

(1952) 04 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Miscellaneous Case No. 11 of 1950

Rangraj and Others

APPELLANT

Vs

Gram Panchayat, Khinwel

RESPONDENT

Date of Decision : 07-04-1952

Acts Referred:

Constitution of India, 1950 — Article 226
Marwar Village Panchayats Act, 1945 — Section 4, 60, 67

Citation : AIR 1952 Raj 144 : (1952) RLW 184

Hon'ble Judges : Wanchoo, C.J.;Bapna, J

Bench : Division Bench

Advocate : B.B. Desai, Hukam Chand, for the Appellant; Dashrath Mal, for the Respondent

Final Decision : Allowed

Judgement

Wanchoo, C.J.—This is an application by Rangraj and seven others under Article 226 of the Constitution of India for a writ of mandamus and prohibition against the Gram Panchayat, Khinwel through its Sarpanch Chunnilal. The State of Rajasthan has also been made a party to the application.

2. It is unnecessary to give in detail all the points raised in the application and we propose to confine ourselves to the main argument on behalf of the applicants based on Section 4 of the Marwar Village Panchayats Act, 1945. That argument is that the Panchayat which is functioning in village Khinwel and has imposed certain taxes since January 1950 is not a properly constituted body, as no notification u/s 4 of the Act was ever issued establishing a Panchayat in that village. The Marwar Village Panchayats Act, 1945 came into force on the 1st January 1946. Section 4 of that Act reads as follows:

"The Minister in Charge may, by notification in the Jodhpur Government Gazette, establish a panchayat in any village or any group of villages not included within the limits of a Municipality."

3. The case of the applicants is that no notification u/s 4 has ever been issued establishing a "panchayat" in village Khinwel and therefore, the body which is acting as a "panchayat" in that village has no legal sanction and cannot function as such. It has been admitted by the opposite parties that no such notification as required u/s 4 of the Act was ever issued by the Minister in Charge; nor has any such notification been brought to our notice by the opposite parties. After this admission, it is clear that no body of persons can set themselves up as a village "panchayat" in village Khinwel and arrogate to themselves the powers which are conferred on a village "panchayat" by this Act.

A notification under S, 4 is, in our opinion, the foundation for the coming into existence of a "panchayat" in a village and where no such notification has been made, no "panchayat" under the Act can function in any village. In the present case, as no such notification was ever made, the body which calls itself the "panchayat" of village Khinwel has no legal existence and cannot impose any taxes or perform any functions conferred on a "panchayat" by this Act. In this view of the matter the applicants are entitled to an order prohibiting this body which calls itself as the "panchayat" of Khinwel from imposing any taxes or exercising any powers under the Marwar Village Panchayats Act, 1945.

4. Learned counsel for the State, however, urges that this Court should not issue an order or direction under Article 226 of the Constitution because there are other remedies available to the applicants. Our attention was drawn in this connection to Sections 59, 60 and 67 of the Act. u/s 59 the Collector can by written order suspend the execution of any resolution or order of a "panchayat" other than an order passed in judicial proceedings or prohibit the doing of any act which is about to be done or is being done under the cover of the Act. Learned counsel for the State urges that the applicants should have proceeded under this section. It appears that the applicants did approach the Collector against the order imposing certain taxes on them and ordering them to pay the amount of the taxes. It further appears that the Sub-divisional Officer and the Collector refused to act u/s 59 and the order of the panchayat imposing the tax on the applicants still stands.

5. As to Section 60, it provides that the Minister-in-Charge may suspend or abolish the "panchayat" if in his opinion it is incompetent to perform or persistently makes default in the performance of the duties imposed on it, or exceeds or abuses its powers, or should there be any reason which in the opinion of the Minister-in-charge necessitates the suspension or abolition of a panchayat. The applicants have not approached the Minister-in-charge with a prayer for the abolition of the "panchayat" on the ground that no notification u/s 4 of the Act has been issued, it is, therefore, contended that this Court should refuse to issue any order or direction under Article 226 of the Constitution as the applicants have not availed of the remedy u/s 60 of the Marwar Village Panchayats Act, 1945.

6. Section 67 provides revisional powers in the Minister-in-charge and he has the

authority of calling for and examining the record of proceedings of any panchayat for the purpose of satisfying himself as to the legality or propriety of any executive order passed by it under cover of this Act and to revise or modify such order as he may deem fit. The applicants have not approached the Minister-in-Charge under this section. But considering that their case is that the "panchayat" is not legally constituted at all, this section has no application, for it applies to cases of orders passed by a legally constituted "panchayat".

7. The question then arises is whether in view of the failure of the applicants to apply to the Minister-in-charge u/s 60, this Court should refuse to issue an order or direction under Article 226 of the Constitution, The direction which will be issued by this Court in this case will be in the nature of prohibition. It has been held in "MA-DAN GOPAL v. THE UNION OF INDIA" 1951 RLW 56, that even if another remedy is available, it is open to this Court, where the order is in the nature of prohibition, to issue such order in a proper case. Learned counsel for the State relies on certain cases in support of his submission that no order should be issued.

8. An examination of these cases, however, shows that they do not lay down that the Court cannot issue an order if there is another remedy available. The power of the Court is there, though it may not be exercised in case where an adequate, specific and convenient remedy is otherwise available. In *Shyamapada Ganguly Vs. Abani Mohan Mukherjee*, which related to the issue of writ of mandamus or Quo Warranto, it was held that recourse ought not to be allowed to an extraordinary remedy when it is not really needed, and a mandamus will never be granted to enforce the general law of the land which may be enforced by action. It was further observed that writs of Quo Warranto are not issued as a matter of course where there is an alternative remedy which is equally appropriate and effective. But the Court went on to observe that the power of the Court was discretionary and proceedings under Article 226 being of a summary and coercive nature, the wide powers under the Article should be sparingly used and only in those clear cases where the rights of a person had been seriously infringed and he had no other adequate and specific remedy available to him.

It may be noted that this was not a case of an order or direction in the nature of prohibition. The next is *Elbridge Watson Vs. R.K. Das*, That was a case under the Income Tax Act and it was held that if there was an adequate legal remedy provided in the statute itself, then the High Court should not interfere under Article 226. But the remedy in question must be a specific remedy at law which is not less convenient, beneficial and effective. In that case, the Court did issue a direction to the Income Tax Officer. The next case referred to was *O.A.O.A.M. Muthiah Chettiar Vs. The Comr. of Income Tax*, That was also a case under the Income Tax Act and it was held that where an assessee failed to ask for a relief which he would have been entitled to obtain under any of the provisions of the Income Tax Act, then certainly the High Court would not exercise its power to

issue prerogative writs to give such relief to the assessee.

9. The last case is *Rakhaldas Mukherjee Vs. S.P. Ghose*, . That was a case in connection with the West Bengal Premises Rent Control Rules and it was held that writs of mandamus, certiorari and prohibition, and for the matter of that, all high prerogative writs, were ordinarily not issued where there existed an alternative remedy equally efficient and adequate; but there was no inflexible rule that such writs could not be issued where the Court thought it just and convenient to do so. The fact that it ordinarily did not do so is a question not of want of jurisdiction but of expediency.

10. It may be pointed out that in the present case Section 60 of the Marwar Village Panchayats Act, 1945 does not confer any right on any party. It only gives power to the Minister-in-Charge. Of course, it is possible for an aggrieved person to go to the Minister-in-Charge and ask him to suspend or abolish the "panchayat" for reasons mentioned in that section. But the exercise of powers u/s 60, however, presupposes the existence of a valid Panchayat and the necessity for its suspension or abolition arises by the improper conduct of the said "Panchayat". This conduct has been classified under various heads such as incompetence, negligence or exceeding its powers or misusing them. Any other reason which in the opinion of the Minister-in-Charge necessitates suspension or abolition would obviously be analogous to the reasons mentioned earlier in the section.

11. In the present case, the very constitutions of the Panchayat is illegal and where the lack of jurisdiction is patent, a writ of prohibition is the proper remedy. We are, therefore, of opinion that an order in the nature of prohibition should issue in this case.

12. We therefore, allow the application and order that the body which is functioning as a "Gram Panchayat" through its Sarpanch Chunnilal be prohibited from functioning as such and from imposing any taxes or performing any duties under the Marwar Village Panchayats Act, 1945. The applicants will get their cost from the opposite parties which we assess at Rs. 50/- per day of hearing.