(1961) 07 MP CK 0032

In the Madhya Pradesh High Court

Case No : M.P. No. 338 of 1960

Sardar Gyan Singh and others — APPELLANT

Vs

State of M.P. and others — RESPONDENT

Date of Decision : 24-07-1961

Acts Referred:
Central Provinces and Berar Panchayats Act, 1946 — Section 128(2)

Citation : (1962) JLJ 245 : (1962) MPLJ 37

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : H.L. Verma, for the Appellant; H.L. Khaskalam, Addl. Govt. Advocate for State, for the Respondent

Judgement

Dixit, C.J.

The petitioners in this case, who are all residents of Takhatpur in the Tehsil and district of Bilaspur, challenge the legality of a revised tax imposed on them in respect of buildings and property owned by them in the area of Gram Panchayat, Takhatpur. Their prayer is that the revision of tax be declared illegal and the demand notices issued to them for payment of tax according to the revised assessment be quashed by the issue of a writ of certiorari,

The matter arises thus. On 15th April 1959 a notification was issued by the State Government dissolving the Gram Panchayat of Takhatpur. This action was taken u/s 128 (1) of the 0. P. and Berar Panchayats Act, 1946. On the dissolution of the Panchayat, the Collector, Bilaspur, directed the Chief Executive Officer Janapada Sabba, Bilaspur, that the Deputy Chief Executive Officer of the said Janapada Sabha be directed to take charge of the office of the Gram Panchayat, He also issued an order purporting to be one u/s 128 (2) of the Act saying that all functions of the dissolved Gram Panchayat would be performed by the Janapada Sabha. On 15th July 1958 the Chief Executive Officer, Janapada Sabha, had passed an order u/s 27(1) of the Local Government Act, 1948, delegating to the Deputy Chief Executive Officer all powers with regard to the administration of the

Janapada Sabha. The powers delegated related to the sanction of casual leave, signing of salary bills, signing of letters, attendance of Standing Committee meetings, inspection of institutions etc. The order passed by the Chief Executive Officer u/s 27 (1) of the Act of 1948 also authorised the Deputy Chief Executive Officer to exercise the powers and perform the duties vested in the Chief Executive Officer under the Local Government Act, 1948, during his absence from headquarters. In 1955 the Janapada Sabba had passed a resolution appointing a sub-committee consisting of seven members for the supervision and control of all Gram Panchayats functioning within its jurisdiction. This sub-committee looked after the affairs of the dissolved Gram Panchayat of Takhatpur. Some two or three months after the dissolution of the Gram Panchayat the Deputy Executive Officer proceeded to revise the assessment of property situated in the Gram Panchayat area purporting to exercise powers u/s 41 of the Panchayats Act, 1946, and the rules made under that Act. The return filed by the opponent-State itself says that the Deputy Chief Executive Officer made the assessment as provided by rule 1 of clause XXIV of the C. P. and Berar Panchayat Rules, 1948, and that after the assessment list was published as required by rule 2 the objections received to the assessment were considered and decided by the Deputy Chief Executive Officer and then a final list of assessment was posted on the notice-board of the Gram Panchayat Office on 15th December 1959.

The petitioners contend that the Deputy Chief Executive Officer of Janapada Sabha, Bilaspur, bad no power whatsoever to revise the assessment, and that on the dissolution of the Gram Panchayat, the Janapada Sabha, Bilaspur, alone could exercise the power of revision of the assessment u/s 41 and the rules made under the Panchayats Act, 1946. In order to appreciate this contention, which must be accepted, it is necessary to refer first to section 128 (2) of the Panchayats Act, 1946, That provision runs as follows-

Until a new Panchayat is constituted either by re-election or by nomination, as the case may be, all functions of the Gram Panchayat so dissolved shall be performed by the District Council and all the property under the control of the Gram Panchayat including the Gram Panchayat fund shall be at the disposal of the District Council until the election or nomination of a new Gram Panchayat.

It is clear from sub-section (2) that when a Gram Panchayat is dissolved the Janapada Sabha, as constituted under the Local Government Act, 1948, steps in and all the functions of the Gram Panchayat can be performed only by the Janapads Sabha. In performing the functions of the Gram Panchayat by virtue of section 128 (2), the Janapada Sabha does not exercise its powers and duties under the Local Government Act, 1948, but the powers, functions and duties of a Gram Panchayat under the Panchayats Act, 1946. The Janapada Sabha gets this power to perform the functions of the dissolved Gram Panchayat by force of the statutory provision contained in, sub-section-(2) of section 128 of the Panchayats Act. No order of any authority is necessary for this purpose. The order made by the Collector saying that the Janapada Sabha shall exercise the functions of the dissolved Gram Panchayat was a superfluity. The dissolution of a Gram Panchayat u/s 128 (1) has not the effect of suspending the operation of the Panchayats Act, 1946, or of disabling the Secretary and other staff of the Gram Panchayat from exercising their powers and discharging their duties under the Panchayats Act, 1946, and the rules made thereunder. The administrative machinery of the dissolved Gram Panchayat continues to function. The effect of section 128 (2) is only to substitute the Janapada Sabha as a body constituted under the Local Government Act, 1948, in place of the dissolved Gram Panchayat.

The Janapada Sabha of Bilaspur being thus competent to function u/s 128(2) of the Act of 1946 in place of the Gram Panchayat, it was open to the Janapada Sabba u/s 29 of the Act of 1946 to appoint from amongst its members sub-committee each consisting of not more than five members for the discharge of its functions in relation to the dissolved Gram Panchayat. The sub-committee, which the Janapada Sabha had constituted in 1955 under the Local Government Act of 1948 for controlling and supervising the work of all the Panchayats within its jurisdiction, was clearly not a committee u/s 29 of the Act of 1946. That committee could not discharge the administrative functions under the Act of 1946 of a dissolved Gram Panchayat. It was also permissible for the Janapada Sabha, Bilaspur, to exercise its powers u/s 25 of the Panchayats Act, 1946, and to employ persons for carrying out the duties imposed on it by or under the Panchayats Act. There was no such employment of the Chief Executive Officer of the Janapada Sabha or of the Deputy Chief Executive Officer of that body. Assuming that these officers of the Janapada Sabha could be validly employed under the Act of 1946, while functioning as officers of the Janapada Sabha, the authority under which the Collector gave direction to the Chief Executive Officer, Janapada Sabha, Bilaspur, for asking the Deputy Chief Executive Officer to take charge of the dissolved Gram Panchayat is not clear to us. Learned Additional Government Advocate could not bring to our notice any provision of the Local Government Act or of the Panchayats Act giving to the Collector power to issue the direction that be did to the Chief Executive Officer of Janapada Sabha, Bilaspur. Be that as it may, even if it be taken that these officers had been validly appointed for carrying out the administration of the dissolved. Gram Panchayat, they could only exercise for that purpose the powers under the Panchayats Act, 1946, and not the powers which they were exercising under the Local Government Act, 1948, as employees of the Janapada Sabha. The delegation u/s 27 (1) of the Local Government Act, 1948, of certain powers to the Deputy Chief Executive Officer by the Chief Executive Officer was utterly ineffective so far as the administration of the dissolved Panchayat and the performance of its functions under the Act of 1946, by the Janapada Sabha were concerned.

Now on a bare perusal of section 41 of the Panchayats Act and the rules contained in clause XXIV of the Panchayats Rules, 1948, it is evident that on the dissolution of a Gram Panchayat the revision of assessment could be under taken only by the Janapada Sabha, and the Deputy Chief Executive Officer had no power to commence revision of the assessment either on his own initiative or acting under the direction of the sub-committee which the Jabapada Sabha had constituted in 1965 under the Local Government Act. Rule 1 of clause XXIV of the Panchayat Rules requires inter alia that the Secretary of the Gram Panchayat should fill or got filled the particulars in the provisional assessment list. This function of the Secretary could not be exercised either by the Chief Executive Officer of the Janapada Sabba or by the Deputy Chief Executive Officer. It is the Secretary of the Gram Panchayat who is required to place the list be/ore the Gram Panchayat and before the Janapada Sabha if a Gram Panchayat is dissolved. The assessment of the value of property has to be made by the Panchayat at a special meeting. It follows, therefore, that if a Panchayat is dissolved it is the Janapada Sabha who has to assess the value of the property at a special meeting. In the present case, admittedly no special meeting of the Janapada Sabha was ever called for this purpose. Again under rule 2 of clause XXIV it is the Panchayat who has to hear objections against the assessment after the provisional assessment list is published. On the dissolution of the Gram Panchayat, Takhatpur, this function could be performed only by the Janapada Sabha as a body or at the most by a sub-committee u/s 29 of the Act of 1946. The Deputy Chief Executive Officer had no authority whatsoever to hear and adjudicate upon any objections against the assessment.

It is thus plain that the proceedings taken in the present case for the revision of assessment and the final assessment list ultimately prepared were wholly illegal. The illegality can only be ascribed to the failure of the authorities to bear in mind the vital distinction between the functions and powers which a Janapada Sabha performs u/s 128 (2) of the Panchayats Act when a Gram Panchayat is dissolved, and the functions and powers of the Janapada Sabha and its Executive Officers under the Local Government Act, 1943.

In the result the revision of assessment made by the Deputy Chief Executive Officer of the Janapada Sabha, Bilaspur, is declared to be illegal and the demand notices issued to each of the petitioners in so far as they relate to the payment of tax on the basis of the revised assessment are quashed. The applicants shall have costs of this application. Counsel''s fee is fixed at Rs. 100. The outstanding amount of security deposit shall be refunded to the petitioners.

