
(1975) 04 RAJ CK 0009
In the Rajasthan High Court
Case No : Civil Writ Petition No. 677 of 1974

Parbhati Lal

APPELLANT

Vs

Additional District Development Officer and Others

RESPONDENT

Date of Decision : 05-04-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1975) WLN 166

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.M. Lodha, J.—This is a petition under Article 226 of the Constitution of India by Parbhatilal, the erst while Sarpanch of Panchayat Gudha, whose seat has been declared vacant by the Additional District Development Officer, (Panchayats) by his order dated 28th December, 1973. In pursuance of this order a Notification was issued on 31st December, 1973 notifying that the petitioner's seat had fallen vacant on account of his having remained absent in five consecutive meetings of the Panchayat.

2. The petitioner's case is that Bagh Singh, Up-Sarpanch bore grudge against him as the petitioner had been instrumental in sending a copy of the panchayat's Resolution to the Additional District Development Officer for declaring the seat of Bagh Singh vacant on account of the latter's failure to attend five consecutive meetings of the Panchayat. He goes on to state that the Additional District Development Officer has not decided Bagh Singh's case, which is still pending before him. It is alleged that Bagh Singh in collusion with certain other Panchas started holding parallel fictitious meetings of the Panchayat and made a report against him to the Additional District Development Officer, who did not make any enquiry into the matter, nor did he apply his mind to the facts and circumstances of the case and declared the petitioner's seat as having fallen vacant only on an office note prepared by the officer designated as P.E.O.

3. The petition is being opposed by Bagh Singh, non petitioner No. 3 who is represented by Mr. J.S Rastogi and also by Mr. B.R. Arora on behalf of the Additional District Development Officer. Since the petitioner did not file a copy of the order of the Additional District Development Officer, I called upon Mr Arora, Deputy Govt. Advocate, to produce the same and he has done that.

4. Learned Counsel for the petitioner has urged three points in support of his petition. Firstly, it has been argued that the Additional District Development Officer did not hold any enquiry into the matter as required by Rule 12(5) of the Rajasthan Panchayat and Nayaya Panchayat (General) Rules, 1961. It may be pointed out that after receipt of the letter from the Up-Sarpanch that the petitioner's seat had fallen vacant, a notice was issued to the petitioner by the Additional District Development Officer and the petitioner filed a written reply to the same. Thereafter, the petitioner was called upon to produce the record of the Panchayat which was admittedly in his possession. But the petitioner failed to do so. The matter was fixed on 12th November, 1973, but the petitioner failed to appear before the Additional District Development officer, on that date. A telegram of his illness was received by the officer the next day, that is, 13th November, 1973. But before that on 12th November, 1973 the Officer directed that since the petitioner had not produced the record, the matter may be proceeded against him in his absence. Thereafter, it appears, that the Additional District Development Officer directed an officer subordinate to him designated as P.E.O. to collect facts from the record and put up a detailed note before him. That note was accordingly prepared by the P.E.O. and the Additional District Development Officer agreed with the P.E.O. and directed that orders be issued accordingly. Section 17(2) of the Rajasthan Panchayat Act, 1953 provides that if any Panch, Sar Panch or Up-Sarpanch during the term of his office absents himself without giving information in writing to the Panchayat, he shall cease to be Panch, Sar Panch or Up-Sarpanch and his seat shall become vacant. Rule 12 of the Rules referred to above provided the procedure to be followed in such matters. Sub-rule (6) to Rule 12 provides that on receipt of the record, the Additional District Development officer may, upon perusing the same, and considering the recommendation of Panchayat and after giving the absentee an opportunity of being heard, declare such seat to have become vacant or make such other order as he may think proper in the circumstances of the case. The wordings of Section 17(2) of the Panchayat Act, 1953 make it clear that the moment it is established that a Panch has absented himself from four consecutive meetings of the Panchayat without giving information in writing to the Panchayat, his seat shall become vacant. This is a mandatory provision and Rule 12 only provides a procedure to settle any dispute which may arise on the question whether the meetings were actually held and whether the Panch remained absent without giving information in writing to the Panchayat. In the present case, the Additional District Development Officer after receipt of the Resolution of the Panchayat, got the matter examined by his subordinate and thereafter came to the conclusion that the meetings had been held and the

petitioner had remained absent without giving written information (sic) these circumstances the mere fact that the Additional District Development Officer got a note prepared by his subordinate with a view to get the facts on the record collected at one place, it cannot be said that the order of the Additional District Development Officer is vitiated.

5. Another contention of the learned Counsel for the petitioner is that no notice had been served upon the petitioner after the close of the fourth meeting as required by Rule 12(1) of the Rules. The meeting; in which the petitioner was alleged to have remained absent are alleged to have been held on January 1, 1973; January 15, 1973, February 1, 1973, February 15, 1973; March 1, 1973. March 15, 1973 and April 1, 1973. Notice for each of these meetings is said to have been issued to the petitioner, but every time it was received back with a report that the petitioner had gone out of station. After the sixth meeting held on March 16 1973 notice dated March 29, 1973 was issued to the petitioner to attend the seventh meeting without fail, lest his seat may be declared vacant. The contention of the learned Counsel for the petitioner is that it was incumbent on the pm of the Panchayat to have issued notice to the petitioner, after the close of the fourth meeting, as required by Rule 12(1) and since this was not done and the notice was issued after the sixth meeting, the Resolution passed thereafter in the seventh meeting declaring his seat vacant was illegal and void. In my opinion, this argument is devoid of substance. If the notice was not received by the petitioner after the close of the fourth meeting and the absence of the petitioner was condoned, it was to the advantage of the petitioner and not to his disadvantage. He could have very well made up his default by attending the seventh meeting. But since he did not avail of this opportunity, he cannot make capital out of the fact that the notice was not given to him after the close of the fourth meeting. He cannot be allowed to place premium on his own default.

6. It is then contended that the petitioner was not served with the notice dated March 29, 1973. It may be noted that the notice was sent by Registered post and was returned with the endorsement that it could not be delivered as the petitioner was out of station. It may not be out of place to point out, here, that the complaint against the petitioner was that in spite of his being a Sarpanch, he was continuously remaining absent from the station and that is why a requisition was made by certain panchas before the Up-sarpanch to call meetings of the panchayat as the Panchayat's work was suffering. There is nothing on the record to show that the endorsement on the notice that the petitioner was not available and had gone out of station is wrong. Besides that, the petitioner could have very well agitated this point before the Additional District Development Officer but he absented himself. The Additional District Development Officer was, therefore, justified in recording a finding against the petitioner.

7. Lastly, it was contended that Bagh Siagh, Up-Sarpanch was not competent to call the meetings of the Panchayat. It may be observed that it was on account of the continued absence of the petitioner from the village that a requisition was

made by certain Panchas to the Up-Sarpanch to call the meetings and, therefore, the Up-Sarpanch started holding meetings. No material has been placed on the record to show that the petitioner was present in the village and/or the proceedings taken by Bagh Singh in his absence were all fictitious. It is true that the petitioner had sent a letter to the Additional District Development Officer that Bagh Singh's Beat had fallen vacant but no decision had been taken in this respect, and the enquiry was still pending. In these circumstances, the seat of Bagh Singh cannot be said to have fallen vacant and he was competent to act as Sarpanch in the continued absence of the Sarpanch viz the petitioner.

8. The result is that I do not find force in any of the contentions raised by the petitioner and hereby dismiss the writ application. But in the circumstances, I make no order as to costs.