

(1971) 07 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 77 of 1971

Indrajit Singh

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 30-07-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Panchayat Act, 1962 — Section 304(4)

Citation : AIR 1972 MP 30

Hon'ble Judges : S.M.N. Raina, J;N.C. Dwivedi, J

Bench : Division Bench

Advocate : K.S. Shrivastava, for the Appellant; J.P. Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

Raina, J.—This is a petition under Article 226 of the Constitution,

2. In the last general election of Gram Panchayat Barkheda Jagir the petitioner was elected as a Panch. Subsequently, the petitioner was duly elected as a Sarpanch of the said Gram Panchayat. On 23-1-1971 a "no confidence" motion was brought against the petitioner but it was thrown out by overwhelming majority vide minutes of the proceedings dated 23-1-1971 (Annexure TV). Soon after the petitioner received 8 letters purporting to be the resignations of eight Panchas vide Annexures "E" to "L". According to the petitioner these resignations were not voluntary and were improperly obtained by someone of the opposite party. The petitioner thereupon wrote to the Collector Guna that the resignations were not genuine and requested him to investigate into the matter. The Collector, however, did not take any action. On the contrary he recommended dissolution of the Gram Panchayat and it was accordingly dissolved by the State Government u/s 305 of the M. P. Panchayats Act, (hereinafter referred to as the "Act"), vide Annexure "S".

3. As a sequel to the dissolution of the Gram Panchayat the Government

appointed an officer known as "Panchayat Avam Samaj Seva Sangthak" to exercise the powers and to perform duties of the Panchayat under Clause (b) of Sub-section (6) of Section 304 read with Section 305 of the Act, (vide Annexure "T"). The contention of the petitioner is that under Subsection (4) of Section 304 read with Section 305 it was obligatory on the Government to give the Panchas a reasonable opportunity to show cause against the dissolution and the Government having failed to do so the dissolution is illegal. The dissolution has also been challenged on certain other grounds which will be considered during the course of this order. The petitioner has, therefore, filed this petition praying that the order of dissolution as well as the order appointing the officer to perform the functions of the Panchayat may be quashed.

4. In the return filed on behalf of the Government, it has been averred that the dissolution of the Gram Panchayat was according to law and the Collector was not bound to hold any enquiry into the voluntary nature of the resignations.

5. It was not disputed before us that the Panchayat was not given an opportunity to show cause against the dissolution. The contention of the Government, however, is that Sub-section (4) of Section 304 of the Act is not attracted in this case. In order to appreciate this contention it is necessary to examine the language of Section 305 of the Act which reads as follows:--

"Section 305:-- Dissolution of Panchayat in event of large number of vacancies:-- If at any time due to a large number of vacancies having occurred in a Panchayat. either simultaneously or in quick succession, the number of Panchas or members becomes less than the quorum fixed for such Panchayat under this Act, the State Government may dissolve such panchayat and thereupon the provisions of Section 304 shall apply thereto."

It is no doubt true that Section 305 is not happily worded. Section 304 provides for dissolution and supersession of a Panchayat for incompetence, persistent defaults in the performance of its duties or abuse of its powers. Evidently, Sub-sections (1), (2) and (3) thereof can have no application to dissolution of a Panchayat u/s 305. Similarly Sub-section (5) of Section 304 which deals with the extension of the period of supersession has no application to the dissolution of a Panchayat, u/s 305 of the Act. The question that remains for consideration is whether Sub-sections (4), (6) and (7) are applicable to the dissolution of a Panchayat u/s 305. The answer to this question depends on the interpretation of the words "and thereupon the provisions of Section 304 shall apply thereto" occurring in Section 305 of the Act.

5. Since it is obvious that all subsections of Section 304 are not applicable to the dissolution of a Panchayat u/s 305, the proper course was to specify particular sub-sections of Section 304 which were intended to apply to a dissolution u/s 305. As this has not been done, it has given rise to the present controversy. In our opinion, the word "thereupon" furnishes a key to the solution of the controversy. The Dictionary meaning of the word "thereupon" is "upon that" i.e.,

"on that being done" vide Short Oxford English Dictionary at page 2169. According to Black's Law Dictionary (4th Edn.) it means "following on," "in consequence of" and also "without delay or lapse of time." In 86 CJS 775 it is stated that the word "thereupon" has different uses and different meanings and in any given case the meaning which will be attributed to it will depend on the context on which it is found. Some of the meanings of the word as given therein are "following upon" or "in consequence of that."

6. Bearing in mind the context in which the word "thereupon" has been used in Section 305 it appears to be clear to us that it means "upon the dissolution of a Panchayat" or "in consequence of dissolution." It would, therefore, appear that Section 304 is attracted only after the Panchayat is dissolved and not before that. Provisions of Section 304 can conveniently be divided into two parts:--

(i) Provisions which relate to pre-dissolution action; and

(ii) Provisions relating to post dissolution action i.e. an action which has to follow immediately after the dissolution.

Keeping in view the appropriate meaning of the word "thereupon" in the present context as indicated above it would appear that only Sub-sections (6) and (7) of Section 304 of the Act are applicable to a dissolution u/s 305. Sub-section (4) of Section 304 cannot be made applicable to a dissolution u/s 305 because it relates to pre-dissolution action while u/s 305 the provisions of Section 304 are attracted only upon or after dissolution and not before that. We, therefore, hold that Sub-section (4) of Section 304 is not applicable to a dissolution of a Gram Panchayat u/s 305. and therefore, it was not necessary for the State Government to give the Panchayat a reasonable opportunity to show cause against the said dissolution.

7. The next point that was urged by the learned counsel for the petitioner was that even if Sub-section (4) of Section 304 is not applicable, the State Government was bound to hold some sort of enquiry and give the Panchayat an opportunity to be heard in this connection before deciding to dissolve it and that the action taken by the Government is illegal because it was taken in violation of principles of natural justice. We are, however, not impressed by this contention.

8. The principles of natural justice are attracted only where a person or a body is required to act judicially vide Constitutional Law of India by Seervai (1968 Edn. 686 . In Maina Bai Vs. State of M.P. and Another, it was held that the rules of natural justice are attracted only where the authority making the order acts judicially or quasi-judicially and not where it merely performs purely administrative function.

9. The learned counsel for the petitioner relied on the decision of the Supreme Court in Province of Bombay Vs. Kusaldas S. Advani and Others, but that decision is of no help to him. In paragraph 7 their Lordships observed as under:--

"This last statement overlooks the aspect that every decision of the executive

generally is a decision of fact and in most cases affects the rights of someone or the other. Because an executive authority has to determine certain objective facts as a preliminary step to the discharge of an executive function, it does not follow that it must determine those facts judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari."

The power to dissolve a Panchayat u/s 305 of the Act can be exercised by the Government only where it finds that due to a large number of vacancies either simultaneously or in quick succession; the number of Panchas has become less than the quorum fixed for such Panchayat under the Act. As pointed out by their Lordships the mere fact that the exercise of a certain power depends upon determination of an objective fact does not render the function a judicial or quasi-judicial one. It, therefore, follows that the mere fact that the Government has to determine whether on account of large number of vacancies the number of Panchas has become less than the quorum does not render the exercise of the power a judicial or a quasi-judicial function. This conclusion is reinforced by the fact that whereas in the case of dissolution u/s 304 the Government is required to give the Panchayat a reasonable opportunity to offer an explanation no such opportunity is to be given in case of a dissolution u/s 305 as pointed out above.

10. In *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, their Lordships while dealing with powers of the State Government to appoint an executive officer of a Municipality u/s 53-A of the C. P. & Berar Municipalities Act, 1922, held that the function which the State Government exercises u/s 53-A is administrative in nature. Section 53-A of the said Act reads as follows:--

"53-A (1) If a committee is not competent to perform the duties imposed on it or undertaken by it by or under this Act or any other enactment for the time being in force and the State Government considers that a general improvement in the administration of the Municipality is likely to be secured by the appointment of a servant of the Government as the executive officer of the committee, the State Government may, by an order stating the reasons therefore published in the Gazette, appoint such servant as the executive officer of the committee for such period not exceeding eighteen months as may be specified in such order.

(2)

(3)

(4)

(5)"

It would be pertinent to note that the aforesaid Sub-section (1) of Section 53-A requires that the Government should publish its reasons for appointing such an

executive officer. In spite of this their Lordships held the function to be administrative.

11. The learned counsel for the petitioner has cited a number of decisions, but it is not necessary to refer to all of them because in each case the exercise of a particular power has to be considered in the light of the provisions of the statute concerned, the nature of the powers and other matters connected therewith. The fact that the legislature provided for an opportunity for an explanation being called from the Panchas before its dissolution u/s 304 but not in the case of dissolution u/s 305 suggests that while the power u/s 304 is quasi-judicial in nature the power u/s 305 is purely administrative. Their Lordships drew a similar inference in *Province of Bombay Vs. Kusaldas S. Advani and Others*, . The following observations in para. 7 are pertinent:--

"It seems to me that the true position is that when the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed."

Similarly in *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, their Lordships compared the provisions of Section 53-A to those of Section 57 which imposed a duty on the Government to give a reasonable opportunity to the Committee to furnish an explanation before dissolving it. The absence of a similar provision in Section 53-A was considered as indicating that the power under that section was purely administrative.

12. The learned counsel for the petitioner invited our attention to a recent decision of the Supreme Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . It was observed in that case that the dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. Their Lordships observed in paragraph 13 that in order to determine whether the power is an administrative power or a quasi-judicial power, one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. If we apply the above test it would appear that the power u/s 305 has to be exercised only where on account of a large number of vacancies the Panchayat becomes unable to function on account of the number of Panchas being less than the quorum. Ordinarily, it is expected that there would be no controversy as to whether a large number of vacancies has occurred or not. A vacancy may arise either on account of death or resignation or otherwise. In either case usually the fact is patent and there is no controversy about it. If on account of a large number of vacancies the Panchayat becomes incompetent to function for want of quorum as prescribed by Sub-section (4) of Section 30 of the Act, the Government is expected to act promptly to dissolve the Panchayat and to reconstitute it by holding a fresh election. Such

a power appears to be purely administrative and not judicial or quasi-judicial and that is why no provision has been made requiring the State Government to call for an explanation from the Panchayat before exercising that power. Ordinarily, a Panchayat cannot give an explanation for the vacancies, for which it is in no way responsible. A vacancy does not arise on account of an act of a Panchayat and therefore there can be no question of calling an explanation from the Panchayat in this connection.

13. We, therefore, hold that the power of dissolving a Panchayat u/s 305 is purely administrative, and, therefore, the action taken by the Government to dissolve the Panchayat cannot be questioned on the ground that it was taken without giving the Panchayat an opportunity of being heard.

14. The only question that arises in this case is whether the Government was competent to dissolve the Panchayat and this depends on the question whether a large number of vacancies as contemplated by that Section had actually occurred. It is not disputed that the total strength of the Panchayat is 14. It is the case of the petitioner himself that three Panchas had originally resigned. The petitioner had himself represented that three Panchas had resigned vide Annexures A and B. It is also his case that eight Panchas had sent their resignations, vide Annexures E to L. It is not the case of the petitioner that these resignations did not bear the signatures of the Panchas concerned. His contention is that they are of no effect as they have been obtained by fraud. In support of this contention he has relied upon the statement of Ajodhya Prasad, Up-Sarpanch vide Annexure N and the affidavits of Buddha, Komalsingh and Bhabhutsingh vide Annexures O and P. The contention of the petitioner is that since he had represented to the Collector vide Annexure M that he had made enquiries from the Panchas concerned and had come to know that the resignations have been obtained from them by force and, therefore, an enquiry should be held into the matter. The grievance of the petitioner is that the Gram Panchayat was dissolved without any such enquiry.

15. As pointed out above there is no provision for an enquiry before dissolving a Panchayat u/s 305 of the Act. u/s 26 of the Act a Panch may resign his office by giving notice in writing to that effect to the Sarpanch. It is the case of the petitioner himself that he had received resignations and it is also not disputed that these resignations bear the signatures or thumb impressions of the Panchas concerned. These resignations are, therefore, prima facie valid and they took effect from the day they were received by the Sarpanch. The Sarpanch or the Panchayat has no jurisdiction to hold an enquiry into the matter and to accept or reject the resignations because a resignation takes effect automatically from the time it is received by the Sarpanch. Thus the fact that the petitioner or the Panchayat allowed Panchas concerned to participate even after they had tendered their resignations is immaterial and is of no consequence.

16. If the resignations were obtained from the Panchas concerned by fraud or force we would expect the Panchas themselves to approach the Collector or other

authorities in this connection or to institute proceedings for a declaration that the resignations having been obtained by fraud were not binding on them and were as such of no legal effect. It seems the Panchas themselves have not at all cared to move in the matter. They did not join the petitioner in this petition and were not even impleaded as non-petitioners. It is no doubt true that the petitioner can question the dissolution himself without joining the other Panchas, but the question whether the Panchas resigned voluntarily or not cannot be decided behind their back.

17. The question whether the resignations tendered by the Panchas were obtained from them by fraud or force is a question of fact, the burden of proving of which lies heavily on the petitioner. This being a disputed question of fact this Court does not consider it proper to go into it particularly because the Panchas concerned are not parties to this petition.

18. Since it is not disputed that the resignations bear the signatures of the Panchas concerned, they are prima facie valid and the action taken by the Government on the basis thereof also appears to be prima facie valid. The petitioner is, therefore, not entitled to challenge the order of dissolution in these proceedings.

19. In the petition the action of the Government was also challenged as mala fide, but this point was not pressed before us. We are also unable to draw any inference to this effect from the material on record.

20. The petition, therefore, fails and is hereby dismissed. We, however, make no order as to costs as the question whether the resignations are voluntary cannot be conclusively determined in these proceedings.