
(2009) 12 RAJ CK 0033
In the Rajasthan High Court

Tulsi Ram Mund

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Rajasthan Panchayati Raj Act, 1994 — Section 101(2)

Citation : (2010) 1 RLW 760

Hon'ble Judges : Sangeet Raj Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.—The notification dated 10.11.09 issued by the Department of Panchayati Raj, Government of Rajasthan appointing administrator to exercise all powers and perform the duties of the Panchayat Samities in respect of the reconstituted and newly created Panchayat Samities which have come into existence by splitting up existing Panchayat Samities, is impugned in these writ petitions.

2. The relevant facts in nutshell are that the State Government decided to create certain new Panchayat Samities by splitting up existing Panchayat Samities in terms of the provisions of Section 101 of the Rajasthan Panchayati Raj Act, 1994 (in short "the Act of 1994"). In this process by splitting up existing Panchayat Samiti, Bikaner two Panchayat Samities viz. Bikaner and Khajuwala were created. Similarly, by splitting up existing Panchayat Samiti, Anoopgarh, two Panchayat Samities viz. Anoopgarh and Gharsana and by splitting up existing Panchayat Samiti, Kherwara, two Panchayat Samities viz. Kherwara and Rishabdeo were created. While creating the new Panchayat Samities by splitting up existing Panchayat Samities, vide notification dated 10.11.09, the State Government has appointed Vikas Adhikari of the respective Panchayat Samities as the Administrator to exercise the powers and perform the duties of the Panchayat Samiti under the Act of 1994 till the elections are held. Aggrieved thereby, these writ petitions have been preferred by the petitioners who were

elected Pradhans of respective existing Panchayat Samities.

3. The writ petition Nos. 10989/09, 10990/09 and 10991/09 relate to existing Panchayat Samiti, Anoopgarh, Panchayat Samiti, Bikaner and Panchayat Samiti, Kherwara respectively.

4. It is contended by the learned Counsel for the petitioners that the petitioners stood elected as Pradhan of the respective Panchayat Samities under the provisions of the Act of 1994 and they are entitled to continue in the office till the completion of their term and cannot be removed without adopting the procedure laid down u/s 38 of the Act of 1994. The learned Counsel submitted that in terms of the provisions of Section 101 of the Act of 1994, the State Government could have appointed the Administrator for newly constituted Panchayat Samities which were not in existence earlier but the same standard cannot be applied for the Panchayat Samities already existing. The learned Counsel submitted that the petitioners are not aggrieved by splitting up of the Panchayat Samities but while implementing the decision to create the new Panchayat Samities, the elected representatives right to continue in the office till the expiry of their term cannot be permitted to be affected adversely.

5. The learned Counsel submitted that by virtue of the provisions of Clause 100(I) (c) and proviso to Sub-section (2) of Section 101, the Administrator can be appointed only in respect of Panchayat circle constituted by amalgamating one panchayat circle into another and the new panchayat circle created by splitting up a panchayat circle but the administrator cannot be appointed in respect of the existing panchayat circle. Accordingly, it is submitted by the learned Counsel that the appointment of administrator in respect of Panchayat Samiti, Bikaner, Anoopgarh and Kherwara is ex facie contrary to the provisions of Section 101 of the Act of 1994 and therefore, deserves to be quashed and set aside.

6. Per contra, the learned Additional Advocate General submitted that by splitting up a panchayat circle into two or more panchayat circle, the original panchayat circle stands dissolved and the new panchayats have to be constituted in terms of the provisions of Section 101(2)(c) of the Act of 1994 and therefore, by virtue of proviso to Section 101(2) till the elections are held and new panchayat is constituted, the administrator has to be appointed to exercise powers and perform duties in respect of newly created panchayats circles. Accordingly, it is submitted by the learned Additional Advocate General that the impugned notification issued by the State Government in exercise of the power conferred by Sub-section (2) of Section 101 is well within its jurisdiction and does not suffer from any infirmity or illegality whatsoever.

7. I have considered the rival submissions and perused the record.

8. The controversy involved in the matter rolls around the provisions of Sub-section (1) & (2) of Section 101 which may be beneficially quoted hereunder:

(1) The State Government may, at any time, after one month's notice published

in the prescribed manner either on its own motion or at the request made in this behalf, and by notification in the Official Gazette-

(a) declare the whole or a part of any local area included within the limits of a Municipality to be a Panchayat Circle; or

(b) include in a Panchayat Circle any such local area or a part thereof or, as the case may be, any local area included within the limits of another Panchayat Circle; or

(c) otherwise alter the limits of a Panchayat Circle by amalgamating one Panchayat Circle into another or by splitting up a Panchayat Circle into two or more Panchayat Circles; or

(d) exclude the whole or part of any local area from a Panchayat Circle, whether on its ceasing to be a rural area or, as the case may be, for its being included within the limits of another Panchayat Circle.

(2) Upon any action being taken under Sub-section (1), the State Government shall, notwithstanding anything contained in this Act or any other law for the time being in force, by an order published in the Official Gazette, make provision for the following, namely:

(a) that, in a case falling under Clause (a) of that Sub-section, a Panchayat shall be established for the local area declared to be a Panchayat Circle; or

(b) that, in a case falling under Clause (b) of that Sub-section, the election of the members for additional local area shall be held; or

(c) that, in a case falling under Clause (c) of that Sub-section, the existing Panchayats shall stand dissolved and new Panchayats shall be constituted-in accordance with the provisions of this Act within a period of six months from the appointed date; or

(d) that, in a case falling under Clause (d), the Panchayat shall stand dissolved or, as the case may be, the members who, in the opinion of the State Government, represent the local area excluded from the Panchayat Circle shall stand removed:

Provided that for so long as a Panchayat or a new Panchayat is not established under Clause (a) or, as the case may be, under Clause (c), all powers and duties of the Panchayat shall be exercised and performed by such administrator as the State Government may appoint in this behalf:

Provided further that no act of a Panchayat shall be deemed invalid by reason of any vacancy of the members referred to in Clause (b).

9. A bare perusal of Clause (c) of Sub-section (1) of Section 101 makes it abundantly clear that the State Government is empowered to split up an existing Panchayat Circle into two or more Panchayat Circles. Therefore, on splitting up of an existing Panchayat Circle, two or more new Panchayat Circle comes into

existence. This stands further fortified from perusal of Clause (c) of Sub-section (2) of Section 101 which provides in unequivocal terms that in a case falling under Clause (c) of Sub-section (1), the existing Panchayats shall stand dissolved and new Panchayat shall be constituted, therefore, in case of amalgamation of one Panchayat into another or by splitting up a Panchayat Circle into two or more Panchayat Circle in either case, the existing Panchayat Circle stands dissolved and a new Panchayat(s) comes into existence.

10. Coming to the question of appointment of the administrator, a conjoint reading of Clause (a) & (c) of Sub-section (1) and Clause (c) of Sub-section (2) and the proviso thereto makes it abundantly clear that the administrator has to be appointed by the State Government where a Panchayat is established in terms of Clause (a) of Sub-section(1) of Section 101 on declaring the whole or any part of local area included within the limits of any Municipality to be a Panchayat Circle or in case of constitution of new Panchayat in terms of Clause (c) of Sub-section (1) either by amalgamation of one Panchayat Circle into another or by splitting up a Panchayat Circle into two or more Panchayat Circles. Suffice it to say that on splitting up of an existing Panchayat Circle, two or more new Panchayat Circles come into existence and till the new Panchayats are constituted in terms of Clause (c) of Section 101(2), the administrator has to be appointed to exercise all power and perform the duties of newly formed Panchayat. Therefore, by no stretch of imagination, the impugned notification issued by the State Government in exercise of the power conferred by Sub-section(2) of Section 101 of the Act of 1994 can be said to be without jurisdiction.

11. The contention of the learned Counsel that the petitioners have been elected for a term of 5 years, the same cannot be curtailed even on account of dissolution of the existing Panchayat Circle and creation of new Panchayat Circle, is also devoid of any merit. Indisputably, the right to be elected to any office in the Panchayat Circle or continuance in the elected office is a statutory right which can always be curtailed by operation of the statutory provision. The State Government is empowered to split up the existing Panchayat Circle into two or more Panchayat Circle and if on that account the existing Panchayat Circle stands dissolved then question of continuing the elected representative in the office does not arise more so when by virtue of proviso to Sub-section (2) of Section 101, it has been specifically provided that till the new Panchayat Circle is constituted the administrator shall be appointed to exercise the power and perform the duties of the Panchayat Circles so constituted.

12. The contention of the learned Counsel that by splitting up of one Panchayat Circle into two Panchayat Circles, the existing Panchayat Circle is not dissolved is also devoid of any force. Simply because while creating two Panchayat Circles by splitting of an existing Panchayat Circle, the name of one Panchayat Circle is retained, it cannot be said that the split up Panchayat Circle continue to remain in existence. Obviously, the petitioners were representing the existing Panchayat Circle, Bikaner and therefore, the question of continuing them in the elected

office for one of the new Panchayat Circle created does not arise.

13. Thus, viewed from any angle, the petitioners who were holding the elected office in the existing Panchayat Circles cannot continue in the office after its dissolution in terms of the provisions of Clause (c) of Sub-section (2) of Section 101 of the Act. Consequently, the notification issued by the State Government appointing administrator for the newly created Panchayat Circles cannot be faulted with.

14. In the result, the writ petitions fail and the same are hereby dismissed. No order as to costs.