removed by operation of law, this Court would like to record the statement given by Mr. Rajesh Panwar, learned Additional Advocate General of the State who conceded that said Dalip Kumar cannot continue as a member of Panchayat Samiti, Khajuwala and the State is in the process of passing requisite order/declaration. Such being the position, the ground of the petitioner which otherwise has a little substance, wanes and does not need any deliberation.

44. This Court, therefore, neither finds any illegality in the notification dated 28.11.2024 issued by the State Government nor in the order dated 17.02.2025 issued by the Chief Executive Officer, Zila Parishad, Bikaner, whereby all the elected representatives from Gram Panchayat, Napasar have been removed.

45. The writ petition is, therefore, dismissed.

46. It may be noted that so far as prayer (A), which relates to quashing of the notification dated 07.11.2024 declaring Gram Panchayat, Napasar as Municipality is concerned, no argument was advanced.

47. Stay application and other interlocutory applications, if any, also stand dismissed accordingly.