
(1990) 11 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Writ Petition No. 430 of 1990

Vishal Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-11-1990

Acts Referred:

Rajasthan Panchayat Act, 1953 — Section 18

Citation : (1990) 2 RLW 413 : (1990) 2 WLN 368

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Mathur, J.—The petitioner by this writ petition has prayed that the order Annex. 2 dated 18.1.1990 may be set. Aside and the respondent No. 3 may be restrained not to take any part in the proceedings of the Panchayat.

2. The brief facts, which are necessary for the convenient disposal of this writ petition are that the petitioner was elected as Sarpanch of Gram Panchayat, Netewala Tehsil and District Sri Ganganagar. One Jaimal Ram was also elected as Up-Sarpanch of Gram Panchayat. Jaimal Ram submitted his resignation from the office of up-Sarpanch to the chief Executive officer cum-2 Secretary, Zila Parishad, Sri Ganganagar, The resignation was sent on 29.8.1989 and the same was received by the respondent No. 2 on 1.9.1989. The same was accepted u/s 18 of the Rajasthan Panchayat Act, 1953 (referred to hereinafter as "the Act") by the respondent No. 2 on 7.9.1989. Thereafter, various meetings of the Panchayat held from time to time and in the last 8 meeting he did not attend as his resignation was already accepted. The respondent No. 3 Jaimal Ram thereafter moved an application along with affidavit before non-petitioner No. 2 and the non petitioner No. 2 accepted the application filed by respondent No. 3 and revoked the order of acceptance of the resignation of respondent No. 3 Jaimal Ram. Hence the present writ petition has been filed by the petitioner challenging the aforesaid order:

3. It is alleged, in the writ petition that once the resignation has been accepted u/s 18 of the Act then it cannot be revoked.

4. Mr. Sharma, learned Counsel appearing for the respondent No. 3, has contested the position without filing a reply to the writ petition. Learned Counsel submitted that the resignation could have been accepted u/s 18 of the Act by the officer In-charge of the Panchayat and the Chief Executive Officer, who accepted the resignation of the respondent No. 3, is not competent to do so. The Officer In-charge has been defined u/s 2(9) of the Act. That means a person or officer appointed by the State Government u/s 74 to be the officer-in-charge of Panchayats and includes an officer subordinate to him under that Section. u/s 74, the State Government may appoint an officer-in-charge of Panchayats with each designation for discharge of such functions. Learned Counsel submitted that for the purposes of acceptance of the resignation u/s 18 of the Act, this power has been given to Additional District Development Officer/Deputy District Development Officer as the case may be. In the present case the resignation has been accepted by the Chief Executive Officer, who is no body in the matter.

5. Mr. Sandhu, learned Counsel for the petitioner has invited my attention to the notification dated 18.3.1989 issued by the State Government u/s 89 of the Act and thereby the existing expression "Additional District Development Officer/Deputy District Development Officer" wherever occurring in the said Rules shall be substituted by the expression "Chief Executive Officer, zila Parishad". The notification reads as under:

Government of Rajasthan Rural Development & Panchayati Raj Deptt. No. (12) LAJ/RDP/88/223 Jaipur, dated: 18.3,1989. NOTIFICATION In exercise of the powers conferred by Section 89 of the Rajasthan Panchayat Act, 1953 (Rajasthan Act 21 of 1953) and all other powers enabling it in this behalf, the State Government hereby makes the following amendment in the Rajasthan Panchayat (General) Rules, 1961, namely:

AMENDMENT

The existing expression "Additional District Development Officer/Deputy District Development Officer" wherever occurring in the said Rules, shall be substituted by the expression "Chief Executive Officer, Zila Parishad.

By order of the Governor Sd/- (T.R.Varma) Spl. Secretary to Government.

6. I have considered the rival submission of the learned Counsel for the parties. It is true that once resignation is accepted then it cannot be revoked. As the non-petitioner No. 3 submitted his resignation and the same was accepted then he ceased to be Up-sarpanch and thereafter the respondent No. 2 cannot accept the withdrawal of his resignation on an application moved by him and that too without notice to the panchayat. Be that as it may, the fact remains that once the resignation has been filed by non-petitioner No. 3 and the same has been accepted meaning thereby he ceased to be the Up-Sarpanch of the Panchayat

and thereafter nothing can be done to revoke the acceptance of the resignation as the whole chapter has been complete.

7. Mr. Sharma, learned Counsel for the respondent submitted that the acceptance of the resignation was not by a competent authority as the Chief Executive Officer is a person who is not competent to accept the resignation. But in view of the notification dated 18.3.1989 issued by the Government as reproduced above it is clearly mentioned that wherever the expression "Addittnal District Development Officer/ Deputy District Development Officer" occurring the expression shall be substituted by "Chief Executive Officer, Zila Parishad. It is not the case of Mr. Sharma that the person who has accepted the resignation was not the Chief Executive Officer of the Zila Parishad.

8. Thus, in this view of the matter, the cancellation of the acceptance of the resignation by the non-petitioner No. 2 vide order dated 18.1.1990 (Annex. 2) cannot be sustained.

9. In the result, I allow the writ petition and set aside the order dated 18.1.1990 (Annex. 2). The parties are left to bear their own costs.