
(1986) 02 RAJ CK 0021
In the Rajasthan High Court
Case No : Civil Revision No. 600 of 1985

Kanhaiya Lal Choudhary

APPELLANT

Vs

Addl. Development Officer and Others

RESPONDENT

Date of Decision : 19-02-1986

Acts Referred:

Rajasthan Panchayat Act, 1953 — Section 13(3), 19

Citation : (1986) 1 WLN 726

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahendra Bhushan Sharma, J.—This revision petition involves an important question of law as to whether a person appointed under Sub-section 3 of Section 13 of the Rajasthan Panchayat Act 1953 (in short "the Act") to the vacancy of Up-Sarpanch till election/bye-election to the office of Sarpanch or Up-sarpanch is held can be removed by the State Government even if elections to the aforesaid office are not held within six months of his appointment and appoint any other Panch in his place ?

2. The relevant facts are these : One Hemraj Singh under Sub-section (1) of Section 13 of the Act was elected as Sarpanch of Gram Panchayat, Kishanganj, District Kota. The said Hemraj Singh was elected as Pradhan of Panchayat Samiti. and therefore, Shri Gangaram Up-sarpanch of Gram Panchayat Kishanganj (elected under Sub-section (2) of Section 13 of the Act) was working as Sarpanch of the Panchayat. He was removed from the office of the Sarpanch on September, 17, 1984 by a vote of no-confidence. He is said to have filed a writ petition which is said to be pending in this Court and an order of maintenance of status-quo has been passed therein. The State Government by its order dated 24-9-1984, u/s 13 (3) of the Act, appointed the petitioner to the vacancy of the Sarpanch till such vacancy was filled by bye-election u/s 20 of the Act. The petitioner took charge as Up-Sarpanch on 31st October, 1984. He was removed

by the State Government by order dated 25-5-1985 and in his place: in exercise of the powers under Sub-section (3) of Section 13 Shri Dhanna Lal was appointed in the vacancy.

3. The petitioner filed a civil suit in the court of Munsif & Judicial Magistrate Baran and in that suit an application for injunction was also filed. The said court gave notice to the non-petitioners and under its order dated 26th June 1985 dismissed the application for injunction under Order 39 rule (1) CPC. The petitioner preferred an appeal before the learned Additional District Judge, Baran who under his order dated 17th August, 1985 dismissed the same. Hence this revision petition.

4. I will revert to the question formulated at the beginning of this order. Section 2 of the Act is definition. Section 2 under Clause (3) "Panch" means a member of Panchayat other than a Sarpanch, under Clause (9A) "Sarpanch", means the Sarpanch of a Panchayat elected under Sub-section (1) of Section 13. It does not define an Up-Sarpanch. Sub-section (2) of Section 13 of the Act provides that "every Panchayat shall have an Up-sarpanch who must be person able to read and write Hindi and shall be elected in the prescribed manner by the Sarpanch and the elected and co-opted Panchas as from amongst the elected and co-opted Panchas. u/s 4, a "Panchayat" consists of a Sarpanch, such number of Panchas, not being less than five or more than twenty as the State Government may determine, elected from amongst the qualified voters of the Panchayat, Panchas co-opted u/s 9 and associated members of Panchayat. Therefore, constitution of Panchayat without Sarpanch will not be legal and a Panchayat must have a Sarpanch. Sub-section (3) of Section 13 of the Act which is relevant for the purpose of the present case reads as under:

If the electors of a Panchayat circle fail to elect Sarpanch in accordance with this section or if the Panchas fail to elect Up-Sarpanch the State Govt. shall appoint a person to the vacancy till such vacancy is filled up by election within a period of six months and the person so appointed shall be deemed to be duly elected Sarpanch or Up-Sarpanch, as the case may be.

(emphasis added)

Under Sub-section (4) of Section 13 a Sarpanch shall hold office during the term of the Panchayat and an Up-sarpanch as long as he continues to be a Panch of the Panchayat. Any bye-election in the event of the office of Sarpanch or Up-Sarpanch becoming vacant by any reasons what so ever, shall be held in the manner prescribed, i e. in the same manner in which the election to the office of a Sarpanch or Up-Sarpanch is held. u/s 20, which deals with bye-election, any vacancy of the office of Sarpanch or Up-Sarpanch shall not be filled if the said term would expire within 6 months from the date of occurrence of such vacancies. No election for the office of Sarpanch or Up-sarpanch can be held as long as he continues to be a Pradhan of the Panchayat Samiti. Under Rule 57A of the Rajasthan Panchayat & Nyaya Panchayat Election Rules (in short Rules) 1960.

As and when a bye-election of Up-Sarpanch becomes necessary u/s 20 of the Act, Collector or an officer nominated by him in this behalf (may appoint any officer who) shall convene a meeting of Sarpanch and Panchas after serving on them notices specifying date, time and place of such meeting and the provisions of Sub-rule (1), (2) (3) and (4) of Rule 50 and Rule 57 shall apply so far as may be. It will be clear from the scheme of the Act and rules referred to above that there must be a Sarpanch in every Panchayat and in the event the Sarpanch is elected as a Pradhan of Panchayat Samiti or a Pramukh of Zila Parishad under the Rajasthan Panchayat Samiti and Zila Parishad Act, 1959, he shall nominally continue Sarpanch of Panchayat and hand over charge to the Up-Sarpanch who will thereafter act, subject to the provisions contained in Sub-section (4) of 13 section as Sarpanch for all practical purposes. It would be further clear that as and when a vacancy in the office of Sarpanch or Up-Sarpanch will take place a bye-election will take place within a period of 6 months. The State Government has powers under Sub-section (3) of Section 13 of the Act to appoint any person to fill the vacancy of Sarpanch or Up-Sarpanch, as the case may be till the election are held.

5. There is no provision either in the Act or rules that if a person is appointed to the vacancy of the office of Sarpanch or Up-Sarpanch, as the case may be under Sub-section (3) of Section 13 of the Act and if the elections for that office do not take place within six months the Government can remove a Panch so appointed and in his place, appoint another person against to fill the vacancy. Under Sub-section (3) of Section 13 of the Act, any person appointed to fill the vacancy of Up-Sarpanch or Sarpanch shall be deemed to be duly elected Sarpanch or Up-Sarpanch. Once such person is deemed to be elected as Sarpanch or Up-Sarpanch he can either be removed from office on misconduct u/s 17 (4) of the Act or under Sub-section (1) or (2) of Section 17 of the Act such a person can also be removed by a vote of no-confidence in accordance with the provisions contained u/s 17 of the Act.

7. The contention of the learned advocate for Dhanna Lal as well as of the Government Advocate is that the life of a person to the office of Up-Sarpanch appointed under Sub-section (3) of Section 13 of the Act is only 6 months and thereafter he has no right to continue in that office & in his place, the Government could have appointed another person. In my opinion, the intention of the legislature contained in Sub-section (3) of Section 13 as well as u/s 20 of the Act is that the bye-election, in case there is vacancy in the office of Sarpanch or Up-Sarpanch, must take place within 6 months. But if the elections are not held within 6 months of the vacancy it does not mean that the State Government have powers to remove such person appointed under Sub-section (3) of Section 13 as Up-Sarpanch and to appoint other person in his place to fill the vacancy. There is no dispute that the petitioner was appointed under Sub-section (3) of Section 13 of the Act as Sarpanch in the vacancy created as a result of passing of vote of no-confidence against Shri Gangaram Up-Sarpanch. A person who is appointed under Sub-section (3) of Section 13, is deemed to be a Sarpanch or

Up-Sarpanch as the case may be, and he can only be removed from office as Sarpanch or Up-Sarpanch either u/s 17 of the Act or u/s 19 of the Act. The State Government have no powers to remove him and make a fresh appointment of somebody else. The vacancy in the office of Sarpanch or Up-Sarpanch, in case a person is appointed under Sub-section (3) of Section 13 of the Act, will only occur as and when election/bye-election to the office take place or the appointee dies or is removed from office under the provisions of the Act, and merely because elections are not held within the period of 6 months it cannot be said that such a person will cease to be a Sarpanch or Up Sarpanch as the case may be and, therefore, there will be a vacancy in the office of Sarpanch or Upsarpanch as the case may be. If such a power is deemed to be vested in the State Government then it can go on removing a person appointed under Sub-section (3) of Section 13 of the Act, even within a period of 6 months and in his place appoint somebody else. Such a power will be against the democratic set-up and no such power has been conferred on the State Government.

8. In my opinion, under Sub-section (3) of Section 13 of the Act if a person appointed to fill the vacancy in the office of Sarpanch or Up-Sarpanch as the case may be, he shall continue in that office till either elections/bye-elections are held to fill the vacancy or till he is removed either u/s 17 of the Act or u/s 19 of the Act by a vote of no-confidence. The State Government removed the petitioner and in his place appointed Dhannalal under Sub-section (3) of Section 13 of the Act to fill the vacancy which as aforesaid did not and could not exist. No such power is vested in the State Government.

9. Consequently, I allow this revision petition and set-aside the order of learned District Judge as well as of the learned Munsif and Judicial Magistrate and allow the application of the petitioner under 39 (1) and (2) CPC and the non-petitioners are restrained from interfering in the functions of the petitioner as Up-Sarpanch. Any how, it will be free for the Panchas to move any vote of no-confidence in accordance with law. Mr. Dhankar says that as many as 9 Panchas out of 12 have no confidence in the petitioner and have moved to the State Government in that behalf. As aforesaid the Panchas are free to take any action as aforesaid.

10. Costs made easy.