

(1963) 11 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 265 of 1963 (J)

Lakhandhar Diwan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 13-11-1963

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1964) JLJ 34

Hon'ble Judges : P.V. Dixit, C.J.; N.M. Golwalker, J

Bench : Division Bench

Advocate : A.P. Sen, R.K. Pandey and P.C. Pathak, for the Appellant; R.J. Bhawe, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.—By this application under articles 226 and 227 of the Constitution, the petitioner prays for the issue of a writ of certiorari for quashing an order made by the State Government on 19th April 1963 u/s 21 (4) of the Central Provinces and Berar Local Government Act, 1948, declaring that the petitioner had ceased to hold from 18th September 1962 the Office of the Chairman, Janapad Sabha, Bilaspur.

2. The applicant was elected as Chairman of the Janapada Sabha, Bilaspur, in 1954 and was holding that office at the time when the Madhya Pradesh Panchayats Act, 1962, (hereinafter referred to as the Panchayats Act) came into force. After the coming into force of that Act, he was elected as Sarpanch of the Gram Panchayat, Pandhi, on 10th September 1962. In October 1962, the respondent No. 4, who was at that time the Vice Chairman of the Janapad Sabha, Bilaspur, addressed a letter to the Collector, Bilaspur, pointing out that after his election as Sarpanch, Gram Panchayat, Pandhi, the petitioner was holding two offices, namely, Chairman of the Janapad Sabha Bilaspur, and Sarpanch of the Gram Panchayat, Pandhi, contrary to the provisions of section 21 of the C.P. and Berar Local Government Act, 1948, that he had failed to resign

from one of the offices within seven days from the date of his election as Sarpanch of the Gram Panchayat, and that consequently he must be regarded as having ceased to hold the office of the Chairman, Janapad Sabha, Bilaspur. The petitioner then sent his reply to this letter of the respondent No. 4 to the Collector, when a copy of the same was sent to him by the Collector. On 8th November 1962 the petitioner resigned from the office of the Sarpanch, Gram Panchayat, Pandhi and the acceptance of the resignation was communicated by the Collector to the applicant on 9th November 1962. Thereafter the impugned order was passed by the Government on 19th April 1963.

3. The petitioner's main contention is that as a result of the issue of a notification u/s 1 (3) of the Panchayats Act bringing into force from 23rd July 1962 inter alia Chapter XXI of that Act, the C.P. and Berar Local Government Act, 1948 stood repealed from that date; that the Local Government Act was not in force when he was elected as Sarpanch of the Gram Panchayat, and, therefore, there was no bar against his being the Chairman of the Janapad Sabha as well as the Sarpanch of the Gram Panchayat and that the amendments made in the Panchayats Act by sections 28, 32 and 33 of the Madhya Pradesh Panchayats (Amendment and Validation) Act, 1963, amending inter alia the heading of Chapter XXI of the Panchayats Act, substituting a new sub-section for section 388(1) as from 20th July 1962, the date on which the Panchayats Act came into force, and reviving the C.P. and Berar Local Government Act, 1948, from 23rd July 1962 could not be construed as requiring any person to exercise his option u/s 21 of the C.P. and Berar Local Government Act, 1948, after 9th April 1963 in relation to elections held or appointments made before 9th April 1963 to the specified offices in two Sabhas, or in a Sabha and in any other local authority. It was said that in the case of such elections, it would be impossible after 9th April 1963 to comply with the requirement of section 21 of the Act of 1948 that a person elected or appointed to two offices should resign within seven days from the date of the second election or appointment.

4. In our judgment, the contention advanced on behalf of the petitioner must be given effect to. On 23rd July 1962 a notification was issued u/s 1 (3) of the Panchayats Act bringing into force, from the said date, inter alia, Chapter XXI of that Act, Section 38a, which was included in Chapter XXI, as it stood on 23rd July 1962 provided for the repeal of the C.P. and Berar Local Government Act, 1948, and other Acts mentioned in section 388 (1). The result of the bringing into force of Chapter XXI was that with effect from 23rd July 1962 the Local Government Act of 1948 stood repealed. Thereafter the M.P. Panchayats (Amendment and Validation) Act, 1963, was enacted and came into force on 9th April 1963. By sections 28 and 29 of this amending Act, for the words and figures "Chapter XXI Repeal and Saving" appearing before section 388 the words "Gram Panchayat, etc" were substituted, and for sub-section (1) of section 388 a new sub-section was substituted which did not in any way speak of the repeal of the C.P. and Berar Local Government Act, 1948 u/s 32 of the amending Act, sections 28 and 29 of that Act were deemed to have come into force on 20th July 1962, that

is the date on which the Panchayats Act came into force. One of the results of these amendments was to rescind altogether, as from 20th July 1962, the repeal of the C.P. and Berar Local Government Act, 1948, which had resulted from the coming into force of section 388 as originally enacted by the issue of a notification on 23rd July 1962 u/s 1 (3) of the Panchayats Act. Section 33 of the amending Act made the matter of revival of the Act of 1948 clear by laying down that notwithstanding the fact that the provisions of Chapters IX to XIII and XVI to XVIII of the principal Act were brought into force from 23rd July 1962 in any area, the provisions of the Acts and the Ordinance mentioned in the Schedule to the amending Act which stood repealed on the said date, shall be and shall always be deemed to have been revived as from such date as if the said provisions had never been brought into force. It is quite true that section 33 of the amending Act makes no reference to Chapter XX or XXI of the Panchayats Act. But the effect of section 33 (1) is to revive the C.P. and Berar Local Government which he is prevented from holding simultaneously under sub-section (1) or (2), then the consequence mentioned in that sub-section would follow if the person fails to resign one of the offices within seven days from the date of his second election of appointment, cannot be enforced in the case of the petitioner as the requirement of resigning from one of the offices within seven days from the date of second election became impossible of performance when the Act of 1948 was not actually in force at the time when the petitioner was elected as Sarpanch but was revived with retrospective effect on 9th April 1963 long after the expiry of seven days' time from the date of the petitioner's election as Sarpanch. After 9th April 1963, the petitioner could not have clearly complied with the condition of resigning from one of the offices within seven days of 10th September 1962 when he was elected as Sarpanch of the Gram Panchayat. Thus, though the Act of 1948 was revived retrospectively with effect from 23rd July, 1962, the operation of section 21(3) of that Act cannot be given retrospective effect so as to apply to elections held before 9th April 1963 because of the requirement of resigning from one of the offices within seven days from the date of the second election. The provision in section 21 (3) that the person elected should resign from one of the offices within seven days from the date of his second election, can be given full effect to only after the date of the revival of the Act of 1948, namely, 9th April 1963, and not before it. If, therefore, the limitation of resigning from one of the offices within seven days from the date of second election did not apply to the petitioner, then he could resign from one of the offices within a reasonable time after 9th April 1963. The petitioner actually tendered his resignation from the office of Sarpanch on 8th Nov. 1962 and this was accepted by the Collector on 9th November 1962. Having resigned from the office of Sarpanch the petitioner is entitled to continue as Chairman of the Janapada Sabha, Bilaspur. As sub-section (3) of S. 21 has no applicability to the petitioner's case, it cannot be held that he ceased to hold the office of Chairman of the Janapada Sabha as he failed to resign from one of the offices within seven days from the date of his election as Sarpanch of the Gram Panchayat. In this view of the matter, the order dated the 19th April 1963 passed

by the State Government declaring that the applicant has ceased to hold the office of Chairman of the Janapada Sabha Bilaspur, from 18th September 1962 is illegal and cannot be sustained.

6. Learned Government Advocate did not dispute the position that section 21 (3) of the C.P. and Berar Local Government Act, 1948, cannot be applied to a person elected or appointed to two offices during the period from 23rd July 1962, when the Act of 1948 was repealed, till 9th April 1963 when it was revived because of the impossibility of performance by such a person of the condition or resigning from one of the offices within "seven days from the date of the second election". He, however, pointed out that Chapter XXI containing section 388 of the Panchayats Act was not actually brought into force; that there were some errors in the notification issued on 23rd July 1962 u/s 1 (3) of the Panchayats Act, one of them being a reference to Chapter XXI as having been brought into force; that these errors were corrected by a corrigendum Issued on 27th July 1963; and that the effect of this correction was to make it clear that Chapter XXI was not brought into force by the issue of the notification on 23rd July 1962 and consequently there was no repeal of the Act of 1948. We are unable to accede to the contention that the notification issued on 23rd July 1962 did not result in the repeal of the Act of 1948. The reason is that no material whatsoever was placed before us to indicate that the reference to Chapter XXI in the notification dated 23rd July 1962 was through inadvertence and was clerical error. Again, if Chapter XXI had really not been brought into force as was contended by the learned Government Advocate and the C.P. and Berar Local Government Act 1948 was never repealed by the Panchayats Act, it is difficult to understand why it was thought necessary to revive that Act with retrospective effect from 23rd July 1962 by section 33 of the M.P. Panchayats (Amendment and Validation) Act, 1963. It is noteworthy that clause (1) of section 33 read with the Schedule, specifically mentioned the Act of 1948 as one of the Acts which stood repealed on 23rd July 1962. In the face of section 33 (1) of the amending Act of 1963, the contention put forward on the basis of the corrigendum dated 27th July 1962 that the Act of 1948 was not repealed cannot be accepted.

7. For all these reasons, this petition is allowed and the order dated the 19th April 1963 passed by the State Government declaring that the petitioner had ceased to hold the office of Chairman of the Janapada Sabha, Bilaspur, as from 18th September 1962, is quashed. The petitioner shall have costs of this application from the respondent-State. Counsel's fee is fixed at Rs. 100. The outstanding amount of security deposit shall be refunded to the petitioner.