
(2016) 06 AHC CK 0039

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/B) No. 14484 of 2016

Vinod Kumar Mishra

APPELLANT

Vs

State of U.P. & Ors.

RESPONDENT

Date of Decision : 23-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 ADJ 707 : (2016) AIR(Allahabad) 148 : (2016) 119 ALR 63 : (2016) 132 RD 277

Hon'ble Judges : Amreshwar Pratap Sahi and Shamsheer Bahadur Singh, JJ.

Bench : Division Bench

Advocate : Alok Kumar Tripathi, Advocate, for the Appellant; C.S.C, for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard learned counsel for the petitioner and learned Standing Counsel.
2. This petition concerns the grant of license for allotting a fair price shop in a Village Gram Panchayat, namely, Dhingwas, Tehsil Lalganj, District Pratapgarh under the fair price shop distribution procedure promulgated through the Government Order dated 17.8.2002 issued under the authority of the Essential Commodities Act, a copy whereof is Annexure ? 1 to the writ petition. Needless to mention that the aforesaid Government Order in some of its clauses has been amended later on, but the principal method of allotting the shop in question in favour of an individual by way of a resolution passed in an open meeting of the Gram Sabha is still intact. The function to promote public awareness for distribution of essential commodities and monitoring of the public distribution system are entrusted to the Gram Panchayat as per Section 15 (xxix) of the U.P. Panchayat Raj Act, 1947. The petitioner has alleged that the respondent No.4/ Sub-Divisional Magistrate, who is the approving authority, under some political pressure is proceeding to allot the shop and grant license directly bypassing the procedure prescribed as mentioned aforesaid in the Government Order dated

17.8.2002. The concern of the petitioner therefore is that the grant of license should be processed through the proper procedure as prescribed for which a direction be issued to the 4th respondent to that effect.

3. We are disposing of this writ petition with appropriate directions as the matter relates to ensuring a public distribution of essential commodities which is one of the essential functions under part IX of the Constitution of India of the Panchayat of the Village Gram Sabha coupled with the responsibilities fixed under the U.P. Panchayat Raj Act, 1947 read with the Rules and Regulations framed thereunder and coupled with the Government Orders referred to here-in-above. But at the same time, a more important issue with regard to the locus of a person to discharge such official duties on behalf of the Panchayat of the Gram Sabha also crops up which requires a judicial pronouncement as has arisen on the facts of the present case.

4. The petitioner is the husband of the Village Pradhan. He has therefore espoused the cause on behalf of his wife which fact is admitted in paragraph ? 8 of the writ petition as follows:-

"8. That when it comes in the knowledge of the village Pradhan that some irregularities is being committed by the opposite party no. 4 relating to allotment of fair price shop license of said village after over looking the Government orders. The petitioner (husband of village Pradhan) submitted an application dated 1.6.2016 to the opposite party no. 4 (Sub Divisional Magistrate) with the prayer for allotment of license of fair price shop village Dhingwas after following due process of Government order which appears that the allotment should be done in open meeting of gram Sabha and after proposal of Gram Sabha in the appearance of authorities. ..."

5. A perusal of the aforesaid averment therefore clearly indicates that this miscellaneous writ petition, which is not a Public Interest Litigation, has been filed to press a demand by the Village Pradhan before the Sub-Divisional Magistrate in the discharge of the official, statutory and administrative duties and functions of the Panchayat of the Gram Sabha. The cause is therefore on behalf of the Village Panchayat of which the directly elected head is Gram Pradhan, and not her husband, the present petitioner in this case.

6. The issue which the Court wants to emphasise is the questionable authority of the petitioner, being the husband of the Village Pradhan, to represent her official duties and discharge of functions as an elected Pradhan of the Village under the statutory provisions and the relevant Government Orders. For the reasons given here-in-after, we are of the firm opinion that such official functions and duties including the representation on behalf of Gram Panchayat/Gram Sabha concerned, in a Court of Law would only be permissible by and through the Village Pradhan and cannot be substituted or even delegated to any of the family members/friends/representatives or well-wishers of the Pradhan. This however relates only to the discharge of official duties and not of political public relations.

7. At this stage, it will be appropriate to refer to the definitions of the words "Gram Sabha" and "Gram Panchayat" separately as they connote two different meanings. Reference may be first made to the constitutional provisions relating to Village Panchayats as introduced by the Constitution (Seventy-Third Amendment) Act, 1992. Article 243-A defines "Gram Sabha" as under:-

"243-A Gram Sabha ? A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide."

Section 2 (g) of the U.P. Panchayat Raj Act, 1947 defines Gram Sabha as follows:-

""Gram Sabha" means a body established under Section 3, consisting of persons registered in the electoral rolls to a village comprised within the area of a Gram Panchayat."

Article 243 (d) and (e) define "panchayat" and "panchayat area" as follows:-

(d) "Panchayat" means an institution (by whatever name called) of self-government constituted under Article 243-B, for the rural areas;

(e) "Panchayat area" means the territorial area of a Panchayat;

Section 2 (h) of the U.P. Panchayat Raj Act, 1947 defines Gram Panchayat as follows:-

(h) "Gram Panchayat" means the Gram Panchayat constituted under Section 12.

Section 12 as referred to in the above definition of the 1947 Act is reproduced hereunder:-

12. Gram Panchayat. ?(1) (a) There shall be constituted for every Panchayat area, a Gram Panchayat bearing the name of the Panchayat area.

(b) Every Gram Panchayat shall be a body corporate.

(c) A Gram Panchayat shall consist of a Pradhan and in the case of a Panchayat area having a population of ?

(i) upto one thousand, nine members;

(ii) more than two thousand but not more than two thousand, eleven members;

(iii) more than two thousand but not more than three thousand, thirteen members; or

(iv) more than three thousand, fifteen members.

(d) For the purpose of election of members of Gram Panchayat every Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as a practicable, be the same throughout the Panchayat area.

(e) Each territorial constituency of a Gram Panchayat shall be represented by one member in the Gram Panchayat.

(f) The territorial constituencies of a Gram Panchayat may be delimited in the prescribed manner and, if necessary, rules in this regard may be made with retrospective effect from a date not earlier than the date of commencement of the Uttar Pradesh Panchayat Laws (Amendment) Act, 1994.]

(2) * * *

(3)(a) A Gram Panchayat shall, unless sooner dissolved under Clause (f) of sub-section (1) of Section 95, continue for five years from the date appointed for its first meeting and no longer.

(b) An election to constitute a Gram Panchayat shall be completed ?

(i) before the expiry of its duration specified in Clause (a);

(ii) before the expiration of a period of six months from the date of its dissolution :

Provided that where the remainder of the period for which the dissolved Gram Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this sub-section for constituting the Gram Panchayat.

(c) A Gram Panchayat constituted upon the dissolution of a Gram Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Gram Panchayat would have continued under Clause (a) had it not been so dissolved.

(d) The constitution of a Gram Panchayat shall be notified in such manner as may be prescribed and thereupon the Gram Panchayat shall be deemed to have been duly constituted, any vacancy therein notwithstanding :

Provided that the constitution of a Gram Panchayat shall not be so notified till the Pradhan and at least two-thirds of the members of the Gram Panchayat have been elected.

(3-A) Notwithstanding anything contained in any other provisions of this Act, where due to unavoidable circumstances or in public interest, it is not practicable to hold an election to constitute a Gram Panchayat before the expiry of its duration, the State Government or an officer authorised by it in this behalf may, by order, appoint an Administrative Committee consisting of such number of persons qualified to be elected as members of the Gram Panchayat, as it may consider proper or the Administrator and the members of the Administrative Committee or the Administrator shall hold office for such period not exceeding six months as may be specified in the said order and all powers, functions and duties of the Gram Panchayat, its Pradhan and Committees shall vest in and be exercised, performed and discharged by such Administrative Committee or the

Administrator, as the case may be.

(4) The term of a member of Gram Panchayat shall, unless otherwise determined under the provisions of this Act, expire with the term of the Gram Panchayat.

(5)(a) In every Gram Panchayat, seats shall be reserved for the Scheduled Castes, the Scheduled Tribes and the backward classes and the number of seats so reserved shall, as nearly as may be, bear the same proportion to the total number of seats in the Gram Panchayat, as the population of the Scheduled Castes in the Panchayat area or of the Scheduled Tribes in the Panchayat area or of the backward classes in the Panchayat area bears to the total population of such area and such seats may be allotted by rotation to different territorial constituencies in a Gram Panchayat in such order as may be prescribed :

Provided that the reservation for the backward classes shall not exceed twenty-seven percent of the total number of seats in the Gram Panchayat;

[Provided further that if the figures of population of the backward classes are not available, their population may be determined by carrying out a survey in the prescribed manner.]

(b) Not less than one-third of the seats reserved under Clause (a) shall be reserved for the women belonging respectively to the Scheduled Castes, the Scheduled Tribes and the backward classes.

(c) Not less than one-third of the total number of seats in the Gram Panchayat, including the number of seats reserved for women under Clause (b), shall be reserved for women and such seats may be allotted by rotation to different territorial constituencies in a Gram Panchayat in such order as may be prescribed.

(d) The reservation of seats for the Scheduled Castes and the Scheduled Tribes shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

Explanation ? It is clarified that nothing in this section shall prevent the persons belonging to the Scheduled Castes, the Scheduled Tribes and the backward classes and the women from contesting election to unreserved seats.

(6) The Pradhan shall be deemed a member of the Gram Panchayat.]

12-A. Manner of election ? The election to the office of a Pradhan or Up-Pradhan [***] or a member of a Gram Panchayat shall be held to secret ballot in the manner prescribed.

12-E. Oath of office ? (1) [Every person] shall, before entering upon any office referred to in Sections (11-A, 12), 43 or 44, make and subscribe before such authority as may be prescribed on oath or affirmation in the form to be prescribed.

(2) Any member who declines or otherwise refuses to make and subscribe such oath or affirmation as aforesaid shall be deemed to have vacated the office

forthwith.

8. Thus, the Gram Sabha is a Village comprising of the persons registered in the electoral rolls relating to the village within a Gram Panchayat. A Gram Panchayat can consist of different villages as well. It is this Gram Panchayat constituted at the village level that exercises authority in a panchayat area which may comprise of a single village or group of villages as per Section 11-F of the 1947 Act. The Gram Panchayat is to consist of a Pradhan as per Section 12 (1) (c) of the 1947 Act whose election is to be held under Section 12-A and who takes oath of office under Section 12-E. The Panchayat therefore is chaired by the Pradhan. The power and duties of the Pradhan are referred to in the U.P. Panchayat Raj Rules, 1947 that would be discussed here-in-after. Thus, a Gram Sabha is governed by the local body of Gram Panchayat. It is the Gram Panchayat which is constituted for the said purpose with the Pradhan as its head to discharge official duties. The functions and duties of the Gram Panchayat are separately defined under Chapter IV of the U.P. Panchayat Raj Act, 1947 and Section 15 (xxix) is the relevant provision pertaining to the present subject matter of public distribution system. It is to be noted that the grant of a license for distribution of a fair price shop is entrusted to a procedure under the Government Order dated 17.8.2002 to the Gram Sabha in its open meeting, and not to the Gram Panchayat, but Section 15 (xxix) of the 1947 Act thereafter requires that the promotion of public awareness and the monitoring of the public distribution system relating to essential commodities is within the functions of the Gram Panchayat.

9. It is here that the duties of the Pradhan of the Gram Panchayat need to be referred to. Rules 47 and 47-A of the U.P. Panchayat Raj Rules, 1947 are extracted hereunder:-

47. Duties of the Pradhan of Gaon Panchayat ? Unless prevented by reasonable cause, it shall be the duty of the Pradhan-

(a) (i) to convene and preside at all meetings of the Gaon Sabha and the Gaon Panchayat; and

(ii) to control the transaction of business at the meetings and preserve order;

(b) to watch over the finance and superintend the executive administration of the Gaon Panchayat and bring to its notice any defect herein;

(c) to superintend and control the establishment maintained by the Gaon Panchayat;

(d) to carry out the resolution of the Gaon Panchayat;

(e) to arrange for the maintenance of the various registers provided under the rules and to carry on all correspondence on behalf of the Gaon Panchayat and the Gaon Sabha;

(f) to arrange for the execution of various works for the custody of the property of the Gaon Panchayat and for the assessment and collection of taxes, rates and

fees imposed by the Gaon Panchayat;

(g) to file civil case and launch prosecution on behalf of the Gaon Panchayat and the Gaon Sabha; and

(h) to perform such other duties as are required of or imposed on him by or under the Act or any other law.

47-A. Special powers of the Pradhan ? In the case of any grave emergency and under intimation of the Prescribed Authority, Pradhan may do any work which the Gaon Panchayat has power to do without obtaining the prior sanction of the Gaon Panchayat, but the matter shall be placed before the Gaon Panchayat, at its next meeting.

10. A perusal of Rule 47 (g) extracted here-in-above would leave no room for doubt that the duty of the Pradhan is to file civil cases and launch prosecution on behalf of the Gram Panchayat and the Gram Sabha both which in our opinion cannot be delegated except to the extent of special provisions referred to here-in-above. This is equally true for all the other functions as prescribed in the above quoted rules.

11. In order to understand the aforesaid issue, the first and foremost aspect to be dealt with is the manner of the election of the Pradhan. A Pradhan is elected under the provisions of Section 11-A, 11-B and 12-A of Chapter III-A of the U.P. Panchayat Raj Act, 1947. By virtue of such an election, which is a direct election by the voters exercising their right of adult franchise through secret ballot by a single transferable vote, the Village Pradhan therefore is a direct representative of the residents of the Village for discharge of all official functions entrusted to the office under the relevant Act, Rules and directives issued by the State Government in this regard. The essential function of the Pradhan therefore on behalf of the Gram Panchayat/Gram Sabha is to represent its cause in official capacity directly, and such authority under the Statute to represent flowing from the will of the people has not been otherwise delegated or substituted in favour of the family members of the elected Village Head/Gram Pradhan. In the present case, it is the husband who has filed this writ petition. This logic would extend equally to the husband, son, father or any such relative, friend, representative or well-wisher. The Gram Pradhan cannot abdicate such an essential function in favour of any such category of persons, who are neither the statutory delegates or substitutes of the Pradhan. The discharge of official duty of the Pradhan therefore stems from the confidence reposed by the public at large directly in the elected Pradhan, and not in favour of the family members, as in the present case to the husband of the Village Pradhan. A clear distinction therefore has to be drawn between sympathising with the family of the candidate who is occupying the office of the Village Pradhan as against the discharge of official functions after election by the Pradhan. By exercise of the right of franchise, the voter cannot be presumed to have under any law delegated the authority in favour of the family members. This would cut directly against the first principles of a

modern democracy where the expression of will of the people is in favour of a particular individual under law which prescribes a direct election to the office of the Village Pradhan.

12. The second step after elections are declared under a certification by the District Magistrate of the district under the 1947 Act is the taking of the Oath of the Village Pradhan which is prescribed under Section 12-E of the Act read with the Uttar Pradesh Panchayat Raj (Oath of Office of Pradhan, Up-Pradhan, Panch, Sarparch, Sahayak Sarpanch and Member of Gram Panchayat) Rules, 1994. The Oath therefore prescribed is administered to the Village Pradhan, and not to his family members or to the husband as in the present case. Consequently, the discharge of duties under such an Oath is the direct responsibility and obligation of the Pradhan, and not of any other person including the husband of the Village Pradhan. The official duties and discharge of official functions therefore are the responsibilities of the Pradhan.

13. Then comes the functions assigned to the office of the Pradhan which also includes administrative and financial functions. Here also, whether it is the operation of accounts of the Gram Sabha or whether it is the signing of the resolutions or act as the Chairman of the Land Management Committee for settlement of Gram Sabha Land and its properties, or exercising such control as defined under the Act and Rules directly envisages the discharge of duties by the Pradhan, and not by the family members, friends, representatives or well-wishers including the husband as involved in the present case. There is no rule or regulation or any provision under the Act for any relative of the Gram Pradhan to act as a substitute for discharging official duties. In short, the office is not heritable during the subsisting tenure of the Gram Pradhan.

14. This being the position of discharge of functions there is yet another dimension with regard to pursuit of legal matters. The functions entrusted under the relevant Rules to either the Gram Sabha or Gram Panchayat cannot be unilaterally taken over by the Pradhan or a delegate be it a relative or friend.

15. For the purpose of conducting any litigation on behalf of the Village Panchayat of the Gram Sabha, there are provisions made under the U.P. Panchayat Raj Act, 1947 and the Rules framed thereunder read with the Gram Sabha Manual framed in this regard.

16. Additional provisions relating to land management, property and funds have now been statutorily also incorporated in the U.P. Revenue Code, 2006 read with U.P. Revenue Code Rules, 2016. A perusal of the said provisions would leave no room to doubt that the Gram Panchayat is to be represented by the Pradhan through an empanelled Lawyer and the Village Pradhan in a private capacity cannot pursue a litigation on behalf of the Village Panchayat of the Gram Sabha in official capacity.

17. In matters arising out of land management, property and funds, the procedure for pursuing litigation on behalf of the Gram Panchayat has been

specifically provided for under Sections 72 and 73 of the U.P. Revenue Code, 2006. The same has been further to be executed through empanelled lawyers with responsibilities which have been further elaborated in Rules 72 and 76. U.P. Revenue Code Rules 2016. This is further supplemented with instructions for conduct of Gram Panchayat litigation as per Rule 74 (f) and the details thereof given in Appendix ? II that prescribes the procedure of litigation where clear instructions have been given, that it is either the Pradhan or a Member of the Gram Panchayat duly authorised who can represent litigation on behalf of the Gram Panchayat with the aid of the Secretary of the Gram Panchayat and the empanelled lawyers as provided therein and also to maintain records, but the aforesaid Rules and the directions are in relation to matters arising out of the U.P. Revenue Code 2006 and the Rules framed thereunder.

18. This is not to say that a Pradhan cannot have an individual right where the Pradhan is personally affected inasmuch as if the Pradhan is facing an election petition or any personal dispute, the Pradhan would not be discharging an official function and would be defending or opposing a personal cause but when it comes to the discharge of official functions, the prescription of law has to be followed.

19. In the present case, the cause espoused is about the discharge of an official function in ensuring distribution of essential commodities to the villagers through a resolution of the Gram Sabha which is to be executed by the Pradhan. The aforesaid meeting is alleged to have been bypassed and which official function is sought to be implemented by seeking a mandamus through this petition to the Sub-Divisional Magistrate for ensuring the said process to be adopted. Thus, this being an official function of the Village Panchayat under Section 15 (xxix) of the 1947 Act read with the Government Order dated 17.8.2002, in our opinion, cannot be directly espoused on behalf of the Gram Panchayat or the Gram Pradhan by the husband of the Pradhan or for that matter, as observed above, by any of his or her family members or such class of persons who cannot and are incapacitated from substituting themselves for the Pradhan. This is also necessary to insulate the functioning of the Pradhan which is fraught with dangers inasmuch as it involves handling of finances and dealing with Gram Sabha property. It is under the signatures of the Pradhan that such functions are to be carried out and therefore any such substitute or delegate including the pursuit of a litigation cannot be permitted under the signatures of the family members of the Gram Pradhan or her husband as in the present case. We have dealt into this matter as the facts of the present case have given rise to this issue but at the same time, in order to ensure that this philosophy of Pradhanpati, Pradhanputra, Pradhanpita, etc., deserves to be directly curtailed.

20. An argument can be raised in favour of female Gram Pradhans who have been elected on account of seats being reserved for women that they are either housewives or illiterates or even otherwise not very capable of handling the affairs of the office of Gram Pradhan. We cannot part with an interpretation on the strength of any such presumption inasmuch neither the Act nor the Rules or

any other statutory provision or for that matter, not even the Constitution of India does envisage any such presumption so as to enable the delegation or substitution of official duties in favour of the husband of the Gram Pradhan or her family members. This would amount to clearly re-writing the law and would not be a sound rule of interpretation for judging the issue merely on the ground that the Village Pradhan is a female, as that would amount to a presumption in the teeth of the provisions that may extend to gender injustice. It cannot be presumed that women are not capable of discharging their duties when the thrust of contemporary thought in local governance is clearly in favour of women empowerment that stands clearly protected under the constitutional umbrella. If a woman is lagging behind then their direct exposure would further enhance their participation in a democracy and strengthen the empowerment that is envisaged eradicating the age old shadow of patriarchy.

21. In this regard, it would be appropriate to refer to the status of the women and their social status which does not appear to have improved a lot that can be assessed on the strength of what was written way back in 1939 by a celebrated Journalist Ranjee G. Shahani in his book Indian Pilgrimage chapter XXVIII, "The Grandeur and Servitude of the Indian Woman", and compared to that what has been viewed by a contemporary journalist, Ms. Barkha Dutt in her book titled "This Unquiet Land" in Chapter ? I The Place of Women. However, at the same time, there should be no attempt of any interpretation that would adversely affect the enforcement of the equality clause and reflect any gender incapability. Thus, to allow any substitute or delegate to usurp official duties of a female Pradhan would be against the interest of this social and constitutional philosophy, hence the said possible argument deserves to be rejected outright.

22. It would also otherwise impede the exposure and the functioning of the directly elected representative who is intended and authorised to function as the Village Pradhan under the direct will of the people read with the legal provisions aforesaid. Any other person trying to pose himself or herself to be a Village Pradhan as a substitute may also give rise to a situation of a criminal liability as well. Thus, the responsibility and obligation of the Village Pradhan being individual which cannot be delegated in any form to the family members or to the husband as in the present case, deserves to be notified to all concerned Village Pradhans in the entire State in order to ensure their effective functioning and also to avoid any such embarrassment or ignominy in future in the discharge of such official functions that may give rise to legal complications.

23. We therefore direct the respondent No.1 as also the Secretary, Panchayat Raj, Government of U.P. to take notice of this judgment and issue necessary executive directions that may be required in this regard forewarning all Village Pradhans through the respective authorities in all the districts of the State of U.P. with regard to their discharge of official functions and duties as observed here-in-above.

24. We however find that the petitioner in his own capacity individually could not

have maintained such a petition but since the prayer made is in the larger interest of the villagers for grant of license for ensuring an effective public distribution system through the procedure prescribed under law, we leave it open to the respondent No.4 to examine this and to take necessary steps in case the license has already not been granted for implementing the Government Order dated 17.8.2002 as well as the subsequent Government Orders in their true letter and spirit after following the due procedure prescribed therein within a reasonable time expeditiously.

25. The writ petition stands disposed off with the said observations.