

(1995) 07 AHC CK 0087

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17348 of 1995

Virandra

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 06-07-1995

Acts Referred:

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 27C(3)

Citation : (1995) 07 AHC CK 0087

Hon'ble Judges : Palok Basu, J and S.Rafat Alam, J

Final Decision : Dismissed

Judgement

Palok Basu, J.—Sri Virendra son of Late Sri Markandey has filed this writ petition with the prayer that the order dated 1461995 (Annexure 4) passed by the District Panchayat Raj Officer, Varanasi, be quashed by issuing a writ in the nature of certiorari. It is further prayed that a mandamus be issued quashing the provisions of 60 days limitation as brought about by subsection (3) of Section 27C which has been incorporated by U. P. Ordinance No. 25 of 1995 known as U. P. Panchayat Laws (III) Amendment Ordinance, 1955 (for short, the Ordinance) whereby the aforesaid Section 27C has been added in the U.P. Kshettra Panchayat and Zila Panchayats Adhiniyam, 1961 (hereinafter referred to as the Act.)

2. Sri R. N. Singh, Advocate, assisted by Sri A. P. Sahi has been heard at sufficient length in support of the pleas taken in the writ petition which is opposed by Sri Kirpa Shanker Singh, learned Standing Counsel on behalf of the State of U. P. and Sri Aditya Narain Singh on behalf of opposite party No. 4, U. P. State Election Commission.

3. Since the matter is of extreme urgency and of significance and consequence, a reasoned order has been prayed for by the learned counsel for the petitioner which on the facts and circumstances of the case appears to be justified and hence even at the admission stage, this reasoned order is being pronounced in

Court.

4. Two fold arguments have been advanced by Sri R. N. Singh, Advocate. He has argued that Section 27C(3) may be attracted only when all elections upto the stage of Zila Panchayat are over. The argument proceeds that it is not possible to invoke the mischievous clause of "60 days" limitation against elected citizens like the petitioner when the elections for the office of Pramukh from out of Kshettra Panchayats constituencies, stand deferred for the time being. His second argument is that in view of the provisions contained in Section 14 of the Act, Panchayat Raj Officer, Varanasi was not empowered to pass the impugned order to invoke against the petitioner the deeming clause of losing Membership in the Kshetira Panchayat thereby pieventing him from fighting the election of Pramukh of Kshettra Panchayat concerned.

5. Some relevant facts may be stated. Elections for members of Kshettra Panchyat in Varanasi for Chandauli Constituency were held on 741995 and the petitioner was declared elected as member of Kshettra Panchayat Chandauli, Varanasi on 2141995. The petitioner had simultaneously filed nomination for member of Zila Panchayat and by the result dated 2141995 he was also declared successful as member of Zila Panchayat, Varanasi.

6. Further facts are that under the present law the Panchayat elections has three tier system, i.e. Gram Panchayat, Kshettra Panchayat and Zila Panchayat. Gram Panchayat came into existence in view of the Section 6 of the U. P. Panchayat Raj Act. Kshettra Panchayats are created in accordance with the provisions under Section 7 of the Act and likewise Zila Panchayats are constituted in accordance with the provisions of Section 10 of the said Act. Pramukhs and UpPramukhs, who are chairpersons of Kshettra Panchayats are elected by virtue of Section 7. It may be noted here that Adhyaksha and Upadhyaksh of Zila Panchayats who are chairpersons of the Zila Panchayats likewise are to be elected by virtue of provisions of Section 19 of the Act. Initially the state of U. P. had notified that elections for Pramukhs (Block Pramukhs) will be held on 1261995 but, admittedly, the said elections for the office of Block Pramukhs have been postponed till September, 1995. It may be mentioned here that elections for the office of Adhyaksha and Upadhyaksha of Zila Panchayats are already over and results were declared on 2251995. However, the notification by which the Ordinance has been promulgated came to be passed on 2051995 by virtue of Section 7 of the Ordinance, Section 27C having three subsections, has been added after Section 27B of the Act. For ready reference the aforesaid Sections 7 of the Ordinance is quoted:

7. After Section 27B of the Principal Act, the following section shall be inserted, namely,

"27C (1) Further bar on holding two offices simultaneously.A person shall be disqualified for being elected to or holding the office of

(a) a member, Pramukh or UpPramukh of a Kshettra Panchayat if he is a

member, Adhyaksha or Upadhyaksha of the Zila Panchayat and

(b) a member, Adhyaksha or Upadhyaksha of the Zila Panchayat if he is a member, Pramukh or UpPramukh of a Kshettra Panchayat.

(2) A person shall cease to hold the office of member, Pramukh or UpPramukh of a Kshettra Panchayat, as the case may be, if subsequently or simultaneously he is elected to the office of member, Adhyaksha or Upadhyaksha of the Zila Panchayat with effect from the date of such election to the office of member, Adhyaksha or Upadhyaksha of the Zila Panchayat, as the case may be.

(3) Notwithstanding anything in this Act, if in the first elections held after the commencement of the Uttar Pradesh Panchayat Laws (Amendment) Act, 1994, a person is chosen to more than one office which he is disqualified to hold simultaneously under subsection (1), he shall submit his resignation from all but one of these offices within sixty days of the declaration of the result of elections, or if the declaration of the results of election in respect of the said offices has been made on different dates, within sixty days of the last of such dates and in the event of failure to so resign, all offices except the office in the Zila Panchayat shall be deemed vacant."

7. In the very nature of the contents of subsection (3) its applicability is confined to the results concerning the "first elections" held after commencement of U. P. Panchayat Laws (Amendment) Act, 1994. It may be mentioned that it is admitted to the petitioner that these elections as noted above are the "first elections" after the U. P. Panchayat Laws (Amendment) Act, 1994 was passed. Keeping this in view, it cannot be doubted that the provisions contained in subsection (3) asking for submission of resignation from the person who has been elected on two posts within 60 days of the last elections has got no connection with the postponed elections for the office of Pramukh of the Kshettra Panchayats. The petitioner has been elected as member of the Kshettra Panchayat and also as member of Zila Panchayat, therefore, subsection (1) of the aforesaid Section 27C leaves no room for doubt that such a person as the petitioner could continue with only one office and not the other. It is provided in subsection (2) that a person shall cease to hold office of Member, Pramukh or UpPramukh of Kshetra Panchayat, if he is elected to the office of Member, Adhyaksha or Upadhyaksha of the Zila Panchayat with effect from the date of such election to the office of the Member, Adhyaksha or Upadhyaksha of the Zila Panchayat. Therefore, subsection (2) lays down only the natural consequence flowing from the provisions of subsection (1) of Section 27C of the Act, which provides, as noted above, that a person shall be disqualified for "being elected to" or "holding the office of" :

(a) a Member, Pramukh or UpPramukh of Kshettra Panchayat if he is a Member, Adhyaksha or Upadhyaksha of the Zila Panchayats, and,

(b) a Member, Adhyaksha or Upadhyaksha of the Zila Panchayat, if he is a Member, Pramukh or UpPramukh of a Kshettra Panchayat.

8. It may be noticed here that while subsection (1) of Section 27C of the Act lays down complete prohibition wherein both the contingencies are contemplated that "disqualification" will apply for "being elected to" or "holding the office". As compared to these two contingencies, the applicability of subsection (3) is limited to only one contingency or elections being over when the candidate stands disqualified "to hold" simultaneously two offices as envisaged by subsection (1).

9. In view of the aforesaid discussions, the attempt on the part of the learned counsel for the petitioner to connect the period of limitation of 60 days with the postponement of elections for the office of Pramukh is wholly misplaced. The said election may be held tomorrow or a month later on after September, the petitioner has to send his resignation from either of the two elected offices within a month, in view of the provisions contained in subsection (1) and (2) as noted above. Since it is the transitory period after the first elections, choice is available to the petitioner for resignation from either of the elected offices, so that he could retain the other office. There is no other alternative left for elected persons like the petitioner who stand elected, as Member of Zila Panchayat and also Member of Kshettra Panchayat. He has to resign from either of the two.

10. It may be mentioned here that since there was no escape for the petitioner from legal consequences noted above, the Panchayat Raj Adhikari, Varanasi, was fully competent to take note of those provisions and issued notice to the petitioner. It may be mentioned that by the said notice dated 21/4/1995, the petitioner was only reminded of those legal consequences and it has been stated therein "the declaration of result of last election concerning the Zila Panchayat has been made on 21/4/1995. Therefore, within 60 days from the said date you may please resign before the Competent authority from the office and opt for the other. If the said period is over, it will be deemed that your membership in Kshettra Panchayat is vacant while your membership in the Zila Panchayat shall be retained." (Translation by Court)

11. Therefore, the order of the Panchayat Raj Adhikari, Varanasi dated 14/6/1995 was not in the nature of deciding any dispute under Section 14 or Section 27 of the Act, as was sought to be argued. There was no dispute in the case. As noted above, the petitioner was duty bound under the law to resign from one post and continue with the other and thus the impugned order dated 14/6/1995 is quite in accordance with law and is upheld.

12. In view of the aforesaid discussions, there is no error in the notice issued to the petitioner and accordingly, this writ petition fails and is dismissed summarily.