
(1975) 01 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1 of 1974

Rajmal, Mishrilal Jain

APPELLANT

Vs

Collector Jhabua

RESPONDENT

Date of Decision : 16-01-1975

Acts Referred:

General Clauses Act, 1897 — Section 6

Citation : (1975) JLJ 856

Hon'ble Judges : U.N. Bhachawat, J;J.S. Verma, J

Bench : Division Bench

Advocate : T.N. Singh, for the Appellant; P.L. Mehta, A.G.A, for the Respondent

Final Decision : Allowed

Judgement

J.S. Verma, J.—There is a common question involved in all these petitions on account of which they shall all be disposed of by this order. Misc. Petition Nos. 1, 13, 22 and 25 of 1974 are by the Presidents of different Janpada Panchayats, while Misc. Petitions Nos. 2, 21, 23, 24, 31 and 82 of 1974 are by Sar-Panchas of different Gram Panchayats in District Jhabua. The common question involved in all these petitions is the effect of amendment of section 21 of the M. P. Panchayats Act, 1962 (hereinafter referred to as the Principal Act) relating to Gram Panchayats and section 111 thereof relating to Janpada Panchayats, by M.P. Act No. 17 of 1972 (hereinafter referred to as the Amending Act).

2. In all these petitions, the petitioner was elected the Sarpanch/President prior to the amendment made in sections 21 and 111 of the Principal Act by the Amending Act No. 17 of 1972 brought into force with effect from 24-7-1972. By virtue of sections 22 and 112 of the Principal Act, the Sarpanch/President had the right to continue in that office for a term of five years subject only to the provisions contained in the Act enabling their removal before expiry of the term. Admittedly, this term of five years in each of these cases has not yet expired. In substance, the effect of the aforesaid amendment of sections 21 and 111 of the Principal Act is that in the Panchayat wherein not less than fifty-one percent of

the Panchas belong to the Scheduled Tribes, the Sarpanch/ President shall be elected from amongst the members belonging to such tribes. It is common ground before us in all these petitions that each of these Panchayats was at the time of its constitution prior to the amendment of this type so that the amended provisions would undoubtedly be attracted provided the same are retrospective in operation. The necessary consequence of applying the amended provisions would be to nullify the election of the petitioners even though held prior to the amendment since, in each of these petitions, the petitioner is not a member of any of the Scheduled Tribes. The Collector of the District, treating these amended provisions applicable, has made an order in every case (Annexure A to the petition) stating that a casual vacancy in the office of Sarpanch/President has occurred on account of the aforesaid amendment made in the Principal Act with effect from 24-7-1972. It is this order, in each case, which is challenged in these petitions.

3. The only question for our decision is whether the amendment of sections 21 and 111 of the Principal Act made by Act No. 17 of 1972 with effect from 24-7-1972 is retrospective in operation so as to take away the petitioners' right to continue in office for the full term, which right they had acquired under the Act at the time of their election to the office prior to the amendment.

4. Section 21 of the Principal Act as it stood initially was as follows:-

21. Election and term of Sarpanch and Up-Sarpanch--

1. Every Gram Panchayat shall at its first meeting elect from amongst its members a Sarpanch and an Up Sarpanch

2. If the Gram Panchayat fails to elect a Sarpanch or an Up-Sarpanch in accordance with this section, the Collector may, by order, direct the Gram Panchayat to elect the Sarpanch or the Up-Sarpanch within the period specified therein and on failure of the Gram Panchayat to do so, appoint any person eligible under sub-section (1) to fill the vacancy.

3. The State Government may make rules for regulating the mode and time of election or appointment of the Sarpanch and the Up-Sarpanch.

After amendment by M.P. Panchayats (Amendment) Act No. 17 of 1972 with effect from 24-7-1972, section 21 is as under:--

21, Election of Sarpanch and Up-Sarpanch--

1. Subject to the provisions of clause (2) every Gram Panchayat shall at its first meeting elect from amongst its members a Sarpanch and an Up-Sarpanch.

2. Where not less than fifty-one per cent of Panchas of the Gram Panchayat belong to the Scheduled Tribes, a Sarpanch and an Up-Sarpanch shall be elected from amongst the members belonging to such Tribes.

3. If the Gram Panchayat fails to elect a Sarpanch or an Up-Sarpanch in

accordance with this section, the Collector may, by order, direct the Gram Panchayat to elect the Sarpanch or the Up-Sarpanch within the period specified therein and on failure of the Gram Panchayat to do so, appoint any person eligible under sub-section (1) or as the case may be, to fill the vacancy.

4. The State Government may make rules for regulating the mode and time of election or appointment of the Sarpanch and the Up-Sarpanch.

Later, the section was further amended by Act No. 18 of 1973 and two provisos were added to sub-section (1) as under:--

Provided that a member of either House of Parliament, member of the Legislative Assembly and a person who is a Chairman of any Co-operative Society shall not be eligible to be elected a Sarpanch or an Up-Sarpanch:

Provided further that where on the date of commencement of the Madhya Pradesh Panchayats (Amendment) Act, 1973 a member of either House of Parliament or a member of the Legislative Assembly or a Chairman of any Co-operative Society is a Sarpanch or Up-Sarpanch, such member or Chairman, as the case may be, shall, on such commencement, be deemed to have vacated his office and a casual vacancy shall be deemed to have occurred in such office for the purpose of section 28.

5. Section 111 of the Principal Act relates to Janapada Panchayats and is corresponding to section 21 for election of President and Vice-President. The Amending Acts have similarly amended section 111 to bring about the same results. The relevant amendments being identical, it is not necessary to quote them again.

6. We shall now state the background in which the question for our decision has to be examined. This can be done best by quoting certain passages from Maxwell on the Interpretation of Statutes (Twelfth edition) which indicate the settled position. The relevant extracts from pages 215 and 216 are as follows:--

Upon the presumption that the Legislature does not intend what is unjust rests the learning against giving certain statutes a retrospective operation. They are construed as operating only in case or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.

The statement of the law contained in the preceding paragraph has been "so frequently quoted with approval that it now itself enjoys almost judicial authority."

One of the most well-known statements of the rules regarding retrospectively is contained in this passage from the judgment of R.S. Wright J. In *Re Athlumney* (1898) 2 Q B 551 at pp. 551-552. Perhaps no rule of construction is more firmly established than this that a retrospective operation is not to be given to a statute

so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. The rule has, in fact, two aspects, for it "involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary.

Before the presumption against retrospectively is applied, a Court must be satisfied that the statute is in fact retrospective. In the words of Cries on Statute Law (6th edition, page 386) a statute is retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past.

7. The nature of petitioner's right to continue in office for a fixed term by virtue of the election prior to amendment and the provisions contained in the Principal Act has now to be examined. The meaning of the expression right accrued" or "vested right" may first be stated.

8. One of the leading cases on the point, which still continues to be an authority having been followed recently by the Supreme Court in a decision which we shall refer to later, is *Abbott v. The Minister for Lands* 1895 Appeal Cases 425. While dealing with the meaning of this expression, their Lordships of the Privy Council summarised the law as follows:-

It has been very common in the case of repealing statutes to save all rights accrued, if it were held that the effect of this was to leave it open to anyone who could have taken advantage of any of the repealed enactments still to take advantage of them. The result would be very far-reaching.

It may be, as Windayer J. observes, that the power to take advantage of an enactment may without impropriety be termed a "right." But the question is whether it is a "right accrued within the meaning of the enactment which has to be construed.

Their Lordships think not, and they are confirmed in this opinion by the fact that the words relied on are found in conjunction with the words "obligations incurred or imposed." They think that the mere right (assuming it to be properly so called) existing in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of that right, cannot properly be deemed a "right accrued" within the meaning of the enactment." (page 431.)

Following the above decision, their Lordships of the Privy Council in *Director of Public Works v. Ho Po Sang* (1961) 2 All E R 721 (P C) at p. 731 reiterated as follows:--

It may be, therefore, that, under some repealed enactment, a right has been

given but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and or preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should or should not be given. On a repeal the former is preserved by the Interpretation Act. The latter is not. Their Lordships agree with the observation of Blair-Kerr J., that:

It is one thing to invoke a law for the adjudication of right which have already accrued prior to the appeal of that law. It is quite another matter to say that, irrespective of whether any right exist at the date of the repeal, if any procedural step is taken prior to the repeal, that, even after the repeal the applicant is entitled to have that procedure continued in order to determine whether he shall be given a right which he did not have when the procedure was set in motion.

A consideration of the authorities confirms their Lordships in the view which has been expressed." (Page 731)

In Maxwell on the Interpretation of Statutes (12th edition), the existing law on this point is summarised as below:--

The Judicial Committee held that the mere right existing at the date of the repealing statute to take advantage of the provisions of the Act repealed was not a "right accrued" within the meaning of the saving clause. (See G. Ogden Industries Pvt. Ltd. v. Lucas. " (1969) 1 All E R 121 (Page 17)

In a recent decision in Lalji Raja and Sons Vs. Firm Hansraj Nathuram, their Lordships of the Supreme Court have reiterated the law as under:--

That a provision to preserve the right accrued under a repealed Act "was not intended to preserve the abstract rights conferred by the repealed Act It only applies to specific rights given to an individual upon happening of one or the other of the events specified in statutes: see Lord Atkin's observations in Hamilton Gell v. White (1922) 2 K B 422. The mere right, existing at the date of repealing statute to take advantage of the provisions of that repealed was not a right accrued within the meaning of the saving clause. See G. Ogden Industries Pvt. Ltd. v. Lucax." (Para. 19 at Page 979).

This position has been succinctly summarised in the "Principles of Statutory Interpretation" by Justice G. P. Singh at page 320 as follows:

The distinction between what is and what is not a right preserved by the provisions of section 6, General Clauses Act is often one of great fineness. See Free Lanko Insurance Co. v. Ranasinghs (1964) 1 All E R 457 (P C) at p. 462. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere hope or expectation of or liberty to apply for acquiring a right. See Director of Public Works v. Ho Po Sang. A distinction is drawn between a legal proceeding for enforcing a right required on accrued and a legal proceeding for acquisition of a right, the former is saved whereas the latter is not.

9. As a result of the settled legal position already stated, it is obvious that where an event has yet to happen on the happening of which alone a right to take advantage of the repealed enactment would arise, there is no "right accrued" which could be saved in spite of the repeal. The real position is that in a case where the event requisite for furnishing the cause of action to initiate a proceeding had not yet happened prior to the repeal even the question of taking advantage of the repealed provision had not arisen so that the mere right to take advantage of the repealed provision had not come into existence. Such a situation in fact is even worse than a case where a right exists on the date of the repealing statute to take advantage of the provision repealed. As already pointed out it is settled law that a mere right existing at date of the repealing statute to take advantage of the provisions of the repealed Act is not a right accrued within the meaning of the usual saving clause. On the other hand, where the event has happened prior to repeal, on the happening of which a right springs up or is acquired under the existing law, without anything more to be done, such a right is a "right accrued" within the meaning of that expression.

10. The petitioner, in each of these cases, was elected the Sarpanch/President before the aforesaid amendments were made with effect from 24-7-1974. On such election, a right was acquired by each of them to remain in office for the full term as provided in the Act, without anything more to be done thereafter. The event of election to the office was the only thing on the happening of which the right came into existence and this had, admittedly happened prior to the amendments. Thus, in view of the aforesaid principles, the petitioner's right to continue as Sarpanch/President for the full term as provided by the Principal Act was undoubtedly a "right accrued" within the meaning of that expression.

11. The petitioner's right to remain in office for the full term being a right accrued within the meaning of that expression, it is clear that the same cannot be taken away, except by provisions indicating that result either expressly or by necessary implication. We have, therefore, to examine if such a result is indicated by the amending Act. Unless a contrary intention to this effect is indicated by the Amending Act, the normal consequence of a "right accrued" being saved has to follow.

12. A plain reading of sections 21 and 111 after the Amendment by Act No. 17 of 1972 does not give any indication of the same being retrospective in operation. Sub-section (1) clearly speaks of the first meeting after constitution of the Panchayat and says after amendment that the election of the Sarpanch/President was to be made subject to the provisions of this sub-section (2). Thus, a plain reading of the provision indicates that the amended sub-section (2) would be attracted for the first time to a first meeting held under sub-section (1) after a fresh constitution of a Panchayat made subsequent to this amendment. To cases like the present wherein the Panchayats were already in existence prior to the amendment and the first meeting to elect persons to these offices had taken place before the amendment, the amended provisions have apparently no

application. This result is inevitable from a plain construction of the amended sections 21 and 111. The question, however, is whether there is anything else either in the Amending Act or elsewhere to suggest a contrary intention.

13. The Amending Act, 1972, read as a whole also does not indicate any contrary intention to suggest that the aforesaid amended provisions are to be treated as retrospective. In short, there is no express provision anywhere to indicate that the amendments are retrospective in nature.

14. The only thing remaining to be seen now is whether the amendment has been made retrospective by necessary implication, there being admittedly no such express intention indicated. Sections 17 and 108 of the Principal Act which also enumerate the subsequent disqualifications which would result in the office becoming vacant, remain unaffected by the aforesaid Amending Act. Similarly sections 28 and 118 which deal with filling up of casual vacancy in such office are not touched by the Amending Act. The situation in which a casual vacancy occurs according to section 28 and 118 are death, resignation, removal, disqualification or the incumbent becoming incapable of acting before the expiry of his term of office. The situation for removal from office is provided in sections 27 and 116. Admittedly, these are not cases of removal from office. The case of disqualification is governed by sections 16 and 108 which do not cover these cases. There can be thus no doubt that sections 28 and 118 do not apply to these cases and it is only these sections which deal with filling up of casual vacancy. Since the enactment provides for situation in which a casual vacancy is deemed to have occurred and for the manner of filling up the same, the present cases which do not admittedly fall within that ambit, cannot be treated as cases of filling up casual vacancies to these offices. It is also significant that the further amendment made in sections 21 and 111 by the Act No. 18 of 1973 expressly provides that where such an office was held by a person belonging to any of specified categories, a casual vacancy shall be deemed to have occurred in such office for purposes of sections 28 and 118. However there is no corresponding provision introduced by amendment to cover cases like the present. This fact also suggests that the legislative intent was not to create casual vacancies in such offices simply because sections 21 and 111 were amended in the manner aforesaid by Act No. 17 of 1972. Thus, there is nothing to show even by necessary implication that the amendment of sections 21 and 111 by Act No. 17 of 1972 is retrospective in operation. These amendments must, therefore, be treated as prospective so as to apply only to elections held in the normal course after the amendment.

15. As a result of the aforesaid discussion, it follows that the Collector had no power to treat a casual vacancy as having occurred in the office simply because sections 21 and 111 so amended. Annexure A to the petition in each case is, therefore, quashed. Accordingly, these petitions succeed and are allowed with costs. Counsel's fee Rs. 50 if certified. The outstanding amount of security deposit shall be refunded to the petitioner.