
(1958) 01 AHC CK 0028
In the Allahabad High Court
Case No : C.M. Writ No. 1881 of 1950

Ram Sanehi

APPELLANT

Vs

Sub Divisional Officer, Maudaha District Hamirpur and others

RESPONDENT

Date of Decision : 30-01-1958

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 5A(a), 6

Citation : (1958) 28 AWR 286

Hon'ble Judges : J.K. Tandon, J

Bench : Single Bench

Advocate : Sri S.N. Dwivedi and Sri K.K. Bajpai, for the Appellant;

Final Decision : Dismissed

Judgement

J.K. Tandon, J.—The Petitioner was declared elected as Pradhan of Gaon Sabha Niuriya in the district of Hamirpur at the last general elections held in that behalf on 24-12-1955. Later there was an election petition by Badri Prasad Respondent No. 3 as a result of which the Petitioner's election was set aside on the ground that he was not a member of the Gaon Sabha concerned and as such was disqualified for being elected u/Cl. (a) of S. 5A of the UP Panchayat Raj Act.

2. It was admitted that the petitiioner's name did not appear in the register of members relating to this Gaon Sabha on the date of the filing of nomination papers. It, however appeared that the Returning Officer who received the nomination paper entered his name in the register and there after accepted his nomination. The Respondents' contention accordingly was that the Returning Officer was not competent under the provisions relating to preparation of the members Register to enter Petitioner's name in the list of members and the fact, that he entered his name therein made no difference while the Petitioner failed to be a member of the Gaon Sabha concerned. Cl. (a) of S. 5A is that a person shall be disqualified for being chosen to any office in the Gaon Sabha which included the office of Pradhan, if he is for the time being not a member of the Gaon Sabha concerned. The Petitioner's election was thus challenged on the ground that he

was not a member. The Sub-Divisional Officer accepted the above contention holding that the Returning Officer had no authority under the law to enter the name of the Petitioner in the Register of Members, and ultimately set aside the election. The Petitioner feeling aggrieved by the said order has come up in this writ petition.

3. The Petitioner does not challenge the finding arrived at by the Sub-Divisional Officer that the Returning Officer was not competent to enter his name in the register of members. He has, however, challenged the order setting aside the election on the ground that the existence of his name in the register of members was unnecessary and he could without his name being there seek election to the office, provided he fulfilled the qualifications etc. required of a member of Gaon Sabha. The simple question for determination in this case, therefore, is whether the Petitioner was entitled to be elected to the office of Pradhan despite the fact that his name was not entered in the register of members. In other words could he still claim to be a member of the Gaon Sabha concerned.

4. There is no controversy that a member alone of the Gaon Sabha concerned is entitled to be elected as Pradhan. Whether the Petitioner can urge that he was a member is, therefore, the question. S. 5 of the Panchayat Raj Act which deals with membership of Gaon Sabha is that.

(1) A Gaon Sabha shall consist of all adults ordinarily resident within the area for which it is established but a person shall be disqualified for being a member of the Gaon Sabha, if he

(a) is not a citizen of India; or (b) is of unsound mind and stands so declared by a competent court.

(2) A person shall be deemed to be ordinarily resident in a village if he has been ordinarily residing in such village or town, or is in possession of a dwelling house therein, ready for occupation." S. 6 of the Act makes provision for the cessation of membership and is that:

(1) A member of Gaon Sabha shall cease to be a member if

(a) he is disqualified u/s 5,

(b) the area where he resides has been excluded from the jurisdiction of the Gaon Sabha, or

(c) he has ceased to be ordinarily resident within the jurisdiction of the Gaon Sabha.

(2). ...

5. One more section which will be relevant may also be quoted. It is S. 9 dealing with the register of members and its preparation. It is that

On the establishment of a Gaon Sabha the prescribed authority shall cause to be prepared a register, in the prescribed form, of all persons ordinarily residing

within the jurisdiction of such Gaon Sabha and such register shall, among other things, contain the name of every person entitled u/s 5 to be a member of the Gaon Sabha on the date of its establishment. The register so prepared shall be revised at least once a year in the manner prescribed.

6. The register of members prescribed under the above section is prepared in accordance with the rules framed in that behalf under Chapter I-B of the UP Panchayat Raj Rules. Some of the rules relevant for the present discussion are R. 4-D which prescribes that every person who has been ordinarily resident within the area of the Sabha, shall be entitled to be registered in the family register and every person who is not registered in the family register and is not less than 21 years age shall be entitled to be registered in the adult register. There are two registers as it appears, one the family register and the other the adult register. The second register contains the names of the members of the Gaon Sabha who consist of the adults residing in the village. R. 4-E onwards up to R. 4J provide for the publication of the draft register, receiving of claims and objections and the disposal of claims and objections. Then comes R. 5 which says that after claims and objections have been decided, necessary amendments shall be made in the draft list published earlier and the register thus amended shall then be published once again and the register so published shall be final. We are not concerned with the provisions relating to revision and amendments in the register which have no bearing on the present case. But it may be said here with respect to the rules that finality is given to the register of members after it has been published with the amendments under sub R. (1) of R 5.

7. To revert now to the main question in the case the Learned Counsel for the Petitioner has contended that u/s 5 of the Act every adult ordinarily resident within the area of the Gaon Sabha and is not disqualified as laid down in that section, is a member of the Gaon Sabha and it is not necessary that his name should appear in the register also He argues that a Gaon Sabha consists of all the adults residing within the locality but who does not suffer from the disqualifications given in the section . No further condition, namely, that his name also appears in the register, is provided in this section to entitle him to be a member. S. 5 is really a provision stating what person can and cannot be members of a Gaon Sabha. It states the qualifications necessary in that behalf as well as the disqualifications which will disentitle a person to be a member. It does not by itself create membership. Just as this section has made provision for persons who may be entitled to be members of a Gaon Sabha S. 6 has made provision for cessation of membership. The two sections, therefore, contain the conditions necessary for membership including continuance of membership. S. 9 makes this position quite clear. The register of members, that is, persons who are at any particular moment members, is prepared under its provisions. It contains the name of every person who is for the time being entitled u/s 5 to be a member of the Gaon Sabha. Sections 5 and 6 thus provide for persons who may be members, while S. 9 makes provision for persons who are at any particular time members of the Gaon Sabha. This register is to contain the name

of every person entitled to be a member. The rules relating to its preparation also are that every person who is so entitled shall be entered in it. In order, therefore, to know who is or is not a member of the Gaon Sabha at a relevant time, the entry in the register is the deciding factor. The finality given to these entries by R. 5 is further proof of the fact that membership of the Gaon Sabha at any particular time is to be ascertained from the entries in the register and not by the mere fact of a person possessing the necessary qualifications for membership. Only such persons whose names exist in the members register are, therefore, members of the Gaon Sabha concerned.

8. The Learned Counsel for the Petitioner referred to certain provisions of the Representation of the People Act 1950 and the Representation of the People Act 1951 relating to electors under those Acts. But it is unnecessary in my view to rely on them so long as the provisions in the Panchayat Raj Act are themselves clear and I find no ambiguity in these provisions in the Act.

9. In view of the above discussion it cannot be held that the conclusion reached by the S. D O. was erroneous. This petition should, therefore, fail and is accordingly dismissed with costs.