
(1991) 04 PAT CK 0019

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1267 of 1990

Ram Prakash Prasad

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 16-04-1991

Acts Referred:

Bihar Panchayat Raj Act, 1947 — Section 26, 27

Citation : (1991) 39 BLJR 1149

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This application is directed against the order dated 8-2-1990 passed by the respondent No. 3, as contained in Annexure-7 to the writ application, whereby and where under the respondent No. 9 was appointed in the post of Chief Officer (Dalpati) of the village voluntary force Karanpura Gram Panchayat.

2. The fact of the matter lies in a very narrow compass.

3. Admittedly, in the aforementioned Gram Panchayat, a Gram Raksha Dal was constituted in terms of the provisions of Bihar Panchayat Raj Act. The Executive Committee of the said Gram Panchayat took into consideration the names of the petitioner, the respondent No. 5 and one Kashi Nath the son of Mukhiya and recommended the case of aforementioned Kashi Nath for appointment before the respondent No. 3. The said recommendation is contained in Annexure-A to the counter affidavit.

4. However, the executive committee in the aforementioned purported recommendations dated 7-4-1988 stated that both the petitioner and respondent No. 5 were not found physically fit for appointment in the said post. Shri Kashi Nath's appointment was not approved by the respondent No. 3. Thereafter, another recommendation was made by the Executive Committee of the

aforementioned Gram Panchayat in which the name of the petitioner was recommended for approval of the respondent No. 3.

5. It appears that the respondent No. 3 did not agree with the recommendations of the Executive Committee of the Gram Panchayat and he, therefore, issued a letter dated 25-3-1989 addressed to Monitoring Officer of the Panchayat Raj Department, Patna to provide his guidance as to whether instead of the petitioner, the respondent No. 3, be appointed in the post of Dalpati or not.

6. By reason of a letter dated 3rd February, 1990, the Deputy Director-cum-Deputy Secretary of the Panchayat Raj Department (Annexure-R/5) stated that the respondent No. 3 himself was competent to pass necessary order in this regard.

Thereafter, the impugned order of appointment as contained in Annexure-7 was issued.

7. The aforementioned basic facts are not in dispute.

8. The petitioner has contended that the impugned order as contained in Annexure-7 to the writ application is illegal on two grounds, namely, (A) The respondent No. 5 was aged about 30 years and thus was not fit for appointment, (B) As the respondent No. 5 has not been recommended by the Executive Committee, the respondent No. 3 had no jurisdiction to pass the impugned order as contained in Annexure-7 to the writ application.

9. In this case, a counter affidavit has been filed on behalf of the State wherein, inter alia, it has been contended:

That with regard to para 2(c) it is stated that Sri Birendra Ojha has not crossed the limitation of 30 years age on 7-4-1988 when first recommendation was sent and Sri Ojha has been appointed due to Superior condidate for appointment shown in that meeting hence matter of crossing, limitation of age does not arises. Sri Ojha was above 29 years on 7-4-1988. His date of birth is 19-1-1959.

That reply to para 7 it is stated that District Panchayat Raj Officer was convinced that Sri Birendra Ojha was not recommended by majority due to village politics but he (Sri Ojha) was superior than Sri Ram Prakash and others hence D.P.R.O. passed his order dated 8-2-1990 regarding appointment of Sri Ojha as Dalpati of Karanpura Panchayat, which is totally justified and according to rules.

10. In the said counter affidavit, it was further contended, as would appear from the minutes of the meeting of the Executive Committee and as contained in Annexure-A to the counter affidavit that the petitioner was found unfit for the appointment in the (sic). It has further been contended in para 6 of the counter affidavit that the respondent No. 5 is a Graduate whereas the petitioner is a matriculate.

11. In his counter affidavit, the respondent No. 5 inter alia, contended that he was appointed as a Section Officer of Village Voluntary Force. According to the

said respondent, the physical qualification and other qualifications required for the purpose of appointment of Section Officer as also a Dalpati are the same. The said respondent, therefore, contended that if he was found physically fit for appointment in the of post of Section Officer, the purported observations made in Annexure-A to the counter affidavit that the respondent No. 5 was not physically fit for his appointment in the post of Dalpati is incorrect.

12. The said respondent has further brought on records a Circular letter of State of Bihar dated 27-2-1988 whereby and where under, it was directed to all the Mukhiyas that for the purpose of filling up of the post of Dalpati, preference should be given to Section Officers.

13. Section 26 of the Bihar Panchayat Act, 1947 reads as follows:

Village Volunteer force--For general watch and ward for meeting cases of emergency like fire, breaking of an embankment or dam, outbreak of epidemic, and occurrence of burglary, dacoity (and for maintenance of peace and tranquility, the Executive Committee may organise a village volunteer force (to be called command of a Chief Officer, who shall be appointed by the Executive Committee and all able bodied males of the village between the ages of 18 and 30 years shall be members of the said force:

Provided that if the Government decided to inter grate the village Police with Village Volunteer Force (Gram Raksha Dal) of any area, the Chief Officer of the Force shall be appointed by the Sub-divisional Magistrate after consulting terms and conditions as the State Government may direct; and on such appointment being made, the appointment, if any, of any other person as Chief Officer of the village Volunteer Force made by the Executive Committee shall be deemed to have terminated.

14. Section 27 of the said Act provides for the Rule making power of the State for the organisation if Village Volunteer Force. The State in exercise of its power conferred upon it framed rules known as Bihar Panchayat Village Volunteer Force Rules, 1949 (hereinafter called and referred as the Rules").

15. Rules 3 and 4, which are relevant for the purpose of this case reads thus:

Rule-3--Within a month of his election, the Mukhiya shall prepare in Form No. 1 a register of all able-bodied males between the ages of 18 and 30 years residing within the Panchayat for the purpose of enrolling them as members of the force.

Rule-4.--(1) Subject to the approval of the District Panchayat Officer, the Executive Committee shall for the purpose of Commanding the Force, appoint a Cheif Officer from amongst the members of the force.

(2) A member of the force, in order to be eligible for appointment as the Chief Officer, must be--

(a) Over 21 and under 30 years of age on the date of the appointment;

- (b) of good character;
- (c) physically fit to stand the rigours of outdoor duties;
- (d) not less than 5 feet 4 inches in height and 32 inches round the chest (unexpanded), and
- (e) in possession of the Middle Vernacular certificate;

Provided that in the event of non-availability of candidate possessing middle Vernacular Certificate, the Upper Primary Certificate may be taken as requisite education qualification.

(3) In selecting a person from amongst the member of the force for appointment as the Chief Officer, preference shall be given to a member who has had war or police service to his credit.

16. From a combined reading of Rules 3, 4, 17 and 21 of the Rules, it would evident that a Chief Officer (Dalpati) has to be appointed by the Executive Committee from amongst the members of the force. Such an appointment, however, is subject to the approval of the District Panchayat Officer.

The position in law, is also evident from the proviso to Section 26 of the Act.

Further, the eligibility clauses contained in Rule 4 aforementioned are mandatory and before a Chief Officer can be appointed, he must fulfill all the criteria's for appointment as envisaged under Rules.

17. The question which arised for consideration in this writ application is as to whether is exercise of power conferred in terms of Rule 4(1) of the said Rules, the respondent No. 3 has the jurisdiction to appoint the respondent No. 5 as Dalpati or not.

18. As noticed hereinbefore, the State has admitted in para 11 of its counter affidavit that the majority of the members of the Executive Committee did not recommend the name of respondent No. 5 for his appointment is the post of Dalpati at all.

19. However, the contentions raised on behalf of State as also on behalf of the respondent No. 5 are that the Executive Committee of the Gram Panchayat in question had committed illegalities inasmuch as at the first instance, in terms of it minutes of meeting dated 7-4-1988 (Annexure-A to the counter affidavit), it recommended the name of the son of the Mukhiya, who did not have the requisite qualification to be appointed therefore, inasmuch as, he was below 21 years of age.

20. It was further been pointed out that from a perusal of the aforementioned minutes of meeting, it was found that both the petitioner and respondent No. 5 where found physically unfit for appointment.

21. The learned Counsel appearing on behalf of the respondent No. 5 therefore,

vehemently contended that in such a peculiar situation, the respondent No. 3 had no other option but to exercise his jurisdiction of appointing the respondent No. 5, inasmuch as taking into consideration all facts and circumstances of this case, he was found to be the best candidate.

22. The learned Counsel further submitted that by appointing the respondent No. 5 in the post of Dalpati, the respondent No. 3 has also given effect to the policy decision of the State as contained in Annexure R/3 aforementioned.

23. The learned Counsel has further drawn my attention to the fact that by reason of two notifications dated 8-2-1990, the aforementioned Karanpura Gram Panchayat was bifurcated and thus the petitioner was not fit to be appointed as Chief Officer of Village Volunteer Force in view of fact that he is no longer resident of aforementioned Karanpura Gram Panchayat.

24. However, according to the learned Counsel for the petitioner, the said notification has not yet been implemented.

25. In view of the order proposed to be passed by me, in my opinion, it is not necessary to decide this aspect of the matter.

26. In my opinion, the provisions contained in Rule 4(1) are absolutely explicit, clear and unambiguous. The scheme and object of the Bihar Panchayat Raj Act, particularly the provisions contained in Section 26 thereof read with the said Rules leave no room for doubt that the power of appointment is vested in the Executive Committee of the Panchayat and in no other authority.

27. It is, further, clear that aforementioned Rules having been framed by the State of Bihar in exercise of its power conferred upon it u/s 27 of the said Act, the same would prevail over the executive instructions and thus must be followed:

Once it is held that the power of appointment is vested in the Executive Committee and none else, in my opinion, the respondent No. 3, namely, District Panchayat Officer whose jurisdiction is merely to grant approval of such an appointment was not conferred with the power to make appointment itself.

28. It is true that in some, cases, owing to recalcitrant attitude on the part of the Executive Committee of the Gram Panchayat question, an appropriate person may not be recommended for appointment at all but that does not mean that only by reason of acts committed by the members of the Executive committee of the Gram Panchayat overtly or covertly in the matter of appointment of a Dalpati, the District Panchayat Officer can assume jurisdiction which on a plain reading of Rule 4(1) of the said Rules, he does not possess.

29. It is now well known in view of various decisions that where the language used in a provision of Statute is clear and unambiguous; literal meaning thereto has to be given and in such a case, the question of invoking the principles of interpretation of the Statute does not arise.

Reference, in this connection may be made to *Sutters v. Briggs*, reported in (1922) Appeal Cases, Page-1.

30. This aspect of the matter has also been considered in a recent Full Bench decision of this Court in *Mohd. Jainul Ansari and Others Vs. Mohd. Khalil*, .

In view of the aforementioned authoratative pronouncements, in my opinion, I have no other option but to hold that on a plain reading of Rule 4 of the said Rules, that the Executive Committee of the Panchayat in question alone is the appointing authority, but such an appointment would be the subject to the approval of the District Panchayat Officer.

31. The word "approval" in the contest of the Scheme and purport of the Act and the Rules would mean the approval to be granted so far as an appoint-meant made in the post of Dalpati is concerned; but while doing so, the District Panchayat Officer cannot himself make any appointment.

32. There cannot be any doubt that the District Panchayat Officer is empowered in law to grant an approval or not to grant approval. In the event, if he considers that the appointment of a person made by the Executive Committee is not a fit person to be appointed as Dalpati, it would be open to him to refuse to grant approval for appointment and send the matter back to the Executive Committee for a fresh decision, in accordance with law.

But, I am of the considered view that while exercising his power to grant approval to an appointment already made, he does not acquire any jurisdiction whatsoever to make offer of appointment to a person whom he considers fit for occupying the said post, although he was not recommended by the executive committee.

33. Taking thus all facts and circumstances into consideration, I am of the view that the impugned order as contained in Annexure-7 to the writ application cannot be sustained.

34. The question, which, now arises for consideration now is as to what relief the petitioner would be entitled to in this application.

35. As noticed hereinbefore, both the petitioner, and the respondent No. 5 were at one point of time found physically unfit to be appointed in the post of Dalpati. The respondent No. 5 however, as noticed hereinbefore, was later on appointed as a Sectional Officer.

36. Nothing has been brought on records to show except by way of an inference that the earlier assessment of the Executive Committee about the physical unfitness of the respondent No. 5 was wrong.

37. In this situation, the Executive Committee of Karanpura Gram Panchayat is hereby directed to consider the cases of all eligible persons afresh, in accordance with the provision of the Rules and appoint a person who is fit to occupy the said post which would be subject to the approval of the District Panchayat Officer.

As the matter has been pending for along time, it is expected that an early action in the matter shall be taken.

38. Before parting with the case, it may be mentioned that in considering the cases of all eligible candidates, the Executive Committee of the aforementioned Gram Panchayat as also the District Panchayat Officer shall take into consideration all aspects of the matter including the rival contentions raised on behalf of the parties and as noticed hereinbefore, which have not been taken into consideration by me for disposal of this application.

39. In the result, this application is allowed to the extent mentioned hereinbefore, but without any order as to costs.