

(1971) 01 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition Case No. 56 of 1970

Mata Prasad Anantram

APPELLANT

Vs

Election Officer (Nirbachan Adhikari) Panchayat Election
Office, Porsa Pargana Ambah and Others

RESPONDENT

Date of Decision : 29-01-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Panchayat Act, 1962 — Section 17, 17(1), 17(2)

Citation : AIR 1971 MP 136 : (1975) ILR (MP) 468 : (1971) JLJ 178

Hon'ble Judges : Shiv Dayal Shrivastava, J;K.K. Dube, J

Bench : Division Bench

Advocate : H.G. Mishra, for the Appellant; R.S. Bajpai, Additional Government Advocate for Opposite Party No. 1, for the Respondent

Final Decision : Allowed

Judgement

Shiv Dayal, J.—This petition under Article 226 of the Constitution challenges the rejection of the petitioner's nomination paper which was filed to contest the election to the Gram Panchayat Budhara under the M. P. Panchayats Act, 1962, hereinafter called "the Act".

2. The election of Panchas to the Gram Panchayat Budhara was to be held on May 20, 1970. The petitioner Mata Prasad and respondent No. 3, Munshi Singh, submitted nomination papers. On the date of scrutiny of nomination papers, an objection was raised by the respondent No. 2. Udaisingh, to the effect that the petitioner owed more than Rs. 400/- in connection with the construction work which meant that he had not repaid the amount up to that date. The amount had been given to him in the capacity of Sarpanch of the Gram Panchayat. The petitioner contended that the amount was not due in respect of panchayat tax. However the Nirwahan Adhikari (Election Officer) respondent No. 1 accepted the objection and rejected the petitioner's nomination paper.

3. It was first contended for the petitioner that no tax was due by the petitioner.

He relied on letter dated December 3, 1969 of the Sub-Divisional Officer. But this averment was controverted in the return filed by the Nirwahan Adhikari who stated that the final order of the Sub-Divisional Officer confirmed the order of recovery of the amount. We do not go into the Question of facts of this nature when there is a remedy of election petition available to the petitioner to canvass such disputes.

4. However, the other contention of the petitioner is that assuming that the petitioner owed an amount which he had received as Sarpanch of the Gram Panchayat in connection with the construction of a well as alleged by the objector, and had not repaid that amount, it entailed no disqualification within the meaning of Section 17(1) of the Act. The Nirwahan Adhikari, in his order rejecting the nomination paper, did not specify the clause which he thought applied to the case. He merely mentioned Section 17 of the Act holding that instead of spending the amount of Rs. 400/-received by him in the construction of a public well, he misappropriated the amount in the construction of his own well.

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5. The learned Additional Government Advocate relies on clause (e) of Section 17 (2) of the Act. In our opinion, Sub-section (2) of Section 17 does not apply as we shall presently show. Alternatively, reliance is placed on Clause (i) of Section 17 (1) of the Act. It will be useful to reproduce both the clauses which read as follows:--

"17. Disqualifications for being Panch, Sarpanch or Up-Sarpanch of Gram Panchayat.--

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

(h) or

(i) has not paid all taxes, due by him to the Gram Panchayat at the end of the financial year immediately preceding that in which the election is held or co-option or appointment is made in spite of a demand notice of not less than thirty days made therefor....."

(2) If a Panch or a Sarpanch or an Up-Sarpanch of a Gram Panchayat having been elected appointed or co-opted.

(e) fails to pay any arrears of any kind due by him to the Gram Panchayat in spite of a demand notice of not less than thirty days made therefor;

he shall, subject to the provisions of Subsection (3), cease to be a Panch or Sarpanch or an Up-Sarpanch and his office shall become vacant." (Underlining is ours.)

6. A plain reading of Sub-section (2) of Section 17 of the Act leaves no manner of doubt that that sub-section speaks of disqualification which is incurred by a Panch who has been elected; and the consequence is that he ceases to be a Panch. It is only Sub-section (1) which enumerates the disqualifications which disentitle a person to be elected as a Panch. Sarpanch or an Up-Sarpanch. In other words, if any of the clauses under Sub-section (1) of Section 17 applies to a person, he is ineligible to be a Panch, while if any of the clauses under Subsection (2) applies to a person, who has already been elected a Panch, he incurs a disqualification and ceases to be a Panch. The present case is not one where the question was whether the petitioner incurred a disqualification as a Panch. Sarpanch or Up-Sarpanch and ceased to be a Panch or Sarpanch on account of the default in payment of arrears due by him to the Gram Panchayat in spite of a prescribed notice of demand.

7. Therefore, all that has to be seen is whether on the facts found by the Nirwahan Adhikari, could the nomination paper of the petitioner be rejected on the ground that he was disqualified to be a Panch within the meaning of Subsection (1) of Section 17 of the Act? As said above Clause (i) alone could be relied on for the respondents but that clause comes into play only when "all taxes due by him to the Gram Panchayat" had not been paid by the candidate.

8. The word "tax" has a known connotation in law. A "tax" is an imposition made for a public purpose without reference to any service rendered for the State or any specific benefit to be conferred on the tax payer. It is a compulsory exaction of money by a public authority for public purposes. In the Act, the word "tax" has been defined in Section 2 (xxxiii) as follows :--

" "tax" includes a tax, toll, cess, rate, fee or other impost leviable under this Act, but does not include a fine."

A toll is a payment in respect of some benefit, advantage or service, generally for the use of another's property. A cess is a tax imposed for some specific purpose with reference to some goods. A fee is a payment levied by the State in respect of services performed by it for the benefit of the individual. A duty is a tax levied on a commodity. It is undoubted that an amount received and misappropriated is neither a tax nor a toll, nor a cess, nor a fee nor any other impost leviable under the Act. It is thus patent enough that the rejection of the petitioner's nomination paper was wholly unauthorised and ultra vires the Act.

9. The learned counsel for the respondent contended that this Court should not exercise its powers under Article 226 of the Constitution inasmuch as the petitioner has an alternative remedy by way of an election petition. Reliance is placed on Pancham Ramcharan Vs. The Collector, Dist. Bhind and Others, . It is clear to us that when a nomination form is illegally rejected, the jurisdiction of this Court is not barred. It is a different matter that this Court would not interfere when any question of fact or a mixed question of fact and law is involved. In the case relied on for the respondents, it was said:--

"All the grounds taken by the petitioner fall under Rule 22 (1) (d) (iii), quoted above. The petitioner having an appropriate and efficacious remedy, which is provided in emphatic terms, this Court would not interfere by a writ under Article 226 of the Constitution save for compelling reasons in very special circumstances."

In *Vinod Kumar v. K. L. Jain*, Returning Officer, 1965 mp LJ 248, it was said--

"Where rejection of a nomination paper is flagrantly wrong and arbitrary and no enquiry or evidence is required, the remedy by way of an election petition cannot be said to be equally efficacious. That is so, not merely because the petitioner will be deprived of contesting the election, but also because the Gram Sabha (to which election is sought) being an electoral college for other elections, the petitioner will be deprived of contesting the latter. This is, therefore, a fit case where appropriate relief must immediately be given to the petitioners. The rules do not provide for an appeal from improper rejection of a nomination paper."

In that case, a writ was issued under Article 226. Also see *Kishanchand v. M. C. Kurwai*, 1969 Jab LJ 1039.

10. In the present case, the nomination form was rejected without authority of law. The Nirwahan Adhikari has exercised his power arbitrarily and capriciously without even referring to the clause applicable to the case. The respondent No. 3 was the only candidate. He was declared elected in consequence of the rejection of the petitioner's nomination form. Therefore, we feel compelled to interfere.

11. In the result, the petition is allowed. The orders of the Nirwahan Adhikari rejecting the nomination paper of the petitioner are quashed. The Nirwahan Adhikari shall accept the petitioner's nomination. The respondents are directed to hold the election according to law. The petitioner shall have his costs from respondents No. 2 and No. 3. Counsel's fee Rs. 50/-. Security deposit by the petitioner shall be refunded.