

(1988) 04 MP CK 0007
In the Madhya Pradesh High Court
Case No : M.P. No. 1932 of 1984

Lagan Singh

APPELLANT

Vs

Sub-Divisional, Officer-cum-The Prescribed Authority under
M.P. Panchayats Act, 1981 and Others

RESPONDENT

Date of Decision : 30-04-1988

Acts Referred:

Madhya Pradesh Panchayat Act, 1962 — Section 11, 117

Citation : (1990) J LJ 634 : (1990) MPJR 799 : (1990) 35 MPLJ 538 : (1990) MPLJ 538

Hon'ble Judges : Y.B. Suryavanshi, J; C.P. Sen, J

Bench : Division Bench

Advocate : Ravindra Shrivastava, for the Appellant; Rajendra Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

Y.B. Suryavanshi, J.

The petitioner Lagan Singh has filed this petition under Articles 226/227, Constitution of India, challenging the validity of the orders, dated 5-6-1984, passed by respondent No. 1 (S.D.O-cum-Prescribed Authority u/s 117, M. P. Panchayats Act, for short called the Act), declaring that the nomination form of respondent No. 2 Chatursingh was improperly rejected, and he being the sole candidate for Ward No. 4, is the successful and unopposed elected Panch, and consequently, the appointment of the petitioner as Panch for the same Ward which purported to be under the Proviso to section 11 (ii) of the Act, is set aside.

The material facts are as follows: -

The respondent No. 2 Chatursingh was a candidate for Gram Panchayat elections from Ward No. 4: whereas, the petitioner Lagan Singh was a candidate from Ward No. 8 of village Hinjer, Block Tamnar, Tahsil Gharghoda, Raigarh. The nomination form of respondent No. 2 Chatursingh was rejected on the ground of

being a defaulter. The petitioner lost the election. But, under the Proviso to section 11(ii) he was appointed as Panch. Respondent No, 2 Chatursingh filed an election petition u/s 117 of the Act, in which besides others, the present petitioner Lagan Singh was also a party.

3, The S.D.O.-cum-Prescribed Authority under the Act in the orders passed on 5-6-1984 (Annexure-E) held, that the notice of demand for arrears, dated 17-5-1983, was sent by Collectorate Panchayat Section, Raigarh, and was received by B.D.O. on 26-5-1983. But the defendants in the election petition which included the present petitioner had failed to prove that the notice of demand was duly served on the present respondent No. 2. It was further held, that even if it be assumed that a notice was sent and served, it was not in accordance with section 30(1), as it fell short of the prescribed period of 30 days; accordingly, the petitioner in the election petition (i.e. present respondent No. 2) did not suffer from any disqualifications and his nomination form was improperly rejected. In view of the pleadings in the election petition, it was further found, that the petitioner in the election petition did not suffer from any disability arising u/s 87(5) read with section 16(4) of the Act. As regards the present petitioner Lagan Singh, it was held, that after the orders passed by the Collector, Raigarh, the Commissioner had remanded the enquiry, and no orders were passed till the time of the elections and therefore, the petitioner Lagan Singh did not suffer from any disability, and in those circumstances, he was appointed as a Panch u/s 11(ii) of the Act. However, ultimately, on basis of his findings in the election petition, he declared respondent No. 2 Chatursingh, being the sole and unopposed candidate, as an elected Panch from Ward No. 4. Consequently, the appointment of the present petitioner Lagan Singh who was appointed a Panch for the same Ward, was held, inoperative.

The learned counsel appearing for the parties heard. Record perused.

On behalf of the petitioner, the principal contention is, that u/s 117, the appointment of Panch envisaged u/s 11 is not within the scope and purview of the election petition. The contention in our view seems to be misconceived. What was challenged in the election was the improper rejection of the nomination form of the respondent No. 2 Chatursingh; and the question about the appointment was mainly consequential because he has been appointed as Panch for Ward No. 4, wherein the petitioner in the election petition was the sole and unopposed candidate. The learned counsel for the petitioner Shri Ravindra Shrivastava, further submitted, that u/s 117(1) only the election or co-option can be called in question before the Prescribed Authority, but the appointment made by the prescribed authority, in exercise of the powers under the Proviso to sub-section (ii) of section 11 "not being an election" or "co-option" is beyond the jurisdiction in the election petition. Therefore, the impugned orders passed in the election petition setting aside the appointment of the petitioner as Panch for Ward No. 4 are without jurisdiction, and void ab initio. The further contention is, that the Legislature has not provided any remedy of an election petition against a Panch

"appointed" as above.

(i) We have gone through certain decisions cited during the course of arguments. In *Tundilal Vs. Returning Officer and Others*, , the facts were quite distinguishable. Therein, the nomination papers of all the candidates seeking election were rejected, and therefore, it was held, that there could be no occasion for notifying the election of any particular person u/s 20 and Rule 80; and if there can be no Notification of the election, then the remedy u/s 357(1) is not open to the applicant and he can avail of the remedy under Article 226, Constitution of India. In that case, the petitioner in the election petition was the sole candidate validly nominated for the election, and was held to be entitled to a declaration that he has been duly elected, unopposed. He was the sole candidate in the field.

(ii) In *Ramgopal v. Election Officer* 1973 MPLJN 53, it was observed:

"Where the Returning Officer appointed a Panch u/s 11(7) of the Act, the appointment does not become an election within meaning of section 357 by virtue of section 20. The deeming fiction in section 11(7) cannot be extended so as to make the appointment equal to election. No election petition lies u/s 357."

(iii) In *Malam Singh Vs. The Collector, Sehore, M.P. and Others*, , Mr. A. P. Sen, J. (as he then was) delivering the judgment for the Full Bench, while referring to Supreme Court decisions reported in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, and *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, , and also decisions of this High Court, observed, "that the provisions of M. P. Panchayat Act and the Rules made thereunder relating to elections, bear a close resemblance to the relevant provisions of the Representation of the People Act, 1951 and the Conduct of Election Rules, 1961". It was further held that:

"it would not be proper to exercise the powers under Articles 226 and 227 of the Constitution for interfering with the order of the Returning Officer rejecting a nomination paper when section 357 of the Madhya Pradesh Panchayats Act provides for only one remedy, namely, that of an election petition to be presented after the election is over and notified."

Tundilal's case referred above, has also been referred, but distinguished. In this Full Bench case also, the nomination papers were rejected during the scrutiny of the objections on the ground that they had not paid all taxes due against them. The election process, as is the trite proposition now, means, "the entire process of election culminating for a candidate being declared elected, and includes, the rejection of a nomination paper with which process of election begins. Thus the Act itself along with the rules furnishes a complete remedy for the particular breach complained of."

In view of the above discussion, the respondent No. 2 *Chatursingh* whose nomination form was rejected, had the remedy as provided under the Act.

So far as the principal contention canvassed on behalf of the petitioner viz. that the prescribed authority in the election petition had no jurisdiction to pass any adverse orders against the present petitioner because he was neither an "elected" Panch nor a "co-opted" Panch as envisaged in section 11(i) of the Act but was being otherwise qualified to be elected as a Panch, was appointed, in view of the powers vested in the Proviso. It is not necessary to state whether such "appointment" could be challenged in an election petition. The proviso is a "deeming provision" and after such an appointment, the appointed Panch, except for the fact that he is an "appointed Panch", enjoys the same status, position and privileges as that of the elected or co-opted Panchas. To reiterate, in the election petition, the appointment of the petitioner was not the main issue. The main issue was improper rejection of the nomination form of respondent No. 2 on the grounds alleged. He was the sole candidate for Ward No. 4 for which the present petitioner was appointed under the Proviso to section 11. Obviously, there cannot be two candidates from the same Ward. Section 13 of the Act says that no person shall be eligible for seeking election as a Panch to a Gram Panchayat from more than one Ward. What has happened in the instant case is only consequential. As respondent No. 2 has succeeded in his election petition for Ward No. 4, the appointment of the petitioner cannot survive. The Proviso itself clearly states "that if any Ward fails to elect a Panch, the State Government or the Prescribed Authority, as soon as possible, appoint from persons qualified to be elected, any person to be a Panch and the person so appointed shall, for all purposes of that Act be deemed to be duly elected". Thus, the provision is there to meet the situation arising when any Ward fails to elect any Panch; and it is not attracted when a Panch is elected from a Ward in ordinary course, election being the recognized method of representation in democracy. As a corollary, it follows, that when respondent No. 2 has been declared a successful candidate for Ward No. 4, that "appointment" would not subsist. To hold otherwise would be contrary to the provisions of the Act and Rules. Thus, the petitioner, in view of the result of the election petition, has to go, which, without expressing any view on the controversy mooted before us, is the inevitable consequence.

In the result, we find no justification for interfering with the impugned orders dated 5-6-1984 passed in the election petition. The consequences thereof shall follow as provided in the Act and Rules. Accordingly, this petition is dismissed, with costs to respondent No. 2 Chatursingh. Counsel's fee Rs. 200/- or as per certificate whichever is less.