

(2012) 07 JH CK 0200
In the Jharkhand High Court
Case No : LPA No. 292 of 2011

Govind Prasad Panjiyara

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 5, 6

Citation : (2012) 4 JLJR 234

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : Subodh Kr. Jha, Anand Kumar Sinha, Krishna Nand Sahay, for the Appellant; Durga Charan Mishra for the Respondent No. 6, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties. This Letters Patent Appeal is directed against the order dated 29th July, 2011 passed in W.P.(C) No. 6905 of 2006, by which writ petition of the respondent-Ram Lal Panjiyara was allowed and the order passed by the Sub-Divisional Officer dated 7th August, 1997; the order passed by the Deputy Commissioner in appeal dated 3rd April, 2002, upholding the order of the Sub-Divisional Officer, and the revisional order passed by Commissioner dated 14th August, 2006, all have been set aside, in the matter of dispute relating to the appointment on the post of Headman (Pradhan) u/s 5 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 and the appointment of the appellant on the post of Headman for the Village-Bansjora has been set aside.

2. The brief facts of the case are that the appellant's father Basant Panjiyara was the Headman of Pradhani Mouza Bansjora. There were certain allegations of misconduct upon the father of the appellant while discharging his duties and, therefore, he was removed in the year 1989. The appellant's father challenged the order declaring him disqualified as Headman by preferring appeal, but during pendency of the appeal, the appellant's father died on 28th March, 1996.

However, the appeal continued, obviously after taking on record the legal representative of the father of the appellant and obviously by impleading the appellant himself as party. That appeal was dismissed on 14th August, 2006. Therefore, the finding of misconduct and removal of the appellant's father from the post of Headman attained the finality. However, during pendency of that appeal, an application u/s 5 of the Act of 1949 was submitted by the writ petitioner-respondent/Ram Lal Panjiyara seeking appointment on the post of village Headman for the Khas village. However, the appellant submitted an application u/s 6 of the same Act of 1949. The application u/s 6 of the said Act can be filed in a case when village Headman of a village, which is not a khas village, and his successor claims his appointment as village Headman. However, the learned Sub-Divisional Officer vide order dated 7th August, 1997 considered both the applications, one filed by the writ petitioner-respondent u/s 5 and another filed by the appellant u/s 6 and held that both the applications be treated to be application u/s 5 of the Act of 1949. After holding and taking procedure on various dates, ultimately vide order dated 7th August, 1997 declared the appellant as Headman on the ground that the total voters i.e., Jamabandi Raiyats in the village are 63 and two had cast vote in favour of respondent-writ petitioner and 41 had cast vote in favour of the appellant. The said declaration was challenged by the respondent/petitioner by preferring appeal before the Deputy Commissioner. The Deputy Commissioner vide order dated 3rd April, 2002 dismissed the appeal of the writ petitioner-respondent. Not satisfied with the dismissal of the appeal, the writ petitioner-respondent preferred revision petition before the Commissioner, who also dismissed the revision petition of the writ petitioner-respondent vide order dated 14th August, 2006. The petitioner-respondent then approached this Court by filing writ petition being W.P.(C) No. 6905 of 2006 Reported in 2011 (4) JLJR 330, which has been allowed by the learned Single Judge. The learned Single Judge was of the opinion that the appellant who was declared elected even did not submit an application u/s 5 of the Act of 1949 whereas only the respondent-petitioner filed the petition u/s 5 of the said Act. The learned Single Judge also held that application of the appellant filed u/s 6 is deemed to have been rejected as the proceeding was continued u/s 5 for the election of the village Headman and the learned Single Judge also held that the appellant was disqualified to contest the election of the Headman, in view of the specific provisions under Schedule-V of the Santhal Parganas Tenancy (Supplementary) Rules, 1950 framed under the provisions of the Act of 1949 which specifically provides that "heir of headman dismissed for misconduct shall have no claim to the office".

3. Learned counsel for the appellant vehemently submitted that the learned Single Judge committed serious error of law as well as error of fact. The error of fact is that the learned Single Judge observed about the implied rejection of the appellant's application filed u/s 6 of the Act of 1949. The learned Single Judge further committed serious error of law in holding that appellant was not qualified to contest the election of village Headman, in view of the fact that appellant's

father has been declared disqualified to hold the post of village Headman. The learned Single Judge committed error of law in interpreting the words which indicate that the heir of dismissed village Headman shall not be eligible candidate, in view of the Schedule appended to the Rules framed under the Act of 1949.

The learned counsel for the appellant relied upon Division Bench judgment of this Court (by us), delivered in the case of Sogen Murmu Vs. The State of Jharkhand and Others

4. Learned counsel for the respondent-writ petitioner vehemently submitted that the appellant was stand declared disqualified statutorily and, therefore, learned Single Judge was right in holding that the appellant was not an eligible candidate for election on the post of village Headman. Learned counsel for the writ petitioner-respondent further vehemently submitted that the appellant did not submit an application u/s 5 of the said Act is a fact admitted and cannot be disputed now also. The appellant's total claim was only on the basis of hereditary right u/s 6 and not otherwise. The learned counsel for the writ petitioner-respondent further submitted that as per sub-rule (5) of Rule 3, the proceeding for appointment of Headman is required to be followed as per the procedure prescribed in Schedule-V, may be for the appointment of Headman u/s 5 or Section 6. Therefore, the Schedule appended to the Rules has statutory authority to govern the procedure and prescribe the disqualification for any of the candidate.

5. We have considered the submission of the learned counsel for the parties and perused the record and the orders placed on record.

6. A bare perusal of the order-sheet dated 7th August, 1997 Annexure-1 make it clear that the appellant submitted application u/s 6, for appointment as village Headman and Section 6 is a provision for making application for appointment of village Headman on the basis of hereditary right. The respondent-writ petitioner submitted application u/s 5, obviously because of vacancy created due to removal of his father from the post of Headman due to his personal disqualification incurred by the father of the appellant. The application filed by the appellant was converted into application u/s 5 application by the order dated 3rd March, 1997 and specifically it has been decided by the Sub-Divisional Officer that now both the applications will be treated to be application u/s 5 of the Act of 1949. Reason for not entertaining the appellant's application u/s 6 was obvious, as the appellant's father himself lost his right to the post of village Headman and had no serving right with him at the time of his death which could have devolved upon his successor. Therefore, learned Sub-Divisional Officer was right in not entertaining appellant's application u/s 6 due to above reason which has been made clear in Schedule-V appended to the Rules of 1950. Origin of above disqualification is not only because of provision in Vth Schedule but Vth Schedule only recognized the pre-existing disqualification of heir due to lose of right of ancestor.

7. After said decision dated 3rd March, 1997, on conversion of the application of the appellant u/s 5, the proceeding continued and taken up on 8th April, 1997, 6th May, 1997, 5th June, 1997, 5th July, 1997, 31st July, 1997 and result was declared on 7th August, 1997. That order of conversion of the appellant's application u/s 6 to u/s 5 was never objected and challenged by the writ petitioner-respondent.

8. Be that as it may, even if any application is submitted by any of the Raiyat u/s 5 of the Act of 1949, according to the procedure, the competent authority Sub-Divisional Officer is required to convene the meeting of the 16 Anna Raiyats (means having 100% Raiyats' right). In that meeting, the Sub-Divisional Officer is required to ascertain the views of the Raiyats and in that meeting the consent of at least 2/3rd of the person recorded as Jamabandi Raiyat is required to be ascertained and when at least 2/3rd person recorded as Jamabandi Raiyat give their consent for appointment of the Headman of the village, the competent authority then notify nomination for appointment of Headman and then proceed to appoint Headman as provided under sub-rule (4) of Rule 3 of the Rules, 1950 read with sub-rule (2) of the Rule 3. Therefore, in any case, on application of the writ petitioner-respondent, the said competent authority had only right to convene the meeting to elect the village Headman. In that meeting, the appellant secured, as stated, 41 votes out of 43 present Jamabandi Raiyats and 2 went in favour of the writ petitioner-respondent. The question is whether in view of the disqualification incurred by the appellant's father as Headman and his dismissal on account of misconduct, the appellant lost his right to contest the election of village Headman. The learned Single Judge held that heir of Headman dismissed for misconduct could not have claim to any office. The learned Single Judge relied upon the provisions made in the Vth Schedule. The relevant portion of the Vth Schedule is as under:--

Dismissal of Headman

The power of dismissal rests with the Deputy Commissioner subject to an appeal to the Commissioner, Santhal Parganas. Headmen are liable to be dismissed for the following reasons, and the heir of headman dismissed for misconduct shall have no claim to the office:--

(1) On account of personal unfitness through excessive age; defective intellect or physical infirmity, provided that in cases of this kind, a headman during his lifetime may with the approval of the Deputy Commissioner, appoint his heir to act for him. Any misconduct on the part of heir will render him liable to lose his claim to succession on the death or resignation of the headman for whom he acts.

(2) On account of any proved fraud, violence, contempt of court or other grave misconduct or of such oppressive or inconsiderate treatment of the raiyats or gross neglect of their interest as may be considered to unfit him for the post.

(3) For destroying, damaging or failing to guard the common property and recorded rights of the village, or for collecting from raiyats in excess of the

settlement of the settlement rates.

(4) For failure without due cause to pay his village rents punctually or for alienating or attempting to alienate, without permission his jot which is security for the rent.

(5) The interest of a headman manjhi or mustafir is not transferable by sale or otherwise.

But in case where such interest has been sold through the Courts and where the right of the purchaser has never since been questioned, recognition should not be refused to the purchaser merely on the ground that the sale took place subsequent to the prohibition by Government of such sale.

9. Before analyzing the above, provision of "dismissal of headman" as provided under Schedule-V of the Rules, 1950, it will be appropriate to recapitulate that under the Act of 1949 still there is a provision of hereditary right vested in successor of the village Headman, which is clear from Section 6, subject to procedure which has been considered by us in the case of Sogen Murmu (supra) and when there is no village Headman then application can be submitted u/s 5 of the Act of 1949. The person has preferential right when one is claiming right to the post of village Headman as hereditary right u/s 6, which has been explained by us in the judgment of Sogen Murmu's case (supra) but on incurring disqualification and consequential dismissal of headman, whether is a disqualification for a descendant of disqualified Headman is the question?

10. A bare perusal of the relevant provisions of the Schedule-V quoted above will make it clear that the Headman can be dismissed for the misconduct, which may be misconduct as enumerated in Clauses (1) to (5) quoted above. From perusal of Clauses (1) to (5), it will be clear that these are the personal misconduct of a person holding the post of village Headman. There cannot be a penal provision which may punish the heir of any person and, therefore, for this simple reason alone, we may hold that a Headman, who has been dismissed, his descendants cannot incur any disqualification except the disqualification of claiming Headmanship as hereditary right. It appears that the meaning of the words "the heir of Headman dismissed for misconduct shall have no right to claim to office" as used in Vth Schedule and quoted by us may be misunderstood to mean that this disqualification is hereditary. This interpretation can be because of the only misinterpretation of the abovesaid words. For claiming a hereditary right, one is required to prove that at the time of death of his predecessor, the predecessor had right. If that right extinguishes before the death of the person in his lifetime of that person then there is no right vested in the person so as to devolve upon the successor upon the death of such person and because of this reason only even these words would not have been there in the Schedule-V specifically ("the heir of headman dismissed for misconduct shall have no claim to the office"), even then such Headman's descendant whose ancestor has been already dismissed from post of Headman prior to his death cannot claim any right by

devolution. These words can be only for the purpose of making the obvious thing more clear and is not making substantive provisions of disqualification. The otherwise interpretation that descendant of such disqualified person will lose his right as a villager of Raiyat may be against the public policy as no Court can punish a person who himself has not committed any misconduct. Even if the father of a person, who is a murderer, dacoit or has committed any much more serious offence, even then no right as of a citizen or a successor can be taken away because of the fault of his father and which has no relation with the right of the successor person, which is absolutely unconnected with the benefit which his father took by his misconduct. The interpretation suggested by the learned counsel for the writ petitioner-respondent gives rise a question that whether because of the misconduct of one Headman, his all generations, may be 100th generation, shall stand disqualified. Learned counsel said that, all will be disqualified. View of the learned counsel is due to misinterpretation of law and is not even literal meaning of the Schedule-V because, such disqualification is only meaning against hereditary right and not disqualification u/s 5. Another argument given by the learned counsel for the respondent-writ petitioner is that since word has been used "heir", therefore, this may be qualified for the one generation. Such interpretation is also absolutely strange interpretation and this suggests only that in the lifetime of one person his son will be disqualified but grandson will be qualified.

11. Be that as it may, any of the argument does not stand to any reasoning, much less to the sound reasoning. Therefore, we are of the considered opinion that the appellant's application filed u/s 6 of the Act of 1949, was converted into application u/s 5 of the Act of 1949, which was processed alongwith application of the writ petitioner/respondent filed u/s 5 and thereafter, complete procedure was completed and therein appellant secured 41 votes against respondent-petitioner's two votes and, therefore, the order passed by the learned Single Judge, for the reasons mentioned above, cannot be sustained and liable to be set aside and hence set aside and the orders passed by the authorities are maintained. The Letters Patent Appeal is allowed accordingly.