

(2025) 01 RAJ CK 1665

In the Rajasthan High Court, Jaipur Bench

Case No : Civil Writ Petition No. 1212 Of 2025

Ram Chander

APPELLANT

Vs

The State Of Rajasthan

RESPONDENT

Date of Decision : 23-01-2025

Acts Referred:

Constitution of India, 1950 — Article 21, 25, 47

Citation : (2025) 01 RAJ CK 1665

Hon'ble Judges : Anoop Kumar Dhand, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Monga, J

1. This court is yet again being swamped each day with writ petitions by transferees of Panchayat department, alleging that the mass transfers carried out, are in violation of the letter & spirit and the intent of Section 89(8-A) of the Rajasthan Panchayati Raj Act, 1994 coupled with the fact that the transfer guidelines framed by this Court in Kera Ram Vs. The State of Rajasthan & Ors. : S.B. Civil Writ Petition No. 2909/2024, decided on 30.04.2024 have been flagrantly violated, compelling them to approach this Court to seek issuance of a writ in the nature of certiorari to quash the respective transfer orders.

2. Facts of the individual cases need not be gone into, as what is under challenge herein simpliciter is the manner, procedure, legality and administrative propriety of the transfers/postings. Assertion is that not only it is mechanical exercise of mind, but also colorable exercise of powers taking advantage of the non obstante clause contained in the Section ibid.

3. In fact, instead of adjudicating the controversy all over again, suffice it would be to reproduce the relevant extract of the judgment rendered in Kera Ram ibid, as below:-

"13. The following questions of law are being formulated, which need to be addressed to adjudicate on the merits of impugned orders:-

1.to 5. xxx xxx xxx

6. What is the legislative intent and scope of the State's power under the non-obstante clause in Section 89(8)(A) of the Panchayat Raj Act, 1994, as amended by Act No. 23/1994 in Rajasthan?

14. to 16 xxx xxx xxx

17. While the State Government has, no doubt, all pervasive powers under the Act, it should refrain from completely taking over the self-governance powers vested in the Panchayats. It is a situation somewhat akin to Article 254 of the Constitution, which envisages that in the event of inconsistency between Parliament and Legislature of State, laws made by Parliament shall prevail on the matters of concurrent list. Likewise, power of transfer of panchayati raj officials herein is concurrently vested with democratically elected panchayati institutions, as well as, State government. It is thus desirable that in keeping with the real intent and spirit of the law, the State Government should only invoke its inherent powers sparingly when there is a conflict with Panchayati Raj elected bodies and avoid exercising these powers in routine Panchayat affairs.

18.to 19 xxx xxx xxx

20. Ultimately, the imperatives of procedural rigor and legal compliance thereof serve as bulwarks against the capricious exercise of transfer authority, ensuring equity and transparency in administrative actions.

In essence, the delicate balance between autonomy, accountability, and effective governance must be maintained, ensuring that decisions are made with due consideration for both procedural norms and administrative exigencies.

21 to 25 xxx xxx xxx

26. Adverting once again to the core issue i.e. the legal intricacies surrounding the constitutional status and functional autonomy of Panchayati Raj institutions in India, established under Part IX of the Indian Constitution through the 73rd Amendment Act, 1992. The involvement of local committees, such as the District Establishment Committee, in transfer decisions exemplifies the commitment to decentralized governance and the protection of constitutional principles. Interference of the State Government, where necessary, is no doubt legally permissible as all pervasive powers have been given to it under the Act but at the same time it should not amount to completely taking over the powers of self governance vested with the Panchayats to make the latter as completely redundant.

27. Trite law it is that the non obstante clause essentially connotes that it shall have over riding effect and shall take precedence over any other clause and shall prevail in the event of any conflicting provision. However, here is a case where in

the absence of any conflict, powers have been invoked in routine and massive transfer drive has been carried out by transferring as many as more than 885 Panchayat Officials without even first letting the elected Panchayati bodies to carry out the said exercise. The intent of non obstante clause to ensure clarity and consistency in the application of law seems to have been thus misused by colorable exercise of powers.

28. xxx xxx xxx

29. There is another crucial aspect to consider i.e. the State Government had imposed an absolute ban on transfers throughout the State of Rajasthan. However, the administration temporarily lifted this ban first for 10 days followed by another 2 days, perhaps with an intended view, as it does not seem to be a mere coincidence, to completely strip the Panchayati Raj Institutions of their constitutionally and statutorily mandated powers. The mode, manner and timing of State administration to invoke its broad powers under Section 89 sub-section 8A of the Act raises serious suspicions and appears to be a colorable exercise of power to carry out the massive transfer drive of the Panchayati Raj officials.

FINDINGS:

30. In the light of discussion and analysis contained in preceding paragraphs let us now revert to address the questions framed in para 13, *ibid*:-

ANSWERS:-

1.to 5 xxx xxx xxx

6. The last question concerns the legislative intent behind Section 89(8)(a) of the Panchayati Raj Act, 1994. This section emphasizes decentralization, delegating specific functions to Panchayats for managing human resources. The rules ensure effective implementation of this legislative intent. While the State Government holds overriding authority for issuing transfer

(III).

(II).

(I).

orders, this power should not undermine the autonomy of Panchayati Raj Institutions.. Striking a balance is essential to maintain the local bodies' autonomy and constitutional integrity. Thus, while the State has absolute power to issue transfer orders, this power should not be exercised in a manner that undermines the faith in democratically elected Panchayati Raj Representatives.

CONCLUSION:-

31. While concluding, in order to avoid needless litigation in future, this Court deems it appropriate to frame/issue following guidelines in matters of transfer of Panchayati Raj officials of the rank of Village Development Officers/Assistant

Administrative Officer/Gram Sewak/LDC/Junior Assistants/Junior Technical Assistant/Gram Vikas Adhikari :-

Transfer Guidelines

****District-Level Transfers:**** Panchayat officials recruited for district-cadre posts cannot and ought not to be transferred in routine outside their respective districts, except wherever permissible under the Act and the Rules framed there under .

****Consultation for Transfers:**** Transfers must be made only after consulting the Pradhan of the Panchayat Samiti.

****Zilla Parishad Transfers:**** Transfers within a Zilla Parishad require consultation with the Pramukh of the Zilla Parishad.

(IV). ****State Overriding Power:**** The State can make transfers without consulting the Pradhan or the Pramukh.

(V). ****Intra-District Transfers:**** The State has the authority to transfer Panchayat officials within or between Panchayat Samitis within the same district.

(VI). ****Inter-District and Intra-Zilla Parishad Transfers:**** The State can transfer officials from one Zilla Parishad to another, from a Panchayat Samiti to a Zilla Parishad, or within the same Zilla Parishad or Panchayat Samiti, with or without consultation of Pradhan or Pramukh.

(VII). Section 89(8)(ii) of the Act, 1994 mandates that a Zilla Parishad can transfer an employee from a Panchayat Samiti only after consulting the Pradhans or Pramukhs of the respective Panchayat Samitis or Zilla Parishads involved in the transfer.

(VIII). Scheme of Rules, 1996 envisage that the Zilla Parishad is the controlling authority for employees appointed in Panchayat Samitis. Transfers within a Zilla Parishad from one Panchayat Samiti to another must comply with Section 89(8) (ii), ensuring consultation with the respective Pradhans or Pramukhs.

(IX). Under Section 89(8A) of the Act, 1994, Consultation is not required for transfers made under this section. It

gives the State Government the power to stay or cancel transfer orders made under Section 89(8) or the associated rules.

(X). In Compliance with State Orders, The Chief Executive Officer/Vikas Adhikari are empowered must to execute transfer orders passed by the State Government, as interpreted by a harmonious reading of Rule 289(3) with Sub-section 89(8A). They do not have any independent power to pass transfer orders.

(XI). The Government must respect the role of the District Establishment Committee of the Zilla Parishad in issuing transfer orders/policies. The Committee is empowered to exercise transfer powers in accordance with

Government policies and directions, ensuring that the Panchayati Raj institutions' constitutional status is upheld.

(XII).Inter-district transfer orders by other Departments must obtain consent from the Panchayati Raj department. 'Consent' implies a voluntary, informed decision, and must be explicitly stated through a conscious decision-making process, not assumed through tacit or non-resistant behavior.

32. The respondent no.1 is directed to issue necessary administrative instructions to the officials of the concerned Panchayati Raj officials to sensitize them about the aforesaid guidelines framed by this Court along with copy of the instant judgment. Needless to say, their non compliance would expose the respondents to the necessary consequences arising thereof."

4. Notwithstanding the aforesaid unambiguous enunciation rendered by this Court, a massive transfer drive, yet again in the similar manner, as also noted in the judgment, *ibid*, has been carried out of more than 1000 Panchayat officials. The administrative power by the state authority has been exercised invoking the non obstante clause, by transgressing into the democratic domain of the elected Panchayat bodies.

5. In fact, it so transpires that the censure issued by this Court in para 32 of the judgment *ibid* seems to have been taken very lightly, coupled with the reluctance of the petitioners to issue any pre contempt legal notices as a precursor to institute contempt proceedings, being fearful that any such action on their part will further antagonize the mighty State officials resulting in unforeseen further adverse actions qua them.

6. Be that as it may, even this Court would refrain to adopt an obstructive approach in the administrative exigencies, which warrant transfers of the Panchayat officials by state officials, provided, a case qua the same is made out. However, it so appears that the sheer number (stated to be more than 1,000) of the Panchayat officials transferred by the State officials without even giving the opportunity to the elected Panchayat bodies to exercise their own powers under the relevant Statute read with Rules framed there under, is merely reflective of their adamancy to not let go of their administrative superiority by asserting their dominant position, instead of decentralizing the power, which was the very genesis of constitutional amendment carried out by the Parliament of the Country resulting in enactment of Panchayati Raj Act.

7. With these observations, the writ petitions are being disposed of with a direction to the Secretary, Department of Rural Development and Panchayati Raj that he shall either himself take the remedial measures and/or direct the competent authorities to take a fresh look at all the transfers, by taking a wholesome view of the matter.

8. If after reconsideration of the matters, the competent authorities are still of the opinion that they need to exercise their powers as provided under Section 89

of the Act of 1994, those cases will be segregated by giving specific reasons thereof. For rest of the matters, fresh orders may then be passed by the

respective Panchayat bodies in accordance with law, if so warranted, depending upon the administrative exigencies within a period of thirty days.

9. Till a decision as aforesaid is taken, the impugned transfer orders in all these petitions shall be put on hold for a period of thirty days.

10. At this stage, Mr. I.R. Choudhary, learned Additional Advocate General submits that passing of the fresh orders requires prior sanction from the competent authority in view of the ban imposed by the Chief Secretary vide an administrative order dated 03.01.2024. In view thereof, in order to obviate any procedural hurdle, it is made clear that since the transfer orders have been put on hold by mandamus of this Court, thus taking fresh administrative decision qua the petitioners shall be construed to be in continuation of the earlier transfer orders. No prior sanction would thus be required in terms of the circular dated 03.01.2024 issued by the Chief Secretary.

11. Pending application(s), if any, stand(s) disposed of.