
(2009) 12 UK CK 0031
In the Uttarakhand High Court

Hari Singh Chilwal

APPELLANT

Vs

District Magistrate and Another

RESPONDENT

Date of Decision : 03-12-2009

Acts Referred:

Forest Act, 1927 — Section 28

Citation : (2010) 1 UD 78

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.—The petitioner is a duly elected "Sarpanch" of Forest Panchayat Badon in District Nainital. The petitioner has challenged the order dated 12th September, 2006, which has been passed by the Sub Divisional Magistrate, Dhari (Nainital), according to which Forest Panchayat Badon was constituted on 24.7.2006 and consequently there was a report of the Tehsildar, who had informed the S.D.M., Dhari that six out of nine members of this committee, who are called "Panch", are not satisfied with the work of the "Sarpanch" and consequently, they have resigned. As such, the S.D.M. Dhari was of the opinion that new elections of the management committee be constituted and vide the said letter dated 12th September, 2006, he has given his permission to hold new election of the committee of this Forest Panchayat Badon. The petitioner has challenged the validity, legality and propriety of this order. Vide an interim order dated 29.9.2006, the said order was stayed. The writ petition is now itself being disposed of finally.

2. Certain relevant provisions of the Indian Forest Act, 1927 (from hereinafter referred to as the Act) and the Rules framed therein known as Uttaranchal Panchayati Forest Rules, 2005 (from hereinafter referred to as the Rules) would be necessary. Under Chapter III Section 28 of the Indian Forest Act, 1927, there is a provision for formation of a village forest and the committee of management of such Village Forest. Section 28 of the Act reads as follows:

28. Formation of village-forests.-(1) The State Government may assign to any village- community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.

(2) The State Government may make rules for regulating the management of village-forests, prescribing the conditions under which the community to which any such assignment is made may be provided or other forest-produce or pasture, and their duties for the protection and improvement of such forest.

(3) All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to village-forests.

3. Consequently u/s 28(2) of the Act, the State of Uttarakhand has framed rules known as Uttaranchal Panchayati Forest Rules, 2005. Under Rule 3 of the Rules a Village Forest Panchayat can be constituted if an application is made in this regard by at least 1/5th of the adult residents of a revenue village and consequently, the Sub Divisional Magistrate of the area shall cause service of a notice in the concerned village under Rule 4 so that it is widely publicised and will also announce the same at some public place in the village as well as place neighbouring or adjoining the village or villages and in all the villages recorded in a forest settlement as having rights of concessions in the area concerned, specifying the situations and limits of the area applied for and the purpose for which it is required. In short, under Rule 4 read with Rule 5 of the Rules firstly a Village Forest Panchayat is demarcated and notified and consequently thereafter under Rule 7 a general body is constituted which in turn elects the management committee. Rule 7 provides that the entire members of the village, who are covered under the U.P. Panchayat, shall assemble at a convenient place, which shall be called "general body" and this "general body" will elect nine adult members as "Panch", who will in turn elect a "Sarpanch". A village forest panchayat has a special bearing in the hill areas inasmuch in the hills, the rights of the villagers are not confined to only their village land, but they have certain limited rights on the forest land as well. It is for an effective management of the forest area adjoining these villages as well as in recognition of the rights of the villagers of the forest area and together with a view of reforestation that these village forest panchayats are constituted. The duties of the management committee of the forest panchayat are given under Rule 19 of the Rules, which reads as follows:

19. Duties of Management Committee:

The duties of a Management Committee within its jurisdiction shall be-

(a) to prepare a five year micro plan and Annual implementation Plan for the village forest/Panchayati Forest and submit it to Forest Range Officer and Sub-Divisional Forest Officer for approval and sanction respectively;

(b) to protect the trees from damage and to use only those trees, which have

been marked silviculturally for felling by the official nominated by the Divisional Forest Officer;

(c) to ensure that no land of village Forest/Panchayati Forest area is encroached upon;

(d) to fix boundary pillars, to make boundary walls and to protect it;

(e) to abide by the directions and executive orders passed by the Divisional Forest Officer regarding conservation and improvement of forests;

(f) to utilise the forest produce, to the best advantage of the right holders, keeping in view the silvicultural health and sustainable resource management of the village Forest/Panchayati Forest;

(g) to protect the forests from illicit felling of trees, lopping, fire and other damages and conserve them;

(h) to ensure that catchments areas of water sources are adequately wooded with appropriate tree and vegetation to maximize rain water conservation;

(i) to promote natural regeneration through management of forest fires and controlled grazing by excluding from grazing at least one fifth area annually by rotation;

(j) to ensure conservation of wild life;

4. The powers of the Management Committee are given under Rule 20 of the Rules, which reads as follows:

20. Powers of Management Committee:

Management Committee shall have the status of a forest officer and shall exercise the following powers for the area entrusted to it:

(a) To compound forest offence committed within the Village Forest/Panchayati Forest for a sum of money up to the limit of Rupees five hundred, for each offence by way of compensation according to the nature of offence;

Provided that if the offender is prepared to compound the case, the Management Committee shall realize the full market value of the property involved in the offence, as assessed by an officer, not below the rank of a Divisional Forest Officer/Conservator of Forests concerned, at the prescribed scheduled rate in addition to the compensation referred to in this rule;

(b) To institute and defend suits and proceedings in respect of claims arising under these rules;

(c) To regulate grazing and admission of the cattle into the Village Forest/Panchayati Forest;

(d) To compound cattle, trespassing into the Village Forest/Panchayati Forest in

accordance with the Cattle Trespass Act, 1871;

(e) To exclude, from any or all privileges in the Village Foest/Panchati Forest, any person, whom the Management Committee may for sufficient grounds considers to be responsible for any fire or damage to the Village Forest/Panchayati Forest area or who does not obey order issued by the Management Committee in exercise of the powers conferred on it;

(f) To seize all tools or weapons used in committing forest offences within the area of Village Forest/Panchayati Forest;

(g) To make local sale of forest produce without detriment to forest and to issue permits and charge fees for grazing or cutting grass or collection of fallen fuelwood, with prior approval of the Divisional Forest Officer if considered necessary, and made for the bonafide use of the right holders, provided further that the permission of the Divisional Forest Officer would not be necessary for allowing grazing, or cutting of grass or collection of fallen fuelwood;

(h) To extract and sell resin in accordance with the provisions of the Uttar Pradesh Resin and other Forest Produce (Regulation of Trade) Act, 1976 (as applicable to the Uttaranchal);

(i) Management Committee, after getting approval from the General Body, may enter into contract with Self Help Group or a member as a group or individual member (as the case may be) for proper management, improvement, protection and development of the Village Forest/Panchayati Forest in its jurisdiction.

5. The "Sarpanch" of the Village Panchayats, who would be equivalent to the Chairman of the Management Committee, would have certain special powers which are given in Rule 25 of the Rules.

6. Now, the Management Committee of Forest Panchayat known as Forest Panchayat Bodon in District Nainital was elected by the general body on 24.7.2005, which consists of nine members i.e. "Panch" and these Panches elected the present petitioner as their "Sarpanch" on 24.7.2005.

7. According to the petitioner due to "party Bandi" or political rivalry in the village, the impugned order has been passed, which he asserts is in violation of the provisions of the Rules.

8. A perusal of the rules clearly shows that there is no provision for resignation of the members of the Management Committee of a Forest Panchayat though Rule 26 provides for "resignation of Sarpanch" according to which resignation has to be addressed to the Sub Divisional Magistrate of the area. The impugned order of the Sub Divisional Magistrate suggests that six out of nine members have resigned and consequently he called for a fresh election. This is clearly in violation of the Rules. In an eventuality where members of a management committee have resigned, the only option left for the Sub Divisional Magistrate was to have reported the matter to the Collector, who would have suspended the

Management Committee under Rule 43 and consequently thereafter proceeded under Rule 46 for reconstitution of a new management committee under Rule 7. Rules 43 and 46 read as follows:

43. Suspension, supersession or Dissolution of Management Committee:

The Collector may suspend, supersede or dissolve any Management Committee if in his opinion such Management Committee abuses its position or is found negligent in the discharge of duties imposed upon it under these Rules or if its continuance is not considered desirable in public interest.

46. Re-constitution of Management Committee:

It shall be obligatory on the part of Collector to reconstitute new Management Committee within a period of six months from the date of supersession or dissolution of a Management Committee under Rule 43.

9. These powers are only vested with the Collector. Instead, however, in the present case, the Sub Divisional Magistrate, Dhari has taken it upon himself these powers and has proceeded under Rule 7 of the Rules. There seems to be, therefore, a clear violation of the Rules. Moreover, the impugned order further suggests that six out of nine members of the committee of management, who have so resigned, are not satisfied with the work of the "Sarpanch" i.e. the present petitioner. In such an eventuality, the right procedure for the S.D.M. would have to have proceeded under Rule 17 of the Rules for removal of "Sarpanch" by calling vote for "no confidence". Rule 17 of the Rules reads as follows:

17. Removal of Sarpanch or members by vote of no-confidence:

(a) The Sarpanch of a Management Committee maybe removed from office if a vote of no confidence is moved, under prior intimation in writing to the Sub-Divisional Magistrate by not less than one third of the total members of the Management Committee and passed by a majority of not less than two third of the total members of the Management Committee.

(b) If majority of the Management Committee members consider it necessary to remove any individual member, the Sarpanch shall report the fact to the Sub-Divisional Magistrate. An Officer nominated by the Sub-Divisional Magistrate shall proceed to the village and shall ascertain the wishes of persons entitled to vote and shall act accordingly. If a member is removed the officer nominated by the Sub Divisional Magistrate shall immediately call on the voters assembled to elect a new member for the expired portion of the term of the member so removed and send intimation to the Sub Divisional Magistrate for approval.

(c) General Body may bring a proposal of no confidence against Sarpanch or any member of the Management Committee after passing a resolution with majority vote. A written information of such proposal, signed by not less than one fifth of

the members of General Body, will be given to the Sub Divisional Magistrate at least 15 days before the meeting of General Body. The Sub Divisional Magistrate or an officer nominated by him shall proceed to the village and shall ascertain the wishes of persons entitled to vote and shall act accordingly. If Sarpanch/Member is removed, the Sub Divisional Magistrate shall act according to the provisions of Rule 17(b) for the unexpired portion of the term of the Sarpanch/Member so removed.

10. This procedure has also not been adopted. Therefore since the order impugned is illegal, it deserves to be quashed and the writ petition is liable to be allowed.

11. Further perusal of Rule 15 of the Rules becomes necessary. Rule 15 reads as under:

15. Terms of the Sarpanch and member of the Management Committee:

(a) The term of the Sarpanch and members shall be five year and management Committee shall have the power to fill up casual vacancies for the rest of the term thereof in accordance with the procedure laid down in rules 7 to 9.

(b) Preparation for the election to the Management Committee shall be initiated by the Sub Divisional Magistrate at least six months before the expiry of the term of existing Forest Panchayat constituted under the earlier arrangement and Management Committee constituted under these Rules, as the case may be, under intimation to the Collector and Divisional Forest Officer.

(c) In case the term of Management Committee expires and election for constituting new Management Committee could not be held for some unavoidable, reasons, Collector shall have the power to extend the term of Management Committee for a period of six months and during this extended term he shall ensure the election of the Management Committee.

12. As per Rule 15 of the Rules, therefore, the term of the "Sarpanch" and the members of the Management Committee shall be five years, which in the present case will come to an end on 23rd July, 2010. Moreover, Rule 15 (b) of the Rules provides that the preparation for the election to the Management Committee shall be initiated by the Sub Divisional Magistrate at least "six months" before the expiry of the term of the existing Forest Panchayat constituted under the earlier arrangement and the management committee constituted under these rules, as the case may be. Moreover, Rule 46 of the Rules provides that in case of dissolution or supersession of a management committee, the responsibility will be of the Collector to reconstitute a new management committee within a period of six months from the date of such supersession or dissolution. Under these provisions, therefore, since the term of the management committee is going to end on 23rd July, 2010, which is less than 8 months from today, the Collector, Nainital as well as the Sub Divisional Magistrate, Dhari are hereby directed to proceed and make preparation for election of the new management committee of

the forest panchayat which in any case, must be initiated at least by 23rd January, 2010.

13. On the aforesaid set of facts and in the light of the law as referred above, the writ petition of the petitioner is liable to be allowed and is allowed. Order dated 12th September, 2006 is hereby quashed. The petitioner is continuing as "Sarpanch" on the strength of an interim order dated 29.9.2006 granted by this Court, however, while allowing the present writ petitions, directions have also been given to the Collector, Nainital to immediately start the process by January 23, 2010 for constitution of a new village panchayat.

14. No order as to costs.