

(1988) 09 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3117 of 1988

Rameshwar Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-09-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 2 RLW 185 : (1988) 2 WLN 595

Hon'ble Judges : Shyam Sunder Byas, J;D.L. Mehta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.S. Byas, J.—In this petition under Article 226 of the Constitution the relief claimed is for issuing directions to the respondents to forth with handover the charge of office of Sarpanch village Panchayat Kaliasar (District Jhunjhunu) to the petitioner.

2. As per averments disclosed in the petition, the petitioner was elected as Sarpanch village Panchayat Kaliasar in the elections which took place on July 6, 1988. After his election he was duly administered oath of office by the Returning Officer. Respondent No. 5 Shri Bhagwan Singh is the ex-Sarpanch of village Panchayat Kaliasar. He also contested the election but lost it. Charge of the office of Sarpanch has not been banded-over to the petitioner by respondent No. 5 Bhagwan Singh. The petitioner approached the Collector and the Additional District Development Officer, Jhunjhunu to seek their help to get the charge handed-over to him. But the attempts proved abortive. He has therefore approached this Court to seek the directions mentioned at the very outset.

3. No reply was filed by the State of Rajasthan, the Collector, Jhunjhunu the Additional District Development Officer, Jhunjhunu and the Tehsildar, Jhunjhunu. Mr. A.K. Sharma learned Counsel for the respondent Bhagwan Singh who is the ex-Sarpanch did not dispute the facts. He merely stated that the charge of the

office was not with him but with the Gram Sevak or the Group Sachiv. We have heard the learned Counsel for the parties.

4. Section 15A of the Rajasthan Panchayat Act, 1953 (for short "the Act") speaks about the handing over of charge. This section postulates all the situations which generally arise as to when a charge is to be handed over. The relevant provision occurring in this section for our present purpose may be reproduced:

When ever the term of office of a Panchayat expires and the election of all the Panchas with or without the Sarpanch has been declared void or such election or the proceeding subsequent thereto have been stayed by an order of a competent court; or

When ever a Panchayat is dissolved or suspended u/s 73 such Panch, Sarpanch or Upsarpanch or the Sarpanch and Panchas of such Panchayat, as the case may be shall forthwith hand over charge in the prescribed manner of his or their office including all papers and properties pertaining to such office in his or their possession or occupation;

(a)

(b)

(c)

(d) in the case of a Panchayat of which the term of office has expired (i) if a new Panchayat has been constituted, to such Panchayat.

5. It would also be useful to read Sub-sections (2)(3)(4) and (5) of Section 15A which run as under:

[2] Upon the election or appointment of a new Panch, Sarpanch or Up-Sarpanch or upon the constitution of a new Panchayat as the case may be, and after the oath of affirmation of office required by Section 15 has been duly made, the person holding at the date on which such oath or affirmation is made charge of the office of the such Panch, Sarpanch, Up-Sarpanch or Panchayat in pursuance of Sub-section (1) shall forth with hand over to the persons to elected or to the Panchayat so constituted as the case may be, the charge of office including all papers & properties, pertaining to such office in his actual possession or occupation;

[3] If any person fails or refuses to hand over charge of office as required under sub Section (1) or Sub-section (2) the prescribed authority may, by order in writing direct the person so failing or refusing to hand over such charge forthwith to the person or persons entitled to under Sub-section (1) or Sub-section (2) as the case may be;

[4] If the person to whom a direction has been issued under Sub-section (3) fails to comply with the direction he shall on conviction, be punished with imprisonment for a term not exceeding one year or with fine not exceeding one

thousand rupees or with both;

[5] Any officer empowered by the prescribed authorities in this behalf may, without prejudice to any action that has been or may be taken under Sub-section (4) use such force as may be deemed necessary for enforcing the provisions of Sub-section (1)&(2) and may for that purpose invoke in the prescribed manner the assistance of the police or the nearest Magistrate competent to do so.

6. The combined reading of these provisions makes it amply clear that as soon as a new Panchayat has been constituted, charge is to be handed over forth with, to such newly constituted Panchayat. If the charge is not handed over by the person concerned or he refuses to hand over the charge, the prescribed authority can get the charge handed over by taking the help and assistance of the Police or the Magistrate.

7. The petitioner is a duly elected Sarpanch. It is not only highly shocking but painful also that the petitioner-a duly elected Sarpanch-is running from pillar to post to get the charge of the office and the State functionaries who are legally bound to get the charge delivered to the petitioner are turning a cold shoulder to his genuine demand. The democratic institutions will be deemed if this State of affairs continues where the elected Sarpanch is not allowed to function. The elections will lose its purposeful meaning if the elected body is prevented from discharging the functions in this or that garb.

8. In the result, we allow this writ petition and direct the respondents namely: (1) The State of Rajasthan, (2) the Collector, Jhunjhunu, (3) the Addl. District Development Officer, Jhunjhunu, and (4) the Tehsildar, Jhunjhunu to get the charge of village Panchayat Kaliasar handed over to the petitioner in accordance with the provisions of Section 15A of the Rajasthan Panchayat Act, 1953 within a fortnight from today. No orders to costs.