

(1981) 12 RAJ CK 0017
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1978 of 1981

Ram Prasad

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 23-12-1981

Acts Referred:

Rajasthan Panchayat (Extension of Term) Ordinance, 1981 — Section 2
Rajasthan Panchayat Act, 1953 — Section 7, 7A

Citation : AIR 1982 Raj 271 : (1982) RLW 55

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Advocate : M.M. Singhvi, for the Appellant; D.S. Shishodia, Government Advocate, for the Respondent

Judgement

M.C. Jain, J.—The petitioner was re-elected to the office of Sarpanch, Gram Panchayat, Gulabpura on February 9, 1978. The term of the Gram Panchayat u/s 7 of the Rajasthan Panchayat Act, 1953 (for short as "the Act") was for five years. By the Rajasthan Panchayat Laws (Amendment) Ordinance, 1981 (Ordinance No. 10 of 1981). Section 7 of the Act was amended whereby the term of the Panchayat was reduced from five years to three years. By the Rajasthan Panchayat (Extension of Terra) Ordinance, 1981 (Ordinance No. 11 of 1981) the term of Panchayats in Rajasthan was extended up to 31st of December, 1981 or till the day immediately preceding the date of the first meeting of the Panchayat as a result of the periodical general election whichever is earlier. By a communication dated September 10/11, 1981, the State Government decided to hold elections of the Panchayats in March 1982 and in the said communication it is also stated that the elections are proposed to be held before January 31, 1982 (vide An-nexure 3). In view of the communication of the Chief Election Officer, Rajasthan (Annexure 3). the Collector, Bhilwara, issued a public notice dated 25-11-1981 (Annexure 4) under Rule 14 read with Rule 48 of the Rajasthan Panchayat Nyaya Up-Samiti Election Rules, 1960, whereby the Collector published the programme of the elections to the Gram Panehayat, Gulabpura.

According to the programme December 13, 1981, was fixed for filing nomination papers followed by the scrutiny and withdrawal on the same day and the poll was to take place on 14-12-1981. The State Government issued a notification Annexure 4 dated November 9, 1981, u/s 6 (1) of the Rajasthan Municipalities Act, 1959, whereby it proposed to constitute Gulabpura as a municipality in view of the fact that the population of the village Gulabpura is 11.586 and objections were invited from the public within a period of two months. The Collector (Elections), Bhilwara, issued another public notice dated December 3, 1981, whereby it was informed that in view of the directive of the Election Department, elections of the Gram Panchayat, Gulabpura, will not be held on 14-12-1981. Annexure 6 refers to the wireless message of the Director of Elections, Rajasthan, Jaipur, dated November 30, 1981, which states that in view of Local Self Government Department. Notification No. F. 1 (B) (2) LSG/ 81 4155 dated 9-11-1981 converting Gram Panchayat, Gulabpura into municipality, it has been decided not to hold election of Gram Panchayat, Gulabpura. In view of the orders of the Election Department, the Collector withdrew the public notice dated 25-11-1981 (Annexure 4) for holding elections of the Panchayat. The petitioner by this writ petition challenges the said public notice Annexure 6 of the Collector. The ground of challenge is that the Collector having issued the public notice dated 25-11-1981 could not withdraw Annexure 4 under orders of the Government and the Government had no authority to take a decision not to hold the elections of the Gram Panchayat, Gulabpura. In view of the fact that the term of the Panchayat was going to expire on December 31, 1981, on the direction of the Court the Deputy Government Advocate took notice and put in appearance. Looking to the urgency of the matter the writ petition was finally heard at the admission stage.

2. A return to the writ petition has been filed on behalf of the respondents. The respondents' case is that the order issued by the State Government was simply meant to bring to the notice of the Collector that in view of the fact that Gram Panchayat, Bhilwara, is proposed to be converted into Municipality, and since the municipal elections are also due to be held very shortly, it was advisable not to hold the Panchayat elections at present. The unnecessary holding of dual elections within a very short period may be avoided in public interest. It was averred that the term of Panchayats in Rajasthan has been reduced to three years and this case of the petitioner is denied that the petitioner is entitled to remain in office beyond 31-12-1981 or till the day immediately preceding the date of the first meeting of the Panchayat as a result of the next periodical general elections. It was also alleged that the Collector issued the public notice Annexure 6 in bona fide discharge of public duty in public interest.

3. It may be mentioned here that the petitioner in his writ petition has sought various reliefs, but at the hearing, he has confined his case to the validity of the public notice Annexure 6 issued by the Collector, so it is not necessary to state the facts, either alleged in the writ petition, or in the return, which may have any relevance with the other prayers, which the petitioner has made in the relief

clause.

4. I have heard Shri M. M. Singhvi, learned counsel for the petitioner, and Shri D. S. Shishodia, learned Government Advocate, for the respondents.

4-A. Mr. D. S. Shishodia, learned Government Advocate, submitted that in view of the provisions contained in Section 2 of the Ordinance No. 11 of 1981, it will not be necessary for this Court to examine the validity of public notice Annexure 6 issued by the Collector, whereby the earlier notice for holding elections Annexure 4 has been withdrawn. He urged that the term of the Panchayat in Rajasthan is extended up to 31st December, 1981 or till the day immediately preceding the date of the first meeting of the Panchayat as a result of the periodical election, whichever is earlier. Even if the elections of Gram Panchayat, Gulabpura, are not held, still its term would not extend beyond December 31, 1981. The petitioner will cease to be the Sarpanch after December 31, 1981, as Gram Panchayat, Gulabpura will cease to exist after that date.

5. Mr. M. M. Singhvi, learned counsel for the petitioner, submitted that the petitioner shall continue to hold office of Sarpanch even after December 31, 1981, in view of the provisions contained in Section 7-A of the Act. The Sarpanch as well as the Panchas of the Panchayat shall continue to hold office till the day immediately preceding the date of first meeting of the Panchayat, which may be formed as a result of the periodical general election. He submitted that the provision of Section 7-A shall apply in view of the fact that the Collector has taken steps for holding fresh general election before the expiry of the term of the existing panchayat. Proviso to Section 7-A would come into play and in view thereof the petitioner and for that matter the other panchas of the Gram Panchayat shall have a right to continue to hold office. According to Mr. Singhvi, Section 2 of Ordinance 11 has no overriding effect on the provisions contained in Section 7-A, for Section 7-A does not deal with the extension of term and only the provisions contained in the Act relating to term, have been overridden by the provisions in Section 2 of Ordinance 11.

6. Thus, it would appear that the controversy between the parties rests on the true scope and effect of Section 2 of Ordinance 11. If it is found that Section 2 of Ordinance 11 even overrides Section 7-A, then the term of the Panchayats will not extend beyond December 31, 1981, and no one can continue to hold the office either of Sarpanch or Panch of the Panchayat beyond that date and in case it is found that Section 2 of Ordinance 11 does not override Section 7-A and if proviso to Section 7-A is attracted, then the Sarpanch or the Panchas shall continue to hold office as such till the day immediately preceding the date of the first meeting of the Panchayat as a result of the periodical general election. It is only in that event the Sarpanch and Panchas will continue to hold office beyond December 31, 1981. Then the validity of public notice Annexure 6 would require to be examined.

7. For the proper appreciation and adjudication of the controversy relating to the

interpretation of Section 2 of Ordinance 11, it is essential to read that provision. Section 2 reads as under:--

"2. Extension of term of Panchayats.--Notwithstanding anything contained in Rajasthan Panchayat Act, 1953 (Rajasthan Act 21 of 1953), the term of a Panchayat, as constituted under the said Act and as existing immediately before the commencement of the Rajasthan Panchayat Laws (Amendment) Ordinance, 1981 (Ordinance No. 10 of 1981), shall extend and shall be deemed to have been extended to 31st day of December, 1981 or till the day immediately preceding the date of the first meeting of the Panchayat as a result of the next periodical general election, whichever is earlier." Section 7-A of the Act reads as under:--

"Section 7-A: Continuance in office until new election.-- Notwithstanding anything contained in Section 7, the Sarpanch and Panchas of the Panchayat, of which the term of office has expired, shall continue to hold office till the day immediately preceding the date of first meeting of the Panchayat as a result of the periodical general election :

Provided that the provision contained in this section shall not apply if no steps have been taken before the expiry of the term of office of a Panchayat for holding fresh general election."

8. Admittedly by Ordinance No. 10 of 1981 the term of Panchayats has been reduced from five years to three years and by Ordinance 11 of 1981, the term has been extended to 31st December, 1981, or till the day immediately preceding the date of the first meeting of the Panchayat as a result of the periodical general election, whichever is earlier.

9. Mr. Singhvi, learned counsel for the petitioner, emphasised that the object of Ordinance 11 is to provide for extension of the term of the Panchayats in the State of Rajasthan, as is clear from the preamble of the Ordinance. Further, the marginal note of Section 2 is also "Extension of term of Panchayats". Even in the body of the provision, what is provided, is that the term of a Panchayat, as constituted under the Act and as existing immediately before Ordinance No. 10 of 1981, shall extend and shall be deemed to have been extended as provided therein. Thus, it is the term of the Panchayat, which has been extended by Section 2. Section 2 has nothing to do with continued to hold office by the Sarpanch or Panchas after the expiry of the term. According to Mr. Singhvi, provision of Section 7-A is in no way affected by what is contained in Section 2. Section 7-A would still spring into action when the term as extended by Section 2 expires. According to him, it is true that Section 2 uses a non obstante clause for whole of the Act and the non obstante clause is not confined to Section 7 of the Act, still its effect in essence is that it will only override that provision whereunder the term of the Panchayat is fixed. Thus, according to Mr. Singhvi, Section 7-A will have full application despite the provision of Section 2 of Ordinance 11.

10. I have given my serious and anxious consideration to the above contention and submissions of Mr. Singhvi. It is true that the object of Ordinance 11 is to extend the term of the Panchayat and for that the true nature of the provision contained in Section 7-A is also to be seen. The marginal note of Section 7-A no doubt uses the expression "Continuance in office until new election". In essence continuance in office until new election is nothing but extension of the term until new election. If the provision of Section 7-A is considered in this light, then Section 7 as well as Section 7-A are nothing, but provisions relating to term of Panchayat. What Section 7-A envisages is the extension of the term of the existing Panchayats till the day immediately preceding the date of first meeting of the Panchayats as a result of the periodical General election provided steps have been taken for holding such elections. The argument of Mr. Singhvi would definitely have some force if there would have been no non obstante clause for whole of the Act and the non obstante clause would have been restricted to Section 7 alone. But when the non obstante clause is for whole of the Act, then all those provisions, which, in essence, are the provisions relating to term of Panchayat, would be affected. The predominant intention behind the provision of Section 2 of Ordinance 11 appears to be that the term of the existing Panchayats shall either expire on the day immediately preceding the date of the first meeting of the panchayat as a result of the periodical general election or December 31, 1981. In no case the term would go beyond any of the earlier of the two dates. In case the periodical general election is not held, then the last day of the term of the existing panchayats would be December 31, 1981. If the intention would have been to save Section 7-A, then a general non obstante clause would not have been used and a non obstante clause would have been used only for Section 7, which specifically deals with the term of office. The general use of the non obstante clause for whole of the Act, gives us the mind and the intention of the Legislature. Irrespective of what is contained, anywhere in the Act, the term of the Panchayat shall be as what is provided in Section 2. The construction, which has been placed on Section 2, as above, appears to be the only plausible construction in view of the use of non obstante clause for whole of the Act; else the operation of the non obstante clause would be limited and which could not be the intention of the maker of the Ordinance. The intention behind Section 2 further is abundantly clear from the latter part of Section 2. It appears that it was in contemplation that periodical general election in any case will be held before December 31, 1981. If that was under contemplation, then the term of panchayat has to be limited only up to the date as provided in Section 2 and in no case Section 2 can be considered in a manner, so as to allow the Sarpanch and Panchas to continue to hold the office after that date. Thus, in view of the interpretation and construction placed, as above, on Section 2 of Ordinance 11. I hold that the term of the Gram Panchayat, Gulabpura would come to an end on Dec. 31, 1981, and it cannot function beyond that date. In this view of the matter it is not necessary to examine the validity of the public notice Annexure 6, whereby the earlier public notice for holding elections of the Gram Panchayat, Gulabpura, has been withdrawn.

11. However, I cannot ignore the situation, which has arisen in the present matter. Elections of the Panchayats have been held in almost (the) whole of the State of Rajasthan and it is likely that conversion of Gram Panchayat, Gulabpura, into municipality may take time and in that situation the elections of Gram Panchayat, Gulabpura, in my opinion, should not be withheld indefinitely; so it would be just and proper to set the time limit, within which the election of Gram Panchayat, Gulabpura, may take place, in case Gulabpura is not converted into a Municipality, and, as such, some direction needs to be given to the respondents for holding the election of Gram Panchayat, Gulabpura. I think it would be just and proper that the elections of the Gram Panchayat, Gulabpura, may be held by 31st Mar., 1982, if notification converting Gulabpura into municipality is not issued up to March 31, 1982.

12. The writ is, therefore, disposed of with the above directions. The parties shall bear their own costs of this writ petition.