
(1986) 08 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2734 of 1984

Hridayeshwar Singh Chauhan

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 01-08-1986

Acts Referred:

Madhya Pradesh Panchayat Act, 1981 — Section 32, 37(2), 81

Citation : (1987) JLJ 566 : (1986) MPLJ 605

Hon'ble Judges : J.S. Verma, C.J;B.M. Lal, J

Bench : Division Bench

Advocate : D.M. Dharmadhikari, for the Appellant; M.V. Tamaskar, Addl. A.G. for State, for the Respondent

Final Decision : Dismissed

Judgement

B.M. Lal, J.

This is a petition under Articles 226 and 227 of the Constitution of India.

By this petition the petitioner who is the elected President of the Janpad Panchayat, Kareli, District Narsinghpur, Madhya Pradesh has challenged the dissolution of the Janpad Panchayat, Kareli vide order dated 22-9-84 (Annexure-B), passed u/s 81 of the Madhya Pradesh Panchayat Act, 1981 (hereinafter referred to as the "Act") by the respondent No. 1 and appointing Administrator/ Chief Executive Officer of the Janpad Panchayat. The petitioner further challenges the resignation of the twelve panchas.

The facts, in narrow compass, are as follows: In the last general elections of the panchayats, which took place in the year 1984, the petitioner was elected as the President of the Janpad Panchayat, Kareli and he assumed office on 18-6-84. It is not disputed that the Janpad Panchayat, Kareli consisted of total 22 members and the quorum, as prescribed u/s 37(2) of the Act is half of the total number of the members constituting the Panchayat. On 18-9-1984 no confidence motion was tabled against the petitioner in which out of 22 members, 10 members cast

their votes against the petitioner and as such the no confidence motion fell by 12 against 10 votes. Having failed in their attempt in ousting the petitioner from the office of the President, 12 members tendered their resignation before the competent authority. On account of resignation, the respondent No. 1, the State of Madhya Pradesh had to take action u/s 81 of the Act for dissolving the Panchayat as large number of vacancies occurred due to the resignation of 12 members. This has given rise to file the instant petition before this Court.

Having heard Shri D.M. Dharmadhikari, learned counsel for the petitioner and Shri M.V. Tamasker, Additional Advocate General for the respondents, we have formed the opinion that this petition has no substance and deserves to be dismissed.

Shri D.M. Dharmadhikari, learned counsel for the petitioner has attacked the factum of resignation of 12 members of the Janpad Panchayat on the ground inter alia that it was not a valid tender before the competent authority as prescribed u/s 32 of the Act and the Rules framed thereunder. Therefore, in consequence thereof passing of any order u/s 81 of the Act, is illegal. In support of the contention it was argued that u/s 32 of the Act, which reads thus:

32. Resignation by the office bearers of Panchayat. - (1) A Panch of a Gram Panchayat or a member of Janapada Panchayat other than those specified in clause (iv) of sub-section (2) of Section 19 or co-opted member of a Zila Panchayat may resign his office by giving notice in writing to that effect to the Sarpanch or President or Chairman as the case may be.

(2).....

(3).....

a notice in writing relating to the resignation of the members has not reached to the President u/s 32 of the Act, Rules have also been framed and these Rules are called the Madhya Pradesh Panchayat (Resignation by Office Bearers) Rules, 1982 (hereinafter referred to as the "Rules"). Rule 5 of the Rules reads as under:

5. Any member of Janapada Panchayat, other than those specified in clause (iv) of sub-section (2) of section 19 or coopted member of Zila Panchayat, may resign his office by giving notice in writing to that effect to the President of the Janapada Panchayat or Chairman of the Zila Panchayat, as the case may be and his resignation shall take effect on the date of its receipt by the President or Chairman, as the case may be.

Thus Rule 5 of the Rules envisages that a member of a Janpada Panchayat may resign by giving notice in writing to that effect to the President and that his resignation shall take effect from the date of its receipt. By demonstrating the above referred two provisions of that Act and the Rules, Shri Dharmadhikari argued that there was no valid resignation tendered or received by the petitioner at the instance of any member within the meaning of section 32 of the Act read with Rule 5 of the Rules.

The facts of the case reveal that the 12 members tendered their resignation before the petitioner (President) but it was he who did not accept the resignation. Therefore, under the compelling circumstances, the resignations had to be submitted before the Chief Executive Officer for their being valid tender before the petitioner. The Chief Executive Officer at once arranged to send the same resignations to the petitioner through special messengers, Shri Manoj Nema, Clerk and Dharamdas Sen, peon. These two persons went to the village Amgaon where the petitioner resides. On 18.09-84 till 9 p.m. the petitioner was not available. However, when the petitioner came at about 9.30 p.m. the resignations of 12 members were submitted to the petitioner who after looking into them, went inside the house and told the clerk Shri Nema and peon Dharamdas that he would be coming afterwards. But, despite repeated requests made by the clerk and the peon, he did not come out of his house and it was informed to these two persons that the petitioner had gone to sleep. Under these circumstances, the clerk and the peon came back late in the night.

In the light of the aforesaid facts if we look into the provisions of sub-section (1) of section 32 of the Act and the Rule 5 of the Rules, we do not see any legal impediment that the resignations were not tendered by the members to the petitioner President, a legal authority competent to accept it. The word "tender" is common to both in English and French. In Latin it is "offeree" and in that sense and with that Latin expression, it is always used in the common law. The import of section 32(1) of the Act and Rule 5 of the Rules, requires that the resignation must be tendered by a member to the President of the Janpada Panchayat.

In the instant case, the resignations tendered by the members, under the aforesaid circumstances of the case, were given to the Executive Officer who in his turn immediately sent them on to the President i.e. the petitioner through special messengers. Therefore, it cannot be said that it was not a valid tender of resignations which became effective the moment they were received by the Petitioner, the President of the Janpada Panchayat and thus, there appears no legal flaw in it and as such the resignations were tendered in the prescribed manner.

Shri Dharmadhikari laid much stress and vehemently argued that the resignations were not received by the President of the Janpada Panchayat. But, a perusal of Annexure R-I i.e., report dated 18-9-1984 submitted by Shri Manoj Nema, spells out that the resignations did reach to the petitioner at 9.30 p.m. on 18-9-1984, but the petitioner thereafter on one pretext or the other avoided to give anything in writing to Shri Manoj Nema, to the effect that he had received the resignations. The requirement of rule 5 of the Rules is that the resignation must reach to the President of the Janpada Panchayat and in the instant case the resignations of the 12 members did reach the President.

Shri Dharmadhikari next contended that the resignations of the 12 members were not made voluntarily by them.

In this context it is necessary to refer that the word "resignation" is a word of art having legal connotation which describes certain legal results. It is characteristically the voluntary surrender of a position by one resigning, made freely and not under duress, as the word, as defined generally has meaning the act of resigning of giving up, as a claim, possession or position. In the instant case, the resignations, so tendered, do indicate that the 12 members had resigned or given up their office of membership of Janpada Panchayat, Kareli.

As to the contention that the resignations were not voluntarily made, a perusal of the affidavits filed by the petitioner alongwith the petition, does show that the 12 members did tender their resignation, but later on, it appears that due to party politics, in order to fulfil his desire to continue in the office, the petitioner tried to obtain affidavits of certain persons who had tendered their resignation, to the effect that they had made their resignations under mis-representation. The fact relating to mis-representation cannot be investigated in this petition because the petitioner has not made them a party in the petition and therefore, in their absence, no such inquiry could be held. Thus, we are of the opinion that the resignations as tendered were valid resignations in all respects as per Rule 5 of the Rules.

Shri Dharmadhikari further argued that Shri Ajay Narain Mushran, the then Forest Minister wielded his influence over those 12 members and got their resignations tendered. This contention has no substance at all. Had there been any truth in it, the petitioner ought to have impleaded Shri Ajay Narain Mushran in the array of respondents, but it appears because of the falsehood of the allegations, he

could not muster courage to implead him as a party and simply by naming him in the petition had tried to sling mud on him. For this reason alone we repel this submission and reprimand the petitioner to make such allegations in the petition.

It is next contended that before passing an order of dissolution of the Janpada Panchayat u/s 81 of the Act, the State Government was obliged to give opportunity u/s 80(2) of the Act. Having not given this opportunity, the order of dissolution vitiates.

Under the given circumstances, u/s 81 of the Act, the power of dissolution of the Panchayat remains purely administrative and, therefore, the action taken by the respondent No. 1 to dissolve the Panchayat cannot be questioned on the ground that it was taken without calling for the explanation from the Panchayat. In such cases where on account of the resignation or for any other reason if a large number of vacancies occurred, the Panchayat automatically becomes incompetent to function for want of requisite quorum as prescribed u/s 37(2) of the Act and in such a situation since the Panchayat itself does not remain in existence, the question of affording of opportunity of being heard to a non-existing panchayat, does not arise at all as required u/s 80(2) of the Act.

Therefore, in the above circumstances, exercise of power to dissolve the

panchayat u/s 81 of the Act becomes purely an administrative act and not judicial or quasi judicial act, so as to afford opportunity of being heard to the panchayat.

A perusal of section 81 of the Act envisages "there the provision of section 80 shall apply thereto" which means that under the given circumstances the Government is given power only to the extent to dissolve the panchayat simpliciter without complying with section 80(2) of the Act for the simple reason that a large number of vacancies occurred affecting quorum prescribed u/s 37 (2) of the Act on account of resignations, making the panchayat legally inactive and hence calling an explanation from the non-existing panchayat or legally inactive panchayat u/s 80(2) of the Act does not arise. Hence there is no force in this submission as well.

No doubt in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, and Awas Rahat Griha Nirman Sahkari Samiti Maryadit, Bhopal Vs. State of Madhya Pradesh, Bhopal and Others, , it has been specifically laid down that even in discharging administrative function, observance of the rules of natural justice is a must and an opportunity to be heard must be extended to the aggrieved party. But in the instant case the position is different. The Janpada Panchayat, Kareli, for want of proper prescribed quorum became functus officio as on account of valid tendering of resignations by its 12 members, a large number of vacancies were caused and thus the Panchayat did not remain in existence. In such a situation, affording of any opportunity to the non-existing panchayat does not arise and hence, in our opinion, the ratio laid down in A.K. Kraipak's case (supra) and A was Rahat Griha Sahpari Samiti's case (supra) is not applicable here in the peculiar circumstance of the case in hand. Therefore, while dissolving the Janpada Panchayat, Kareli and appointing Administrator/ Chief Executive Officer, rightly, the State Government has not afforded opportunity.

No other points were pressed.

For the reasons stated aforesaid this petition fails and is hereby dismissed. Counsel's fee Rs. 250/-, if certified.