

(1968) 02 PAT CK 0001
In the Patna High Court
Case No : L.P.A. No. 4 of 1966

Ram Pravesh Prasad and 4 Others

APPELLANT

Vs

Kailash Singh and 10 Others

RESPONDENT

Date of Decision : 09-02-1968

Acts Referred:

Bihar and Orissa General Clauses Act, 1917 — Section 24
Constitution of India, 1950 — Article 226, 227

Citation : (1968) 02 PAT CK 0001

Hon'ble Judges : R.L. Narasimham, C.J;B.N. Jha, J

Bench : Division Bench

Advocate : Ram Bilas Sinha, for the Appellant; Jugal Kishore Prasad and Rajendra Kishore Prasad, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Narasimham, C.J.—This is a Letters patent appeal against the judgment of a single judge of this Court in Civil Writ Jurisdiction Case No. 811 of 1965. One Kailash Singh (respondent no. 1) filed an application under Articles 226 and 227 of the Constitution, challenging the validity of the elections held to Khanetu Gram Panchayat in the district of Gaya on the 14th June, 1965. The main ground urged in support of the application was that the elections were conducted by two Presiding Officers, viz., Shri Singheshwar Prasad Singh and Shri Saheb Dayal Singh, for booths 1 and 2, and that they had no jurisdiction to function as Presiding Officers, inasmuch as they were appointed as Presiding Officers by the Sub-divisional Magistrate functioning as Election Officer after he had delegated his power as Election Officer to the Block Development Officer, Tekari Block. It was urged that, after such delegation, the Sub-divisional Magistrate lost his power to appoint Presiding Officers, and that, consequently, Shri Singheshwar Prasad Singh and Shri Saheb Dayal Singh could not validly function as Presiding Officers, and conduct the elections. Several other grounds were alleged in support of the writ petition; but the learned single Judge disposed of it on the said ground only, leaving the other grounds open. He thought that, in view of a

Bench decision of this Court in (1) Hanuman Mishra V. Bachan Mishra (1964 B.L.J.R. 773), the Sub-divisional Magistrate was divested of his power to appoint Presiding Officers to hold the elections after he had delegated his power as Election Officer to the Block Development Officer. Hence, he set aside the election. Against the judgment of the learned single Judge, this appeal was filed by opposite party nos. 1 to 3, 8 and 9. Opposite party nos. 1 and 2 (appellants nos. 1 and 2) were elected Mukhiya and Sarpanch, respectively, of the said Panchayat. Opposite party no. 3 (appellant no. 3) was elected a panch after contest. Opposite party nos. 8 and 9 (appellants nos. 4 and 5) were elected as members of the Executive Committee of the said Panchayat after contest.

2. It is now necessary to refer to some of the relevant provisions of the Bihar Panchayat Election Rules, 1959 (hereinafter referred to as the Rules). Clause (g) of Rule 2 defines an "Election Officer" as "the Sub-divisional Magistrate exercising jurisdiction over the Subdivision within the local-limits of which the Gram Panchayat in which the Selection or the bye-election is to be held is situated and includes any other officer who may be specially appointed by the Election Officer to discharge any of his functions under these rules." By virtue of this definition, it is clear that the Sub-divisional Magistrate is the Election Officer, though he has the power to delegate his functions as Election Officer to any other officer. It is not denied that, in exercise of this power, he delegated his functions as Election Officer to the Block Development Officer, Tekari Block. The process of election is required by these rules to be conducted ordinarily by the Election Officer, who prepares the election programme, receives the nomination papers, scrutinises the nomination, and, eventually, decides on the holding of poll (see Rules 17 to 30). Rule 31 (2) is as follows:

The Election Officer shall, in writing, appoint a Presiding Officer and such number of Polling Officers to assist the Presiding Officer as he thinks necessary.

In view of the definition of "Election Officer" (as quoted), it is obvious that, in respect of the Panchayat concerned, the Block Development Officer has, undoubtedly jurisdiction to appoint the Presiding Officer and the Polling Officers to conduct the poll. It is, however, admitted that, in respect of the impugned election, the Presiding Officers and the Polling Officers were appointed by the Sub-divisional Magistrate himself. There is no finding of the learned single Judge, nor is it alleged in the writ petition, that the Block Development Officer also appointed the Presiding Officers and the Polling Officers for the same booths so as to produce a conflict of jurisdiction between two classes of Presiding Officers and Polling Officers. Nevertheless, the learned single Judge thought that the Division Bench Judgment reported in (1) 1964 B.L.J.R. 773 would apply. That case is, however, distinguishable because there two sets of Presiding Officers were appointed, one by the Sub-divisional Magistrate in purported exercise of his residuary power and the second by the delegated authority functioning as Election Officer. Their Lordships, therefore, at page 776 observed:

Having regard to the scheme and the language of the Bihar Panchayat Election

Rules, we are satisfied that the Sub-divisional Magistrate has no concurrent power of appointing a second set of Presiding Officers after he had delegated his powers as Elections Officer under Rule 2 (g) to another officer and after such officer had already appointed one set of Presiding Officers. It follows, therefore, that the action of the Sub-divisional Magistrate in appointing a second set of Presiding Officers on the 1st October, 1962, for conducting the elections of the Gram Panchayat is illegal and ultra vires.

It will be noticed from the passage quoted above that the order of the Sub-divisional Magistrate was declared ultra vires because he had appointed a second set of Presiding Officers after the delegated authority had exercised his functions to appoint the Presiding Officers. Their Lordships were not dealing with a case like the present one where the Sub-divisional Magistrate alone appointed the Presiding Officers, and the delegated authority did not appoint anyone. That case is, therefore, no authority for the decision of the point in controversy here.

3. On general principles of delegation, it is well settled that the delegated authority, by the mere act of delegation, does not completely denude itself of his powers. As pointed out by Lord Coleridge, C.J. in (2) *Huth V. Clarke* (1890) 25 Queen's Bench Division 391 at 394:

But delegation does not imply a denudation of power and authority; the 6th Schedule of the Act provides that the delegation may be revoked or altered and the powers resumed by the executive committee. The word "delegation" implies that powers are committed to another person or body which are as a rule always subject to resumption by the power delegating, and many examples of this might be given. Unless, therefore, it is controlled by statute, the delegating power can at any time resume the authority. Here the executive committee has exceeded the power which the sub-committee might have exercised--but did not--and no question of conflict of jurisdiction arises.

4. Apart from the general principles, by virtue of Section 24 of the Bihar and Orissa General Clauses Act, 1917, the Sub-divisional Magistrate has the power at any time to cancel the order delegating his powers as Election Officer to the Block Development Officer. Hence, on the principles laid down in the aforesaid decision, his jurisdiction to exercise the powers of Election Officer and to appoint Presiding Officers or Polling Officers cannot be held to have been completely divested by the Act of delegation. Doubtless, as pointed out in the portion underlined in the aforesaid passage, if the delegated authority had exercised the power in pursuance of the order of delegation by appointing Presiding Officers and the Sub-divisional Magistrate also exercised the same power, conflict of jurisdiction may arise. This happened in the case reported in 1964 B.L.J.R. 773, referred to above. But, where there is no such conflict of jurisdiction, it will be against all principles to hold that, by appointing the Block Development Officer as Election Officer, the Sub-divisional Magistrate has divested himself of his powers as Election Officer. I would, therefore, hold that the view taken by the learned single Judge on this point is erroneous.

5. In the aforesaid Patna case (1) 1964 B.L.J.R. 773, the learned Judges relied on Rule 23 (4), Rule 31 (2) and Rule 50 (2) (b) for the purpose of holding that, whenever the rule making authority wanted the delegated authority not to exercise the functions of an Election Officer, express provision was made in the rules. This has been relied upon for further holding that, after passing an order of delegation, there was no residuary power left with the Sub-divisional Magistrate. With great respect, however, I must point out that such a conclusion does not necessarily follow from scrutiny of Rule 23 (4), Rule 31 (2) and Rule 50 (2) (b). The general principle that the statutory authority is not completely divested of its functions after delegating the same to another authority will always prevail; but the authority, to whom the functions are delegated, is not, in exercise of the functions delegated, a subordinate authority of the delegating authority, and, in the absence of express provisions in the rules, the delegating authority will have no power to revise, modify or cancel any valid order passed by the delegated authority; but, with a view to confer such express powers of supervision and control, special provisions were made in Rule 23 (4), Rule 31 (2) and Rule 50 (2) (b). Thus, in Rule 23 (4), the Sub-divisional Magistrate was conferred power (almost analogous to appellate power) against an order of the delegated Election Officer accepting or rejecting a nomination paper. Similarly, in Rule 31 (2), the Sub-divisional Magistrate was conferred power to revise the order of the delegated Election Officer regarding the location of any polling station. Again, in Rule 50 (2) (b), the delegated Election Officer was required to take the approval of the Sub-divisional Magistrate for the purposes mentioned in that sub-rule. These provisions, therefore, do not in any way weaken the principle that delegation does not amount to denudation. They are special provisions made to confer additional power on the Sub-divisional Magistrate.

6. Under normal circumstances, we would have set aside the order of the, learned single Judge and sent back the case for disposal on other grounds which were not considered by the learned Judge; but Mr. Jugal Kishore Prasad for the respondents stated that, on the unchallenged facts, the election will have to be set aside, and that, consequently, a remand to the learned single Judge would cause unnecessary harassment to the parties.

7. In Paragraph 14 of the writ petition, it was stated that, in the election programme as published under Rule 17 read with Rule 30, the poll was to take place from 8 A.M. to 4 P.M., but that the Presiding Officer suspended polling from 11.30 A.M. to 3 P.M. with the result that more than 300 voters could not cast their votes. A true copy of the report of the Presiding Officer (Annexure B) of that date, viz., 14th June, 1965, is as follows:

Booth--Balabigha Middle School.

The polling remained suspended from 11.30 to 1 P.M. due to hooligans and riot. The voters fled helter and skelter. The Magistrate could not turn up till 11.35.

In the counter affidavit filed by the Block Development Officer himself, this fact is

not challenged; but it is stated (see Paragraph 10) that the Presiding Officer had power to adjourn the poll under Rule 50, and that he exercised the power under that rule. Similarly, in the counter affidavit filed by the appellants, who are the contesting opposite party (see Paragraph 11), it was admitted that the polling was suspended for the reasons given in Annexure B: but reliance was placed on Rule 50.

8. It may thus be taken as admitted by all concerned that the poll was suspended from 11.30 A.M. to 3 P.M. due to hooligans and riot. Rule 50 (1), on which all parties seem to have relied, does not give power to the Presiding Officer to resume polling after suspending it for a few hours on the date fixed for poll. Rule 50 (1) (a) is as follows:

If at an election the proceedings at any polling station are interrupted or obstructed by any riot or open violence or it is not possible to take the poll at any polling station on account of any natural calamity, or any other sufficient cause to the satisfaction of the Presiding Officer, the Presiding Officer for such polling station shall, for reasons to be recorded in writing, announce an adjournment of the poll to a date to be notified later, and where the poll is so adjourned by a Presiding Officer, he shall forthwith inform the Election Officer concerned.

The rule quoted above shows that, where there is a riot, in consequence of which the voters are unable to cast their votes, the Presiding Officer could adjourn the poll to another date to be notified later, and inform the Election Officer of the same. The Election Officer is then required to proceed under Clauses (b) (c), (d) and (e) of Sub-rule (1) of Rule 50. There is no provision in the rules authorising the Presiding Officer to abridge the time fixed for the poll due to hooliganism and riot, thereby reducing the hours of poll from eight hours to four and a half hours. Doubtless, if this reduction of the hours had not caused any prejudice to the parties, I may not be inclined to interfere, but the allegation in the writ petition was that, on account of the disturbance and the reduction of the polling hours, more than 300 voters could not cast their votes. This portion of the allegation has not been controverted either in the counter affidavit of the Block Development Officer or of the appellants. Though it is difficult to speculate as to which of the candidates would have got these 300 votes, nevertheless it seems reasonable to infer that material prejudice has been caused by the substantial reduction in the hours fixed for the poll by the Presiding Officer and his omission to proceed in accordance with Rule 50.

9. For these reasons, though I do not agree with the view taken by the learned single Judge as regards the validity of appointment of Presiding Officers by the Sub-divisional Magistrate, nevertheless I do not think this is a fit case to interfere with his order setting aside the election to the Panchayat. Under Rule 50, the only course left open is to direct the holding of a fresh election according to law. The appeal is, therefore, dismissed but without costs.

B.N. Jha, J.

I agree.