
(1982) 03 MP CK 0038

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 449 of 1981

Gram Panchayat, Kanwan and Another

APPELLANT

Vs

Francis Baria and Others

RESPONDENT

Date of Decision : 11-03-1982

Acts Referred:

Madhya Pradesh Panchayat Act, 1962 — Section 16
Madhya Pradesh Panchayat Adhiniyam, 1981 — Section 80(3)

Citation : AIR 1982 MP 198 : (1983) J LJ 27 : (1982) 27 MPLJ 257

Hon'ble Judges : K.N. Shukla, J;G.G.Sohani, J

Bench : Division Bench

Advocate : K.L. Sethi, for the Appellant; Solanki and S. Kulshrestha, Deputy Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Shukla, J.

This is a petition under Article 226 of the Constitution of India.

Petitioner No. 1 is a Gram Panchayat established and constituted under the provisions of the Madhya Pradesh Panchayat Ordinance, 1981 (now M. P. Panchayat Adhi-niyam, 1981). The term of the Panchas of Gram Panchayat, Kanwan was to expire on 28-4-1980 and, therefore, the State Government passed an order dated 11th Apr., 1980 appointing respondent No. 1 as Administrator till the constitution of the new Gram Panchayat. On coming into force of the Madhya Pradesh Panchayat Ordinance, 1981 (hereafter called as Ordinance) elections of the Gram Panchayat were held on 9-8-1981 and 21 persons including petitioner No. 2 were elected and co-opted as Panchas for the constitution of Gram Panchayat, Kanwan. Elections for the office of Sar-Panch and Up-Sarpanch were also held and petitioner No. 2 was elected Sarpanch of the Gram Panchayat. These elections were duly published and notified by the Collector vide notification dated 11-8-1981 (Annexure I) as per the provisions of the Ordinance. One of the elected Panchas namely Rajmal s/o Sagarmal filed an

election petition against the election of petitioner No. 2 before the Sub-Divisional Officer (respondent No. 2) who by his order dated 17-8-1981 stayed taking over of charge by him. However, on 25-8-1981 said Rajmal withdrew the election petition with the result that the Sub-Divisional Officer dismissed the same as withdrawn. The stay order was automatically vacated. Thereafter one Shantilal who was a nominated Panch preferred a revision against the order of the Sub-Divisional Officer u/s 313 of the M. P. Panchayat Act, 1962 (the repealed Act) before Collector, Dhar. The revision petition is still pending before the Collector.

Petitioners' grievance is that the Administrator (respondent No. 1) has refused to hand over charge to the petitioners even though the election petition has been dismissed and the stay order has been vacated. According to the petitioners, respondent No. 1 has no lawful authority to refuse to hand over charge and to continue as Administrator. Petitioners, therefore, seek a writ of mandamus against the Administrator, respondent No. 1 to hand over the charge of the office of Gram Panchayat Kanwan to petitioner No. 2 the elected Sarpanch thereof and a similar writ against respondents 2 and 3 to act in accordance with the provisions of the Adhiniyam and direct the Administrator to hand over charge to petitioner No. 2.

Return has been filed only by respondent No. 1 the Administrator of the Gram Panchayat. He has resisted the petition and the relief sought by the petitioners mainly on the ground that the election petition was illegally withdrawn by Rajmal Jain and a revision against the dismissal of the petition by the Sub-Divisional Officer is pending before the Collector. Till the decision of the revision by the Collector, petitioner No. 2 the elected Sarpanch is not entitled to take over charge from the Administrator and, therefore, no relief as claimed by the petitioners can be granted in his favour. Various facts about the invalidity of the election of petitioner No. 2 as Sarpanch have also been pleaded but they are not relevant for disposal of this petition. In fact learned Deputy Government Advocate squarely relied upon the plea that petitioner No. 2 was not entitled to take over as Sarpanch till the disposal of the revision pending before the Collector.

Having heard learned counsel we are satisfied that this petition has to be allowed. It was not disputed that petitioner No. 2 Pra-kashrao had been elected as Sarpanch in accordance with Section 15 of the M. P. Panchayat Adhiniyam, 1981. Respondent No. 1 was appointed as Administrator of the Gram Panchayat under the repealed Panchayat Act of 1962 by superseding it on 27-4-1980. The Administrator's term automatically came to an end as soon as the Panchayat was re-constituted after fresh elections. u/s 80 (3) (b) of the Adhiniyam he could exercise powers and duties of the Panchayat until the Panchayat was re-constituted. As soon as the Panchayat was re-constituted, as admittedly it was so re-constituted, he had no warrant for continuing in office nor had he the authority to refuse to hand over charge of the said office. By refusing to do so, for whatever reason, the Administrator interfered with the functioning of the

Panchayat in accordance with law.

The scheme of the old Act as well as the Adhiniyam is clear and it is meant to encourage functioning of the democracy at the grass root level lawfully. By no means can an Executive Officer try to deny an elected body its rightful powers unless warranted by Statute. Learned counsel for the respondents was unable to justify refusal of respondent No. 1 to hand over charge of office to petitioner No. 1 Gram Panchayat and petitioner No. 2 the Sarpanch thereof. Section 16 (1) enjoins the outgoing Sarpanch to hand over charge of his Office to the new Sarpanch. Sub-section (2) thereof empowers the prescribed authority (Sub-Divisional Officer) to direct the outgoing Sarpanch to hand over charge forthwith along with papers and property in his possession to the new Sarpanch. It was thus not open to the Administrator or the Sub-Divisional Officer to decline to act in accordance with law in handing over charge of office to the petitioners under the plea that a revision against the order of dismissal of the election petition against petitioner No. 2 was pending before the Collector. No authority of law was shown to us by which the Administrator could continue in office after the Constitution of the elected Panchayat and could refuse to hand over charge of office to the petitioners.

In the result the petition is allowed. A writ of mandamus be issued against respondent No. 1 to hand over charge of the office of Gram Panchayat, Kanwan to petitioner No. 2 immediately. A writ of mandamus be also issued against respondent No. 2, the Sub-Divisional Officer, Badnawar for taking immediate action u/s 16 (2) of the Adhiniyam for issuance of direction to respondent No. 1 to hand over charge of the office of the Gram Panchayat, Kanwan to petitioner No. 2 in accordance with law. Costs of this petition will be borne by the respondents. Advocate's fee Rs. 150/-. The outstanding amount of security deposit be refunded to the petitioners.