
(2002) 09 RAJ CK 0050
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2680 of 2002

Vikramajeet

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 5 WLN 705

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 22.7.2002 against the respondents with the prayer that by an appropriate writ, order or direction, the circular dated 12.7.2002 (Annex. 2) issued by the respondent No. 1 State of Rajasthan by which it was directed that on becoming the post of Sarpanch vacant belonging to reserved category, if the Vice-Chairman does not belong to reserved category, in that event, State Government could nominate any member of reserved category for taking over the charge of that vacant post and the order dated 12.7.2002 (Annex. 4) by which in compliance of circular Annex. 2 dated 12.7.2002, the respondent No. 5 Sohan Lal, who belongs to reserved category (OBC) was nominated and given charge of Sarpanch, Gram Panchayat Chunagarh, Panchayat Samiti, Sri Ganganagar till further orders or till vacancy is filled-in up by election, whichever is earlier, be quashed and set aside.

2. The case of the petitioner as put forward by him in this writ petition is as follows

The petitioner is elected Panch Ward No. 1 Gram Panchayat Chunagarh District Sri Ganganagar from OBC category and Shri Sultana Ram (hereinafter referred to as the deceased was elected as Sarpanch of Gram Panchayat Chunagarh from

OBC category. The deceased died on 26.6.2002 and on his death, the post of Sarpanch, Gram Panchayat Chunagarh became vacant. Thus, after the death of the deceased, charge of the office of Sarpanch, Gram Panchayat Chunagarh was to be handed over to another Panch belonging to OBC.

The further case of the petitioner is that in the Gram Panchayat Chunagarh, there were three Panchas belonging to OBC and, therefore, the Collector, Sri Ganganagar (respondent No. 4) decided to call a meeting of the Panchayat to elect one person in place of the deceased and Tehsildar was appointed to preside over that meeting. The Tehsildar (Revenue), Sri Ganganagar through letter Annex. 1 dated 5-6/7/2002 called a meeting to be held on 15.7.2002 at 11.00 AM for filling up the vacancy caused due to the death of the deceased.

The further case of the petitioner is that the respondent No. 3 Hira Lal Indora is MLA from Sri Ganganagar constituency and he is a close friend of respondent No. 5 Sohanlal so he wanted that the vacancy which occurred due to death of the deceased should be filled-in up by the respondent No. 5 Sohanlal. Therefore, for extraneous consideration, he got issued a circular dated 12.7.2002 (Annex. 2) by which it was directed that on becoming the post of Sarpanch vacant belonging to reserved category, if the Vice-Chairman does not belong to reserved category, in that event. State Government could nominate any member of reserved category for taking over the charge of that vacant post. According to the petitioner, the circular Annex. 2 dated 12.7.2002 issued by the Government of Rajasthan was against the provisions of the Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as "the Act of 1994") and Rajasthan Panchayati Raj Rules, 1996 (hereinafter referred to as "the Rules of 1996"). Furthermore, the said circular Annex. 2 was also issued in violation of the circular issued earlier on 21.3.2002 (Annex. 3).

3. The further case of the petitioner is that on the same day i.e. on 12.7.2002 through Annex. 4 on the vacancy which occurred because of death of deceased, the respondent No. 5 Sohanlal, who was also member of the OBC was nominated by the State Government and he was given charge of Sarpanch, Gram Panchayat Chunagarh, Panchayat Samiti, Sri Ganganagar till further orders or till vacancy is filled-in up by election, whichever is earlier.

4. In this writ petition both the circular Annex. 2 dated 12.7.2002 and the order dated 12.7.2002 (Annex. 4) have been challenged on various grounds and the main grounds are as follows

(i) That the circular Annex. 2 dated 12.7.2002 on the very face is arbitrary and unconstitutional and the same has been issued against the provisions of Section 25 of the Act of 1994.

(ii) That u/s 25 of the Act of 1994, the power to nominate the person to take over the charge of office of Sarpanch has been given to the competent authority and as per Notification issued by the State Government under Clause (vii) of Section 2 of the Act of 1994 on 12.12.1994, which was published in the official

gazette on 26.12.1994, for the purpose of Section 25, the Collector would be the competent authority and not the State Government. Therefore, appointment on the vacancy caused due to death of the deceased could only be filled-in up by the order of the Collector and not by the State Government and, therefore, order Annex. 4 is bad in law and without jurisdiction and thus, cannot be sustained.

(iii) That circular Annex. 2 and order Annex. 4 have been issued with ulterior motive and for extraneous consideration and thus, cannot be sustained.

Hence, this writ petition with the prayers as stated above.

A reply to the writ petition was filed by the respondent No. 5.

The case of the respondents is that the vacancy which occurred due to death of the deceased, could not be filled-in up under the provisions of Section 25 of the Act of 1994, but it should be filled-in up under the provisions of Sub-section (2) of Section 26 of the Act of 1994 and therefore, the appointment of respondent No. 5 by the State Government through Annex. 4 cannot be said to be illegal one. Furthermore, the circular Annex. 3 dated 21.3.2002 was not in consonance with the provisions of the Act of 1994 and that is why, circular Annex. 3 was superseded by issuance of circular Annex. 2 dated 12.7.2002, According to the respondents, the only power for nomination of the Sarpanch under Sub-section (2) of Section 26 of the Act of 1994 is vested with the State Government and that power was rightly exercised by the State Government through Annex. 4, as Collector and Tehsildar had no authority under the provisions of the Act of 1994 to fill in up the vacancy caused due to the death of any Sarpanch. It has been further contended that Section 25 of the Act of 1994 is not applicable in the present case and on the contrary, reliance has been placed on Section 42 of the Act of 1994. Hence, it was prayed that the writ petition filed by the petitioner be dismissed.

5. I have heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents and gone through the materials available on record.

6. For convenience, Sections 25, 26 & 42 of the Act of 1994 are quoted here

Section. 25. Handing over of charge.--(1) Whenever the election of a member of Chairperson or Deputy Chairperson of a Panchayati Raj Institution has been declared to be void, or whenever such member or Chairperson or Deputy Chairperson

(i) is not found qualified or becomes disqualified u/s 19 to hold his office, or

(ii) ceases to be so under the provisions of this Act, or

(iii) fails to make the prescribed oath or affirmation in accordance with the provisions of this Act, or

(iv) is removed from office or is suspended u/s 38; or

(v) resigns his office u/s 36, or

Whenever a motion of no-confidence is passed against the Chairperson or the Deputy Chairperson of a Panchayati Raj Institution u/s 37; or

Whenever the term of office of a Panchayati Raj Institution expires or the election of all the members of a Panchayati Raj Institution with or without the Chairperson has been declared void or such election or the proceedings subsequent thereto have been stayed by an order of a competent Court; or

Whenever a Panchayati Raj Institution is dissolved under this Act.

Such member or Chairperson or Deputy Chairperson or all or any of them shall forthwith hand over charge in the prescribed manner of his or their office including all papers and properties pertaining to such office in his or their actual possession or occupation

(a) in the case of a member, to the Chairperson of the Panchayati Raj Institution concerned;

(b) in the case of Chairperson, to the Deputy Chairperson of such Panchayati Raj Institution or, where there is no such Deputy Chairperson, to such member of such Panchayati Raj Institution or other person as the competent authority may direct.

Provided that charge of office of any chairperson who was elected to an office reserved for the persons belonging to Scheduled Castes or the Scheduled Tribes or the Backward Classes or for women, shall be handed over as per directions of the Competent Authority, to a member, if any, of the said Castes, Tribes or Classes or a Women member, as the case may be, in the manner as may be prescribed and where there is no such member belonging to said castes, tribes, classes or a women member to whom charge can be given as aforesaid, the charge shall be handed over in the manner as may be prescribed, to any other member not belonging to the aforesaid categories.

(c) in the case of a Deputy Chairperson, to the Chairperson of the Panchayati Raj Institution concerned, or where there is no such Chairperson, to such member of such Panchayati Raj Institution or other person as the competent authority may direct;

(d) in the case of a Panchayati Raj Institution of which the term of office has expired, to such new Panchayati Raj Institution as has been constituted; and

(e) in the case of a Panchayati Raj Institution dissolved under this Act, to the Administrator appointed u/s 95.

(2) Upon the election or appointment of a new member or Chairperson or Deputy Chairperson or upon the constitution of a new Panchayati Raj Institution, and after the oath or affirmation of office required by this Act has been duly made, the person holding, on the date on which such oath or affirmation is made,

charge of the office of such member or Chairperson or Deputy Chairperson or the Panchayati Raj Institution shall in pursuance of Sub-section (1), forthwith hand over to the person so elected or to the Panchayati Raj Institution so constituted, as the case may be, the charge of office including all papers and properties pertaining to such office in his actual possession or occupation.

(3) If any person fails or refuses to hand over charge of office as required under Sub-section (1) or Sub-section (2), the competent authority may, by order in writing, direct the person so failing or refusing to hand over such charge forthwith to the person or persons entitled thereto under Sub-section (1) or Sub-section (2), as the case may be.

(4) If the person to whom a direction has been issued under Sub-section (3) fails to comply with the direction, he shall, on conviction, be punished with imprisonment for a term not exceeding one year or with fine not exceeding one thousand rupees or with both.

(5) Any officer empowered by the competent authority in this behalf may, without prejudice to any action that has been or may be taken under Sub-section (4) use such force as may be deemed necessary for enforcing the provisions of Sub-sections (1) and (2) and may for that purpose invoke in the prescribed manner the assistance of the police or the nearest Magistrate competent to do so.

Section 26. Sarpanch and his election.--(1) Every Panchayat shall have a Sarpanch who must be a person qualified to be elected as a Panch and shall be elected by the electors of the whole Panchayat Circle in the prescribed manner.

(2) If the electors of a Panchayat Circle fail to elect Sarpanch in accordance with this section or if the Panchas fail to elect an Up-Sarpanch, the State Government shall appoint a person to the vacancy till vacancy is filled up by election within a period of six months and the person so appointed shall be deemed to be a duly elected Sarpanch or Up-Sarpanch, as the case may be.

Section 42. Filling up of vacancies.--The event of the office of a member or Chairperson or Deputy Chairperson of a Panchayati Raj Institution becoming vacant by death, removal, resignation or otherwise under this Act shall be forthwith reported to the State Election Commission. An election to fill the vacancy shall be held in such manner as may be prescribed. The foregoing provisions of this Act shall apply to such election and the member or the Chairperson or the Deputy Chairperson so elected shall hold office for the remainder of the term during which the outgoing member or the chairperson or the Deputy Chairperson would have been entitled to hold office, if the vacancy had not occurred:

...Provided that it shall not be necessary to fill up the vacancy if the term of such vacancy would expire within six months from the date of the occurrence of the vacancy.

7. As per Section 25 of the Act of 1994, in five contingencies, the question of

handing over the charge arises and death of Sarpanch is not one of the contingencies as mentioned in Section 25 of the Act of 1994.

8. From perusing Section 42 of the Act of 1994, it clearly appears that a post may become vacant by death, removal, resignation etc. Thus, the word "death" is found in Section 42 and the same is missing in Section 25 of the Act of 1994.

9. When the word "death" is not found in Section 25 of the Act of 1994, therefore, the case of the petitioner that the vacancy which occurred due to death of deceased should have been filled-in up under the provisions of Section 25 of the Act of 1994 cannot be accepted.

10. Thus, it is held that Section 25 of the Act of 1994 has no application where the vacancy occurred on account of death of a person after election is to be filled-in up till such vacancy is filled-in up by election.

11. Sub-section (2) of Section 26 of the Act of 1994 further makes the position clear that the State Government can appoint a person to the vacancy till vacancy is filled-in up by election within a period of six months and the person so appointed shall be deemed to be a duly elected Sarpanch or Up-Sarpanch, as the case may be, meaning thereby if the vacancy is caused, that could be filled-in up by the State Government under the provisions of Section 26(2) of the Act of 1994.

12. A bare reading of Section 42 of the Act of 1994 further makes it clear that a vacancy caused due to death of a person after election, would be filled-in up by election.

13. Thus, there is a consonance between the provisions of Sections 26 & 42 of the Act of 1994 in the manner that if a vacancy is caused due to death of any member, Chairperson or Deputy Chairperson, the State Government could fill-in up that vacancy till such vacancy is filled-in up by election.

14. Since Section 25 of the Act of 1994 is not applicable to the facts of the present case, therefore, provisions of Section 26(2) of the Act of 1994 would be applicable where the death of a person has taken place after election and that vacancy should be filled-in up as interim vacancy till a new person is elected through election.

15. Therefore, it is held that the State Government has power to fill-in up the vacancy which caused due to death of any member. Chairperson or Deputy Chairperson, till such vacancy is filled-in up by election, under the provisions of Section 26(2) of the Act of 1994.

16. In these circumstances, on the vacancy which caused due to death of the deceased, if the State Government through order Annex. 4 appointed respondent No. 5 Sohan Lal, who belongs to the same reserved category to which deceased belonged, as Sarpanch till further orders or such vacancy is filled-in up by election, no illegality has been committed by the State Government in doing so

and the action of the State Government cannot be said to be suffering from the vice of arbitrariness.

17. Thus, in the above circumstances, issuance of circular Annex. 2 and order Annex. 4 cannot be said to be illegal and arbitrary and furthermore, they cannot be termed as being issued to favour respondent No. 5 Sohan Lal.

18. There is one more aspect that goes against the petitioner. Even the respondent No. 5 Sohan Lal, who has been given the charge of the post of Sarpanch, Gram Panchayat, Chunagarh on the death of the deceased, also belongs to OBC category and, therefore, in no manner it can be said that the post was filled-in up by the State of Rajasthan with ulterior motive. The object, which was sought to be achieved, has been achieved by filling up that post from a person belonging to OBC category.

19. For the reasons stated above, all the submissions raised by the learned Counsel for the petitioner fail and stand rejected and this writ petition is liable to be dismissed.

Accordingly, this writ petition filed by the petitioner is dismissed. No order as to costs.