

(1965) 09 MP CK 0016
In the Madhya Pradesh High Court
Case No : M.P. No. 127 of 1965

Laxminarayan Ramnath

APPELLANT

Vs

Director, Panchayat Avam Samaj Seva, M.P., Indore and
others

RESPONDENT

Date of Decision : 02-09-1965

Acts Referred:

Madhya Pradesh Panchayat Act, 1962 — Section 17(3)

Citation : (1968) ILR (MP) 34 : (1965) JIJ 1057 : (1965) MPLJ 959

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : R.K. Tankha and P.C. Pathak, for the Appellant; R.J. Bhawe, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.

The Petitioner in this case was elected a Panch of the Gram Panchayat, Simar, district Bhind, in December 1964. Thereafter, he was elected Sarpanch also of the Gram Panchayat. Before becoming a Panch of the Gram Panchayat in December 1964, he was also a Panch of the Gram Panchayat constituted under the Madhya Bharat Panchayat Act, 1949. In April 1964, the Director, Panchayat Avam Samaj Seva, Madhya Pradesh, served on the applicant a charge-sheet in respect of having prepared a false T.A. bill and having irregularly withdrawn certain amounts from the Panchayat funds, and after some inquiry issued a notice to the applicant calling upon him to show cause why he should not be removed from the office of Panch u/s 18(4) of the Madhya Bharat Panchayat Vidhan. On 2nd January 1965, the Director made an order removing the Petitioner from the office of Panch of the Gram Panchayat constituted under the Madhya Bharat Panchayat Act. Thereafter, on 20th February 1965, the Collector, purporting to exercise his powers u/s 17 (3) of the Madhya Pradesh Panchayats Act, 1962, made an order declaring that a vacancy had arisen in the office of

Panch of the Gram Panchayat constituted under the Act of 1962, to which the Petitioner had been elected in 1964. The Collector took the view that after having been elected a Panch in 1964 the Petitioner became subject to the disqualification mentioned in Section 17(1), Clause (k) of the Madhya Pradesh Panchayats Act, 1962.

The Petitioner now seeks a writ of certiorari for quashing the order dated 2nd January 1965 of the Director, Panchayat Avam Samaj Seva and the order dated 20th February 1965 of the Collector, Bhind.

Having heard Learned Counsel for the parties we have reached the conclusion that the order dated 20th February 1965 of the Collector, Bhind, must be quashed. Section 17(1), Clause (k), is as follows:

(1) No person shall be eligible to be a Panch, Sarpanch or an Up-Sarpanch of a Gram Panchayat who-

Sub-section (2) of Section 17 says that if a Panch or a Sarpanch or an Up-Sarpanch of a Gram Panchayat having been elected, appointed or co-opted-subsequently becomes subject to any of the disqualifications mentioned in Sub-section (1) and such disqualification is not removable or being removable is not removed, then he shall, subject to the provisions of Sub-section (3), cease to be a Panch or Sarpanch or Up-Sarpanch, and his office shall become vacant. The third Sub-section gives the power to the Collector to decide on an application made to him in person, or on his own motion, whether a vacancy has occurred under Sub-section (2). From the above provisions it is clear that the Collector had, no doubt, the power to determine whether the Petitioner became subject to any of the disqualifications after having been elected a Panch in December 1964. But the removal of the Petitioner from the office of a Panch of the Gram Panchayat constituted under the Madhya Bharat Panchayat Act, 1949, by the order which the Director made on 2nd January 1965, does not make the Petitioner subject to any of the disqualifications mentioned in Sub-section (1), including that stated in Clause (k). In the return and impugned order of the Collector, reliance has been placed on Section 17 (1) (k) for supporting the order passed by the Collector on 20th February 1965. But, as is clear from the wording of that clause, disqualification under that clause on account of a removal from the office of a Panch of a Gram Panchayat constituted under any of the enactments repealed by the Act of 1962 is incurred only if the removal from office has been during the period of five years preceding the date of filing of a nomination paper in any election held for the first time under the Act of 1962. Here, the Petitioner was elected in December 1964 to the Gram Panchayat constituted under This clause was added by M.P. Panchayats (Amendment) Act (28 of 1964) (k) has been removed from, or disqualified from holding, the office of a Panch, Gram Panch, Kendra Panch, Mandal Panch or Member or an office-bearer of a Gram Panchayat, Gaon Panchayat, Gram Sabha, Panchayat, Tahsil Panchayat, Kendra Panchayat, Mandal Panchayat or Janapada Sabha, as the case may be constituted under the enactments specified in Sections 379 and 388

during the period of five years preceding the date of filing a nomination paper in any election to be held for the first time under this Act. the Act of 1962 and was removed from the office of a Panch of the old Gram Panchayat constituted under the Madhya Bharat Panchayat Act, by an order, passed by the Director on 2nd January 1965. His removal from that office was thus plainly not within a period of five years preceding the date of his filing a nomination paper in the election held in December 1964, in which he was successful. It is thus clear that the Collector could not declare the Petitioner's office vacant u/s 17 (3) of the Act on the ground that he had been removed from the office of a Panch of the former body constituted under the Madhya Bharat Panchayat Act by an order passed by the Director on 2nd January 1965. The Collector's order cannot therefore be sustained.

In this view of the matter, it is not necessary to ""consider whether the order passed by the Director on 2nd January 1965 removing the applicant from the office of a Panch of the defunct Gram Panchayat constituted under the Madhya Bharat Panchayat Act was validly made. A consideration of that question would be to no purpose when the applicant is entitled to continue functioning as a Panch and Sarpanch of the newly constituted Gram Panchayat under the Act of 1962.

For these reasons, this application is allowed, and the order dated 20th February 1965 of the Collector, Bhind, declaring as vacant the office held by the applicant as a Panch of the Gram Panchayat, Simar, to which he was elected in December 1964, is quashed. In the circumstances of the case, we leave the parties to bear their own costs. The security deposit shall be refunded to the Petitioner.