

(1991) 03 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. No. 1285 of 1991

Mani Kant Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-03-1991

Acts Referred:

Bihar Panchayat Raj Act, 1947 — Section 10, 11, 11(2), 12(6), 3

Citation : (1991) 03 PAT CK 0003

Hon'ble Judges : S. Ali Ahmad, J;G.C. Bharuka, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This application has been filed by way of public interest litigation challenging the continuance of Mukhiyas and Executive Committees of all the Gram Panchayats in the State. In order to appreciate the argument advanced Mr. Thakur it will be necessary to refer to Sub-section (2) of Section 11 of the Act which was substituted by Act 50 of 1982. Under this sub-section the term of office of the Mukhiyas or Members of the Executive Committee was to be five years from the date of election of the Mukhiyas or the Members of the Executive Committee and was to continue till the new Mukhiyas or the new Members of the Executive Committee, as the case may be, assumed charge of their offices, Admittedly election of the different Gram Panchayats in the State was held last in the year 1978. Further, in exercise of the powers conferred u/s 3 of the Bihar Panchayat Raj Act, new Gram Panchayats were established after bifurcating the existing ones or by altering the boundaries thereof. The Mukhiyas and the Members of the Executive Committee of the newly created Gram Panchayats were nominated by the Collector in exercise of his power under the proviso to Section 10 of the Act. Therefore, as a result of Sub-section (2) of Section 11 and the proviso to Section 10 of the Act the elected or nominated Mukhiyas or Members of the Executive Committee of different Gram Panchayats were functioning and discharging their duties. The Bihar Legislature in its wisdom

passed Act 7 of 1990 making amendments to the several provisions of the Act including Sections 10 and 11 of the Act which we have referred above. The Act came into force with effect from 30.1.1990. Under the substituted Section 10, there is no provision regarding nomination Mukhiyas or Members of the Executive Committee of the Gram Panchayat by any authority. The position, how therefore, is that no Mukhiyas or Members of the Executive Committee can be nominated by anyone even if new Gram Panchayat is created. The only way to fill up the posts is by way of election. So far as the term of office of Mukhiyas or Members of the Gram Panchayat is concerned, that also has been very substantially affected by the amendment. We have mentioned earlier that under Sub-section (2) of Section 11 of the Act the normal life of the Mukhiyas and Members of the Executive Committee was five years but the life was extended under that sub-section till the newly elected Mukhiyas assumed charge. This provision does not exist now on the statute book. Sub-clause (2) of Clause (Kha) of Section 12(6) as substituted by the Amending Act 7 of 1990 provides that the term of office of the Mukhiyas and Members of the Executive Committee shall be five years from the date of the election and in special cases the State Government may extend the time by another six months. As we have said earlier the elections were held last in the year 1978. In between 1978 and 1991 several new Gram Panchayats were created and nominations were made under the then existing proviso to Section 10 of the Act. Therefore, the position that now emerges is that all those Mukhiyas and Members of the Executive Committee of different Gram Panchayats in the State, who were elected in 1978 cease to hold their respective offices. Likewise, all those Mukhiyas and Members of the Executive Committee of the different Gram Panchayats, who were nominated and have completed five years since the date of their nomination cease to hold their offices any longer, but a further period of six months, however, may be added to the term of offices in such cases where the State Government has extended the period under Clause (Kha)(2) of Sub-section (6). Having held that the Mukhiyas and Members of the Executive Committee, who were elected or nominated more than five years ago, subject to six month's extension, do not hold their respective offices, it necessarily follows that they cannot discharge their functions as envisaged under the Act or under any scheme formulated either by the State Government or by the Central Government. It cannot be doubted for a moment that the Gram Panchayats continue to exist but as a result of the change in law there are no Mukhiyas or Members of the Executive Committee to achieve objects provided in the Panchayat Raj Act. As a result thereof the very purpose of creation of Gram Panchayats stands frustrated. Therefore, in the circumstances the authorities should consider the desirability of taking immediate steps in the matter so that the aspiration of the people with regard to the Panchayat Raj is not frustrated.

2. One copy of this order may be given to Mr. Advocate General.

3. With the aforesaid observation this writ application is thus disposed of.