
(2007) 08 JH CK 0052
In the Jharkhand High Court

Jakir Hussain and Another

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 06-08-2007

Acts Referred:

Constitution of India, 1950 — Article 243, 243A, 243M, 243N

Citation : (2007) 4 JCR 120

Hon'ble Judges : M. Karpaga Vinayagam, C.J; Narendra Nath Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—In this writ petition, the petitioners have made the following prayers : (i) for declaring the provisions of Section 8 of the Jharkhand Panchayat Raj Act, 2001 (hereinafter to be referred as the "Panchayat Act") ultra vires, illegal and beyond the legislative competence of the State of Jharkhand, being contrary to the provisions contained in Part-IX of the Constitution of India; (ii) for declaring Rule 5(Ga) of Jharkhand Gram Sabha (Gathan, Baithak Ki Parkriya Ewam Kamkaj Ka Sanchalan) Niyamawali, 2003 (hereinafter to be referred as "Rule 2003") ultra vires and beyond the competence and jurisdiction of the State Government; and (iii) for quashing Letter No. 266 dated 14th February, 2006 addressed to all the Deputy Commissioners, whereby guideline has been issued for conducting the meeting of Gram Sabha in non-scheduled areas, providing for elections of persons to preside over the meetings and to act as a Pradhan in the Gram Sabha, being contrary to the provisions of the Constitution of India and Section 8 of the Panchayat Act.

2. Petitioner No. 1, Jakir Hussain, happens to be the Member of Childag Gram Sabha within Childag Panchayat, whereunder, according to him, there are four Gram Sab-has, namely, Simalia, Lalgarh, Soso and "Childag. Petitioner No. 2, Rajani Kumar Mahto, is a member of Gram Sabha of village Gagi.

3. The main controversy, which led to this writ petition, is as to who will preside

over the meetings of the Gram Sabha, which, according to Article 243(b) of the Constitution of India, is a body consisting of persons registered in the electoral rolls, relating to a village comprised within the area of Panchayat of the village level. The said Article 243 provides various definitions and is the opening provision of chapter "panchayat" in Part IX of the Constitution of India.

4. Part-IX of the Constitution was inserted by the Constitution (73rd Amendment) Act 1992 with effect from 1st June, 1993. The newly inserted Part-IX of the Constitution provided for establishment of Panchayats at the village level, intermediate level and district level. The provisions of newly added Part-IX of the Constitution are not made applicable in the "Scheduled Areas and Tribal Areas", but the parliament has been authorized to extend the provisions of this part to the "Scheduled Areas" subject to such exception and modification, as may be specified in such law.

5. In 1996, the Parliament extended the provisions also to the "Scheduled Areas" by a legislation, known as Panchayats (Extension to the Scheduled Areas) Act, 1996, which is commonly called as "PESA".

6. The State of Jharkhand enacted the said Jharkhand Panchayat Raj Act, 2001 for implementing the provisions of Part-IX of the Constitution of India and for establishment and functioning of Panchayats in the State of Jharkhand.

7. Section 8(i) and (ii) of the Panchayat Act provide that the meetings of the Gram Sabha shall be presided over by the "mukhia" and in his absence of "Up-mukhia". In absence of both, meetings shall be presided over by a person elected by a majority of votes by the members of the said Gram Sabha.

8. Section 8(iii) of the said Panchayat Act provides that the meetings of the Gram Sabha in the "Scheduled Areas" shall be presided over by a member of Scheduled Tribe, who is neither a mukhia nor Up-mukhia nor a member of the concerned panchayat, rather the meetings of the said Gram Sabha shall be presided over by a person, who, according to the custom, is recognized as Gram Pradhan; such as Manjhi, Munda, Pahan, Mahto or by whatever name he is known, or by the person proposed by such Gram Pradhan or by the person nominated or supported by general consensus.

9. Under the powers conferred by the said Panchayat Act, the State Government framed a Rule for conducting the meetings of Gram Sabha. The said Rule is known as "Jharkhand Gram Sabha (Gathan, Baithak Ki Parkriya Evam Kamkaj Ka Sanchalan) Niyamawali, 2003". In the said Rule, similar provisions for conducting the meeting and for presiding over the meetings of Gram Sabha have been made. The said provisions of Section 8 as also Rule 2003 and the impugned letter issued by the Principal Secretary to the Government, Panchayati Raj Department, which has been issued in the line of the provisions made in the said Panchayat Act and Rule 2003, have been sought to be assailed and declared as ultra vires to Article 243(b) of the Constitution of India.

10. The grounds, challenging the provisions of Section 8 of the said Panchayat Act and Rule 2003 as also the impugned letter dated 14th February, 2006, are as follows:

i. Article 243(b) of the Constitution of India defines Gram Sabha, which means a body consisting of persons registered in the electoral rolls relating to a village. From the definition, it is clear that the Gram Sabha is an independent body consisting of persons registered in the electoral rolls of a village.

ii. Article 243A of the Constitution of India empowers the State Legislature only to define the powers and functions of Gram Sabha, but the State Legislature has not been empowered to make law as to who will preside over the meetings of the Gram Sabha.

iii. Part-IX of the Constitution of India has been brought by way of 73rd Constitutional Amendment with the object to strengthen the roots of democracy at the grass-root level and in that view, the Gram Sabha has been entrusted to formulate various schemes for development at the village level and also for all-round development of the villages and/or its residents, keeping in view the basic requirements and necessities.

iv. In view of the said constitutional provision, it is clear that the Gram Sabha has been given absolute freedom in respect of the mode and the manner in which it will function.

v. Imposition of Mukhia and Up-Mukhia to preside over the meetings of Gram Sabha is illegal, unconstitutional and contrary to the letters and spirit of Part-IX of the Constitution.

vi. Gram Sabha is itself a self-contained independent and autonomous unit and outsider cannot be thrust upon to preside over the meetings of such Gram Sabha.

vii. A panchayat may consist of several Gram Sabhas, but the Gram Sabha has to function independently.

viii. Section 4(f) of the PESA provides that every Panchayat at the village level shall be required to obtain from the Gram Sabha certification of utilisation of funds by the panchayat for the plan, programme and project referred to in Clause 4(e) of the PESA.

ix. The provisions of Section 8 of the Panchayat Act are contrary to the said provisions and ultra vires to Part IX of the Constitution and contrary to Rule 2003, which contains the similar provisions.

x. The State of Jharkhand has issued impugned letter dated 14th February, 2006 addressed to all the Deputy Commissioners, directing them to issue appropriate implementation of the provisions of the Panchayat Act stating, inter alia, that since there has been no election for Panchayats at village level till date in the State of Jharkhand, the persons are required to be elected in order to preside over the meetings of Gram Sabha in non-scheduled areas and to act as Pradhan

of the said Gram Sabha. The impugned letter is violative of the provisions of the Constitution and contrary to the provisions of Section 8 of the Panchayat Act. Such directions are beyond the competence/jurisdiction of the State Government and the same is liable to be quashed.

11. The State of Jharkhand contested the writ petition. In its counter-affidavit filed on behalf of respondent Nos. 1 and 2, it has been stated, inter alia, that the State Legislature has enacted the Panchayat Act in accordance with the provisions of the 73rd Constitutional Amendment and also under the provisions of PESA 1996. Part-IX of the Constitution is made applicable in the "Scheduled Area" by the PESA 1996.

12. It has been further stated that the provisions have been made in the Panchayat Act for holding a meeting of the Gram Sabha and for presiding over the same by mukhia of the concerned Gram Panchayat and in his absence by up-Muk-hia or in absence of both, by the member of the Gram Sabha elected for that purpose by majority of votes by the members present. Since the Panchayat Election has not been held in the State of Jharkhand till date, guideline has been issued by Letter No. 266 dated 14th February, 2006 for holding the meetings of Gram Sabha provisionally. The Panchayat Act, PESA 1996 and the impugned guideline issued by Letter No. 266 dated 14th February, 2006 are well within the provisions and power provided under the Constitution and are intended to achieve the constitutional object and there is no lack of competence and jurisdiction or any infirmity, as has been alleged by the petitioners. Mukhia and Up-Mukhia are elected by the members of all the Gram Sabhas of the Panchayat and the Gram Sabhas are the part of Panchayat Raj System. A Gram Sabha is to co-ordinate with the panchayat for the proper functioning of the Panchayat Raj, as provided by the 73rd Constitutional Amendment. Thus, there is no substance in the petitioners' allegations and contentions made in the writ petition and the petitioners is without any merit and is liable to be dismissed.

13. In order to appreciate the rival stands and contentions of the parties, it is necessary to notice and discuss the relevant provisions of the Constitution, particularly, the provision of Article 243(b), which is said to be violated by Section 8 of the Panchayat Act as well as by the impugned letter dated 14th February, 2006.

14. Article 243 is the opening provision of Part-IX of the Constitution, which deals with the "panchayat" etc. Article 243(b) defines Gram Sabha as follows:

"Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat of the village level.

Article 243A provides for power and functions of Gram Sabha, as under:

243A. Gram Sabha. - A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may by law, provide.

Article 243M provides for exclusion of certain areas, as:

243M. Part not to apply in certain areas.

Article 243N provides for continuance of existing laws in Panchayats, which is quoted hereunder:

243N. Continuance of existing laws and panchayats. - Notwithstanding anything in this Part, any provision of any law relating to panchayats in force in a State immediately before commencement of the Constitution (Seventy-third Amendment) Act, 1992, which is inconsistent with the provisions of this part, shall continue to be in force until amended or repealed by a competent Legislature, other competent authority or until the expiration of one year from such commencement whichever is earlier;

Provided that all the Panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each house of the Legislature of that State.

15. It is clear from the provisions of Article 243(b) of the Constitution of India that Gram Sabha is a body consisting of persons registered in the electoral roll relating to a village comprised within the area of Panchayat at the village level.

16. Mukhia and Up-Mukhia are the elected representatives of the whole Panchayat of which the Gram Sabha of village is a nucleus. Obviously, mukhia and up-muk-hia, if present in a Gram Sabha of a village, being superior elected representatives have precedence over a person elected by the Gram Sabha.

17. Section 8 of the Panchayat act also authorizes mukhia and up-mukhia as Presiding Officers of the meetings of the Gram Sabha. Mukhia being the head executive of the Panchayat has higher elected hierarchy than the Upmukhia or over any other elected representative of the village and if the mukhia is present in the meeting, he has priority to preside over the meeting of the Gram Sabha. In absence of mukhia, Up-Mukhia, who is next to the mukhia, having superior position over any other elected representative of particular village/Gram Sabha, has got precedence over such representatives at the village level. In absence of Mukhia as well as Up-Mukhia, a person is to be elected by majority of votes by the members of Gram Sabha for presiding over the meetings of the Gram Sabhvi. In the villages falling within the "Scheduled Area", where there are customs of election of village officials like Manjhi, Munda, Pahan, Mahto etc. They are accepted and recognised as village heads and any meeting in such village is either presided over by the said elected/selected village official(s) or by the person(s) nominated by him or by a person nominated/supported by majority of persons present in the meeting. The said provisions have been duly codified and found expression in Section 8 of the panchayat Act; which are in conformity with the logical reasons and legal provisions. The said Section 8 does not offend any

provision of Part-IX of the Constitution, which includes Articles 243(b), 243A, 243M and 243N.

18. Almost the same provision and expression have been made in Rule 2003. The said Rule has been framed u/s 133 of the said Panchayat Act, which provides for the procedure and the guideline for holding the meetings of the Gram Sabha, including fixing date, time and place of the meeting, mode of giving notice, producing relevant records for inspection of the decision taken in the meeting, maintaining and holding the funds and such other relevant provisions, which are in conformity with the object of 73rd Constitutional Amendment pertaining to the Panchayats. The said provisions do not confront and oppose or violate the provisions of Section 8 of the Panchayat Act.

19. The impugned letter dated 14th February, 2006 has been issued as a guideline to all the Deputy Commissioners for conducting the meetings of the Gram Sabha in accordance with the provisions of Rule 2003. The said circular provides that if mukhia of the Panchayat is present, the meeting of the Gram Sabha will be presided over by mukhia and in his absence by up-mukhia or in absence of both, by the person elected by majority of votes by the members of the Gram Sabha. In the villages falling within the "Scheduled Area" such meetings shall be presided over by the officials/representatives, who are recognized as Gram Pradhans according to the respective customs of the tribals, such as Manjhi, Munda, Pahan, Mahto etc. The impugned letter, which has been issued as a guideline, is just an expression and simplified paraphrasing of the provisions of Section 8 of the Panchayat Act and Rule, 2003.

20. The Gram Sabha is the specie and the Panchayat is the genesis. The provisions have been made for the co-ordinated functioning of the democratic system at the grass root level. Gram Sabha is not an independent isolated unit of local self-governance, rather a constituent unit of the Panchayat of which mukhia is the executive head.

21. In view of the above discussion, we find no substance in the petitioners' contention that the mukhia, who is the executive head of panchayat will have no power to preside over the meetings of the Gram Sabha of one of the villages of his panchayat or that the provisions empowering the mukhia and up-mukhia provided by the legislation or by the executive circular issued in conformity with legal provision is without jurisdiction and that Section 8 of Jharkhand Panchayat Raj Act as well as Rule 5(Ga) of the said Rule 2003 or Letter No. 266 dated 14th February, 2006 in any way are contrary to or contravene the provisions of Part IX of the Constitution of India.

22. For the reasons aforesaid, we find no, merit in this writ petition and the same is, accordingly dismissed.

23. No order as to costs.

M. Karpaga Vinayagam, C.J.

24. I agree.