

(1971) 01 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 422 of 1970

Karam Singh and another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 29-01-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1971) 01 P&H CK 0048

Hon'ble Judges : A.D. Koshal, J

Bench : Single Bench

Advocate : B.S. Bindra with Sh. J.C. Verma, for the Appellant; H.L. Sibal, Advocate-General (Punjab) with Sh. M.R. Sharma, D.A.G., Punjab and Sh. S.C. Sibal, Advocate, Sh. Kuldip Singh with Sh. R.S. Mongia for Respondent No. 4 and Sh. A.S. Ambalvi for Respondents Nos. 7 to 9, 11, 12, 17, 19 and 28, for the Respondent

Final Decision : Dismissed

Judgement

A.D. Koshil, J.—This petition under Articles 226 and 227 of the Constitution of India has arisen in the following circumstances. Before the reorganisation of the State of Punjab by the Punjab Reorganisation Act, 1966 (hereinafter referred to as the 1966 Act), there existed in Tehsil Kharar a Panchayat Samiti for a Block known as the Majri Block. That Samiti had been constituted under the Punjab Panchayat Samitis and Zila Parishads Act, 1961 hereinafter referred to as the Samitis Act) and the two petitioners. along with 22 others, were members thereof, having been so elected in the year 1955 from amongst the Panches and Sirpanches concerned under sub Clause (i) of Clause (a) of Sub-section (2) of Section 5 of tie Samitis Act. Majri Block then consisted of 83 Gram Sahha areas including village Maloa which after the passing of the 1966 Act fell within the Union Territory of Chandigarh, so that the Samiti, a corporate body, became an inter-State corporation.

2. By virtue of notification No. G.S.R.-1785, dated the 20th of November, 1967.

the Central Government amended the schedule appended to the Inter-State Corporations Act, 1957 (hereinafter referred to as the Corporations Act) so that the Samitis Act was included therein as item No. 7.

Purporting to act in exercise of the powers conferred by Section 4 of the Corporations Act, the Central Government promulgated the Punjab Z U Parishads, Panchayat Samitis and Gram Sabhas (Re-constitution and Re organisation) Order, 1969 (hereinafter referred to as the Order) by Clause 3 of which all Panchayat Samitis (including that for Majri Block) which were heretofore functioning as inter-State corporations were dissolved with effect from the 1st of September, 1969, the date on which the Order came into force. About 3 1/2 months later, on the 16th of December, 1969, the Punjab Government, acting in exercise of the powers conferred on it by Clause 4 of the Order, re-constituted the Majri Panchayat Samiti nominating to it 25 members, only 11 of whom (not including the two petitioners) were members of the Samiti before its dissolution on the 1st of September, 1969. The dissolution and reconstitution of the Samiti were challenged in the petition on various grounds, only the following three of which have been put forward on behalf of the petitioners at the hearing before me:

(1) Action under the Corporations Act can be taken not with regard to all inter-State corporations but only such of them as fall within the ambit of the definition of the term "Inter-State Corporation" given in Section 2 of the Corporations Act which, as originally enacted, ran thus:

In this Act, "Inter-State Corporation" means any body corporate constituted under any of the Acts specified in the schedule and functioning in two or more States by virtue of Section 109 of the States Re-organisation Act, 1956.

The definition is limited to inter-State corporations which were functioning on the 1st of November, 1956, when the States Re-organisation Act, 1956, came into force and not to any corporate bodies which came into existence later. The Order, therefore, is ultra vires of the Corporations Act.

(2) Shri Parkash Singh Badal, who was at the relevant time functioning as the Development and Panchayats Minister in Punjab, is a brother-in-law of Shri Surjit Singh, an M.L.A. belonging to the Akali Party, who patronised one group of members of the Majri Panchayat Samiti while a rival group is led by Shri Raja Singh, M.L.A. The eleven members of the dissolved Samiti who were nominated to the re-constituted Samiti are supporters of Shri Surjit Singh above mentioned. A majority of the members belonging to the group of Shri Raja Singh were not nominated to the reconstituted Samiti and instead fourteen new members, all belonging to the group of Shri Surjit Singh above mentioned, were brought on the reconstituted Samiti. The dissolution and reconstitution of the Samiti were brought about mala fide and for political considerations in order to help Shri Surjit Singh, Akali M.L.A.

(3) The reconstitution of the Majri Panchayat Samiti is hit by Article 14 of the Constitution of India inasmuch as it was brought about in an arbitrary manner

wholly different from that adopted in the case of Kharar Panchayat" Samiti. In regard to the latter all that was done was that the member elected from the area which fell within the Union Territory of Chandigarh as a result of the 1966 Act was excluded from the reconstituted Samiti which was comprised of all the other members of the dissolved Samiti. The same criterion should have been followed in the case of Majri Panchayat Samiti by excluding the member elected from Maloa village and reconstituting the Samiti with the other twenty-three members. The action taken by the State Government In reconstituting the Majri Panchayat Samiti is discriminatory.

2. There is no substance in the first ground. Section 2 of the Corporations Act was amended by Section 75 of the Bombay Reorganisation Act (hereinafter referred to as the Bombay Act) passed by Parliament in 1960, to read as under:

In this Act, "Inter-State Corporation" means any body corporate constituted under any of the Act specified in the schedule and functioning in two or more States by virtue of Section 109 of the States Re-organisation Act, 1956 or of any other enactment relating to reorganisation of States.

Mr. Bindra, appearing on behalf of the petitioners, concedes that Section 2 of the Corporations Act was so amended but contends that the amendment must be given a limited meaning so as to have reference only to the Bombay Act and not to any other enactment. The argument is clearly untenable in view of the unambiguous language used by the legislature In Section 75 of the Bombay Act. If it was intended to enlarge the scope of Section 2 of the Corporations Act merely so as to make it embrace the Bombay Act, the words "any other enactment" would certainly not have been used and, on the other hand, the language employed would have been "or of the Bombay Reorganisation Act, 1960". In this view of the matter the first ground need not be scrutinized any further and is repelled.

3. The second ground was given up at the hearing by Mr. Bindra when it was pointed out to him that he had not so much as mentioned the names of members who, according to the petitioner, belonged to the Raja Singh group. It is, therefore, held, that the action of the Government impugned in the petition is not liable to be struck down by reason of its having been taken mala fide.

4. The third ground is also without merit. The relevant portion of Clause 3 of the Order which provides for dissolution of the existing Samitis and constitution of new ones may be reproduced here:

3. As from the appointed day, - (1) the existing Panchayats shall stand dissolved and all members thereof (including, in the case of a Gram Sabha, the Chairman of the Gram Sabha and Sarpanches and Panches of the Gram Panchayat of the Gram Sabha] shall vacate office;

(2) the authorities specified in column (4) of the First Schedule shall constitute for the areas specified in column (2) thereof, a new Zila Parishad, Panchayat

Samiti or Gram Sabha, as the case may be, by the name specified in column (3) of the said Schedule;

Provided that where the same name has been specified in column (3) of the First Schedule against different areas specified in column (2) thereof, all such areas shall be constituted into a single Zila Parishad, Panchayat Samiti or Gram Sabha, as the case may be;

* * * *

Clause 4 of the Order makes provision for temporary administration of the new Panchayat Samitis until members are elected thereto. It runs thus:

Until members are elected to a Zila Parishad, Panchayat Samiti or the Gram Panchayat of a Gram Sabha constituted under Clause (2) of paragraph 3 of this Order and the first meeting of that body is held, the authority which constitutes that body shall appoint an administrator or administrators or nominate any person or persons considered suitable in this behalf, to exercise the powers and perform the functions of the Zila Parishad, Panchayat Samiti or Gram Panchayat as the case may be.

Now the authority specified in column 4 of the First Schedule appended to the Order as being competent to constitute the Majri Panchayat Samiti is the State Government. It is therefore, that Government which is also competent to take action under Clause 4. Now it goes without saying that the State Government is the highest executive body in the State and there is every reason for this Court to presume that it would properly exercise the power conferred on it by Clause 4, In this connection reference may be made with advantage to the following observations of their Lordships of the Supreme Court in *Matajog Dobey v. H.C. Bkari* 1955 (2) S.C.R. 926, which were quoted with approval in *Shri Ram Krishna Dalmia, etc. v. Shri Justice S.R. Tendolkar and others* AIR 1958 S.C. 638.

It has to be borne in mind that a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretion is vested in the Government and not in a minor official.

Again in *Pannalal Binjraj Vs. Union of India (UOI)*, , the same view was reiterated thus by Bhagwati, J.:

It may also be remembered that this power is vested not in minor officials but in top-ranking authorities like the Commissioner of income tax and the Central Board of Revenue who act on the information supplied to them by the income tax officers concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials. There is moreover a presumption that public officials will discharge their duties honestly and in accordance with the rules of law.

I may repeat here that in the present case the allegation of mala fides on the part of the State Government in the matter of nominating members to the Majri

Panchayat Samiti has already been given up so that no ulterior motive is attributable to that Government in connection therewith. As it is the State Government has unfettered discretion in the matter of selecting persons whom it would nominate to exercise the powers and perform the functions of the Panchayat Samitis concerned. No person in view of the language of Clause 4 can claim as a matter of right to be so nominated. The question of suitability of the persons to be nominated is to be decided solely by the Government and there is no limitation on its power of nomination such as may require it to consider the claims of any ex-members, so that no question of discrimination arises merely by reason of the fact that in the case of Kharar Panchayat Samiti all the persons nominated under Clause 4 were members of the dissolved Samiti.

5. In the view I have just above expressed I am fortified by the opinion of a Division Bench of this Court consisting of Mehar Singh. C.J., and Tuli J, in *Ch Bishan Dass v. The Governor of the Punjab and Ors.* ILR 1969 (2) P&H. 413. In that case Sub-section (3-A) of Section 26 of the Punjab Co-operative Societies Act, 196], which runs thus-

3-A. Where for any reason the number of members of the Committee of a Co-operative Society falls short of the quorum prescribed in the bye-laws of the Society for a meeting of the Committee, then notwithstanding anything contained in Sub-section (1), the Registrar may nominate such number of Members of the Committee not exceeding the total number of vacancies, as he may deem fit. A member so nominated shall cease to hold office when the vacancy, against which he is nominated, is filled by election or a period of one year has expired from the date of his nomination which ever event occurs earlier.

was challenged on the ground, among others, that it gave the Registrar unrestricted power to nominate any persons as members of a Committee Relying on the above-quoted observations of Bhagwati, J., the challenge was repelled by Tuli, J., who delivered the judgment of the Division Bench, in the following words.:

The second challenge to the validity of the Ordinance is that Sub-section (3-A) newly enacted gives powers to the Registrar to nominate any persons, whether shareholder or not, and he can nominate any number of persons and for the exercise of this power, no guiding principles have been laid down, In my view, there is no force in this contention, The Registrar Is a very high officer of the State Government and the power has been left with him to be exercised only in such cases in which the number of continuing members of the committee of management is below the quorum prescribed in the bye-laws and it is necessary to fill up the vacancies of members of the managing Committees or the Boards of Directors to provide interim management till the vacancies are filled in by election. In all the three cases the Registrar has nominated such persons who are either the share-holders of the Society or the share-holders of the co-operative societies which are shareholders of the Society. He has, however, the power to nominate any person, whether a shareholder or not, whom he considers fit to

perform the duties of a member of the managing committee or the Board of Directors. The vesting of this power in the Registrar does not make the newly-enacted Sub-section constitutionally invalid.

The power given to the State Government in the present case is similar to that conferred on the Registrar in the case just above cited and it cannot be said that the State Government must exercise that power in a particular way or that it must follow certain criteria in the matter of nominations to all Panchayat Samitis.

6. For the reasons stated, the petition fails and is dismissed, but with no orders as to costs.