
(2012) 02 JH CK 0017

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4432 of 2002

Subhash Chandra Sah

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 5

Citation : (2012) 4 JCR 321

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Jai Prakash Jha, for the Appellant; K.P. Deo and Mr. J.S. Tiwari, J.C. to S.C. - I for the Respondent Nos. 1-3, for the Respondent

Judgement

Narendra Nath Tiwari

1. This writ petition has been preferred challenging the order dated 28.11.2001 / 3.7.2002 / 5.7.2002 passed by the Deputy Commissioner, Godda in R. M. A. No. 16/2001. By the impugned order, the said respondent has reviewed the earlier order passed by his predecessor and cancelled the fresh appointment of the petitioner as Village Pradhan. The short facts of the case are as follows:

(i) One Tridev Sah, who was a duly appointed Pradhan of Mouza - Barhara, P.S. & Dist - Godda due to his old age and infirmity, appointed the petitioner as Karpardaz.

(ii) Tridev Sah died leaving behind his two sons, namely, Biishwanath Sah and Neeraj Kumar Sah. Two sons of Trideo Sah had predeceased their father. The petitioner is the son of Budhi Nath Sah, who predeceased his father Trideo Sah.

(iii) After the death of Trideo Sah, the petitioner and his two uncles, namely, Bishwanath Sah and Neeraj Kumar Sah filed applications in the prescribed forms before the Sub-divisional Officer, Godda for appointment as Pradhan of Mouza - Barhara. Subsequently, Bishwanath Sah withdrew his application and relinquished his claim in favour of Neeraj Kumar Sah. His withdrawal was

accepted by the Sub-divisional Officer. The Sub-divisional Officer, Godda by his judgment / order dated 24.12.1996 allowed the application of Niraj Kumar Sah.

(iv) Aggrieved by the said order, the petitioner preferred appeal before the Deputy Commissioner, Godda.

(v) The Deputy Commissioner, Godda, by his judgment dated 13.7.1999, set aside the said order of the Sub-divisional Officer and remitted the matter to the Sub-divisional Officer, Godda for passing fresh order for appointment of Pradhan.

(vi) The Deputy Commissioner found that the appointment of Neeraj Kumar Sah as Pradhan of Mouza - Barhara is contrary to the mandatory provisions of Santhal Parganas Tenancy Act, particularly, against Schedule - V thereof. Neeraj Kumar Sah was not permanently residing within one mile of Mouza - Barhara. Since he is an employee of the Eastern Coalfield Ltd., a Central Government undertaking, he cannot discharge the duty and function of Pradhan. The Circle Officer being the landlord has recommended the name of the petitioner, as he is Class-I heir of the then Pradhan, Late Trideo Sah. He further held that since Bishwanth Sah has already relinquished his claim and another applicant Neeraj Kumar Sah is an employee of the Eastern Coal Field Ltd., the petitioner being an heir of the then Pradhan is fit to hold the post of Pradhan and in view thereof, a fresh order is to be passed by the Sub-divisional Officer.

(vii) Thereafter, the Sub-divisional Officer, Godda considered all the facts, and materials on record including the opinion of the proprietor and held that the petitioner was found to be acceptable as Pradhan to all concerned.

(viii) Against the said order of the Sub-divisional Officer, Bishwanath Sah and Neeraj Kumar Sah (respondent Nos. 4 & 5) filed appeal before the Deputy Commissioner, Godda being R. M. A No. 16/2001. The Deputy Commissioner disposed of the petitioner's appeal by the impugned order dated 28.11.2001 setting aside the order dated 27.4.2001 of the Sub-divisional Officer, Godda and appointing Bishwanath Sah (respondent No. 4) as Pradhan of the said Mouza.

2. The said order of the Deputy Commissioner, Godda has been assailed mainly on the ground that the said order is contrary to the mandatory provisions of Schedule -V of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 [hereinafter referred to as "the said Act"]. The appointment of Village Pradhan has to be made with the consent of 16 Anna Raiyats of the Mouza, but there is no such consent in favour of the respondent No. 4. In his earlier order, the Deputy Commissioner had considered all the aspects and the provisions of law and the order was passed in favour of the petitioner. The Deputy Commissioner has no jurisdiction to recall the earlier order and pass a fresh contrary order. The impugned order was not passed in presence of the petitioner and the same is antedated and vitiated.

3. Mr. Jai Prakash Jha, learned Sr. counsel appearing on behalf of the petitioner, submitted that by the earlier order, the Deputy Commissioner had decided

almost all the controversies. There was no fresh material for reconsideration of the same. The impugned order has been passed without taking into consideration the mandatory provisions of the said Act. In the matter of appointment of Pradhan of the said Mouza, there is no valid ground for deviation from the earlier order. The enquiry report and the recommendations of the concerned authorities and learned Sub-divisional Officer were brushed aside. Learned counsel referred to the provisions of Schedule - V and submitted that the office of headman being hereditary, the next heir, who is fit, should be appointed as the headman. A person, who is unfit and who does not have general acceptance by the Raiyats, cannot be appointed.

4. It has been submitted that the impugned order, though learned Deputy Commissioner has rightly rejected the claim of Neeraj Kumar Sah, but has erroneously appointed Bishwanath Sah, who had already withdrawn his application filed before the Sub-divisional Officer. He was not in the fray. His name was also not recommended by the concerned authorities, as he was not generally acceptable to the 16 Annas Raiyats and in the earlier order the Deputy Commissioner had rightly considered the same and recommended appointment of the petitioner. Bishwanath Sah, thereafter, was not a candidate under consideration. The petitioner was, thus, rightly appointed as Pradhan of the said village. The petitioner's appointment is in accordance with the mandatory provisions of the said Act, as his name was recommended by the landlord after taking consent of 16 Annas Raiyats. In the case of Jagdish Misra Vs. Chamaklal Misra reported in 1965 B.L.J.R. 674, it has been held that the Pradhan is a representative of the Raiyats and his appointment has to be made by the Deputy Commissioner according to the wishes of the Raiyats as to the acceptability of a particular candidate as a Village Pradhan.

5. The respondents have appeared and contested the writ petition. It has been, inter alia, stated that the impugned order has been passed in accordance with law and the same is valid and legal. The Deputy Commissioner has jurisdiction to appoint the headman amongst the heirs of the deceased. The respondent No. 4 being the next heir and nearer than the petitioner, has been rightly appointed as Pradhan of the said Mouza.

6. Mr. K. P. Deo, learned counsel appearing on behalf of the respondent No. 4, submitted that though it is an admitted fact that Bishwanath Sah had withdrawn his application, his withdrawal was intended to relinquish his right in favour of Neeraj Kumar Sah. The Deputy Commissioner duly considered the said fact and passed an independent order in appeal filed by the respondents. The impugned order is not an order passed on review, rather it is an order passed on appeal filed by Bishwanath Sah. There is, thus, no infirmity and illegality in the impugned order.

7. In the case of Jagdish Misra (supra), it has been clearly held that the Village Pradhan is a representative of the Raiyats and his appointment has to be made by the Deputy Commissioner according to the wishes of the Raiyats as to the

acceptability of a particular man being appointed as a Pradhan.

8. Having heard learned counsel for the parties, I perused the facts and materials on record.

9. Before proceeding further, it is desirable to take into consideration the prescribed procedures and provisions for appointment of village headman.

10. Section 5 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 makes provisions for appointment of village headman of Khas village, which reads as follows:

5. Appointment of a village headman of khas village. - On the application of a raiyat or of landlord of any khas village and with the consent of at least two thirds of the jamabandi raiyats of the village ascertained in the manner prescribed, the Deputy Commissioner may declare that a headman shall be appointed for the village and shall then proceed to make the appointment in the prescribed manner.

11. Rule 3 of the Santhal Parganas Tenancy (Supplementary) Rules, 1950 provides rules regarding the manner of ascertaining the consent of Jamabandi Raiyats and appointment of headman u/s 5, which runs as follows:

3. Rules regarding the manner of ascertaining the consent of jamabandi raiyats and appointment of headman u/s 5.- (1) On receipt of an application from a raiyat or a landlord u/s 5, the Deputy Commissioner shall issue notice to the jamabandi raiyats of the village and to the landlord in Form A.

(2) The consent of at least two-thirds of the persons recorded as jamabandi raiyats of the village shall be ascertained by the Deputy Commissioner by show of hands:

Provided that if on the date so fixed at least two-thirds of the persons recorded as jamabandi raiyats of the village fail to be present the Deputy Commissioner shall fix another date and issue fresh notices in the manner prescribed in sub-rule 3(1), if on the date so fixed, at least two-thirds of the persons recorded as jamabandi raiyats again fail to be present the Deputy Commissioner shall summarily reject the application made u/s 5.

(3) The decision of the Deputy Commissioner as to whether a person is entitled to vote or not shall be final.

(4) If at least two-third of the persons recorded as jamabandi raiyats give their consent for appointment of headman for the village, the Deputy Commissioner shall at once invite nomination for the appointment of headman and proceed to make the appointment

(5) In making the appointments of headman u/s 5 or Section 6 the Deputy Commissioner shall, as far as possible, follow the rules prescribed in Schedule V except where these rules, expressly or by necessary Implication, provide

otherwise.

12. On plain reading of sub-rule 5 of Rule 3, it is clear that for appointment of headman, the rules prescribed in Schedule - V are required to be followed by the Deputy Commissioner, except other rules are provided.

13. It has been admitted by both the parties that in the instant case, there is no such, otherwise, rule and the appointment of Village Pradhan of the said Mouza has to be made in accordance with the provisions of Schedule - V.

14. Schedule - V of the Santhal Parganas Tenancy (Supplementary) Rules, 1950 specifically makes provisions for appointment of headmen, which is being reproduced herein below:

In appointing headmen the following rules should be taken into consideration:-

The headman must be a resident of the village or his permanent home must be within one mile of the village.

1. The appointments of headman shall be made in accordance with village customs, and before confirming any appointment, the Deputy Commissioner shall satisfy himself that the candidate is generally acceptable to the raiyats, and an opportunity shall also in every instance, be afforded to the proprietor to object to any candidate.

2. No sub-division of the office of headman can be allowed or recognized unless:-

(a) there are different classes of raiyats in the village who have always been managed separately:

(b) such sub-division has been recognized at the last settlement

3. The office of headman being hereditary, the next heir, who is fitted, should be headman. If the heir be a minor, he may be appointed headman with a sarbrakhar to manage for him until he attains his majority.

If no suitable sarbrakhar can be found, the right of the minor lapses.

4. A person may be refused succession on the death of his father / mother if, for reasons to be recorded, he / she be considered unfit for the post

15. On conjoint reading of Section 5, Rule 3 and Schedule - V, it becomes clear that for appointment of a headman, the following considerations are required: (i) The headman must be a resident of the village or his permanent home must be within one mile of the village. (ii) The appointment has to be made in accordance with the village customs. (iii) The Deputy Commissioner before confirming any such appointment shall satisfy himself that the candidate is generally acceptable to the Raiyats. (iv) An opportunity should be given to the proprietor to object to any candidate. (v) The Deputy Commissioner must satisfy himself that the candidate to be appointed must be a fit candidate.

16. In the instant case, it is not in dispute that by order dated 13.7.1999, the Deputy Commissioner, Godda found that initially there were three applicants for the headmanship i.e. the petitioner, who is the grandson of the then village headman and his two uncles namely, Bishwanath Sah and Neeraj Kumar Sah. Bishwanath Sah, subsequently withdrew his application in favour of Neeraj Kumar Sah. By order dated 24.12.1996, the Sub-divisional Officer, Godda appointed Neeraj Kumar Sah, who is an employee of the Eastern Coalfield Limited (a Government of India undertaking) and does not reside within one mile, which is a condition precedent as per the provisions of Schedule - V. It was further found that the Circle Officer, who happens to be the proprietor of the village, recommended appointment of the petitioner as village headman. By order dated 13.7.1999, the Deputy Commissioner, Godda, thus, remitted the matter to the Sub-divisional Officer to pass a fresh order for appointment of Village Pradhan. In view of the aforesaid observation, by order dated 27.4.2001, the Sub-divisional Officer, Godda heard all the interested parties and found that out of the applicants, the petitioner's claim for appointment as Village Pradhan is tenable, as there was no consent or recommendation of the proprietor in favour of the other applicants, whereas the proprietor had recommended the name of the petitioner. On that ground the Sub-divisional Officer appointed the petitioner as the village headman.

17. It is relevant to mention here that neither the Deputy Commissioner in his order dated 13.7.1999 nor the Sub-divisional Officer in his order dated 27.4.2001 has recorded that the Jamabandi Raiyats have given their consent for appointment of the petitioner or any of the claimants as village headman.

18. There is no specific finding of the said authorities that the views of the Jamabandi Raiyats were ascertained by the Deputy Commissioner regarding the said applicants.

19. In the impugned order, the Deputy Commissioner has again ignored the said mandatory requirements of law and has erroneously set aside the order of the Sub-divisional Officer and has passed the impugned order for appointing Bishwanath Sah only on the ground that he is the son of the then village Pradhan Late Trideo Sah and that there is no adverse comment against him from any quarter.

20. The Deputy Commissioner lost sight of the fact and the requirement of law that there was no consent of Jamabandi Raiyats and proprietor in favour of Bishwanath Sah for his appointment as village Pradhan, which is a condition precedent for appointment of village headman.

21. In the instant case, there is no finding regarding the views of the Jamabandi Raiyats and their acceptability and consent for appointment of either the petitioner or anybody else as village headman. There was no such consent of the proprietor or the Jamabandi Raiyats in favour of Bishwanath Sah and as such he cannot be appointed as Village Pradhan.

22. The Deputy Commissioner has, thus, committed serious error in setting aside the order of the Sub-divisional Officer and appointing Bishwanth Sah as village headman, who is not the next heir fitted for appointment as village headman.

23. In view of the above discussions, the impugned order dated 27.4.2001 (Annexure-3) passed by the Sub-divisional Officer, Godda in P. A Case No. 17/96-97 as well as the impugned order dated 28.11.2001 (Annexure-4) passed by the Deputy Commissioner, Godda in R. M. A No. 16/2001 cannot sustain and are, hereby, set aside. The matter is remitted to the Sub-divisional Officer, Godda for considering and disposing of the same afresh, in accordance with the above mentioned provisions and procedures prescribed by law. With the above observations / directions, this writ petition is disposed of.