

CIVIL MISCELLANEOUS

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

GURU DATT,—*Petitioner.*

versus

SOHAN SINGH AND ANOTHER,—*Respondents.*

Civil Writ No. 2056 of 1963.

1964

July, 21st.

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—S s. 2(3) and 121—Punjab Panchayat Samitis and Zila Parishads (Election^{Petition} Rules)—Rule 4—Election petition—To whom to be presented—Authority to try and decide the election petition—Election petition presented to the Deputy Commissioner but tried and decided by Additional Deputy Commissioner—Order of Additional Deputy Commissioner—Whether without jurisdiction—Authority designated as persona designata to perform judicial or quasi-judicial functions—Whether can delegate its functions—Administrators—Powers to be exercised—Whether can exercise powers outside the law.

Held, that an election petition under section 121 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, must be presented to the Deputy Commissioner within whose jurisdiction the Panchayat Samiti or Zila Parishad is situated as per Rule 4 of the Punjab Panchayat Samitis and Zila Parishads (Election Petition Rules), 1961. The Deputy Commissioner, according to this Rule, is the prescribed authority under section 121. The Deputy Commissioner under section 2(3) means the Deputy Commissioner of a district including any officer not below the rank of an Extra Assistant Commissioner specially appointed by the Government to perform the functions of a Deputy Commissioner under this Act, but such officer is expressly debarred by means of the proviso from performing any function in respect of which the decision of the Deputy Commissioner under this Act is made final. Rule 8 (e) of the Election Petition Rules makes the order of the Prescribed authority final. It is thus clear that it is the Deputy Commissioner alone who has been given the jurisdiction to entertain and

dispose of the election petitions. The object of conferring authority on the Deputy Commissioner to entertain the petition would be frustrated, if after entertaining it, its trial and disposal could be entrusted to an individual who does not fall within the definition of "prescribed authority" as provided by Rule 4 of the Punjab Panchayat Samitis and Zila Parishads (Election) Rules.

Held, that the Deputy Commissioner for the purposes of election petitions under the Act and the Rules, is a *persona designata* and, therefore, it is the Deputy Commissioner alone who can as such perform the functions which the statute and the rules made thereunder confer on him. The order of Governor, dated 13th December, 1962, declaring the ex-cadre posts of Additional Deputy Commissioners to be equivalent in status and responsibility to the cadre posts of Deputy Commissioners does not, and indeed cannot modify the statutory provision, according to which, an election petition has to be presented to the Deputy Commissioner because an officer specially appointed to perform the functions of a Deputy Commissioner is expressly debarred from performing any function in respect of which the decision of the Deputy Commissioner is made final. The order of the Additional Deputy Commissioner disposing of an election petition is, therefore, without jurisdiction and must be quashed.

Held, that when judicial and quasi-judicial functions are entrusted to a specified officer as *persona designata*, then such functions are *prima facie* meant to be performed only by the officer designated, and such designated authority possesses no inherent or implied power to delegate its functions to some one else. Performance of such functions by any other authority would *prima facie* be unauthorised and *non est* as in cases where unauthorised persons lacking inherent jurisdiction purport to perform judicial or *quasi-judicial* functions, the orders passed by them are generally treated as void and, therefore, nullities; they do not exist in the eye of law.

Held, that the administrator, while dealing with the citizens' rights, can exercise only those powers which the law gives him and possesses no power outside the law. The rule of law accordingly serves as a beacon-light or a guide-post to the administrator and is not an irksome obstruction in his way, as some may choose to believe.

Case referred by the Hon'ble Mr. Justice Inder Dev Dua on 2nd March, 1964 to a Larger Bench for decision owing to the importance of the question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice D. K. Mahajan, on 21st July, 1964.

Petition under Article 226 of the Constitution of India praying that a writ of certiorari, mandamus, prohibition or an order or direction be issued quashing the order of Respondent No. 2, dated 10th October, 1963.

T. S. MUNJRAL AND S. S. DHINGRA, ADVOCATES, for the Petitioner.

R. SACHER AND M. J. SETHI, ADVOCATES, for the Respondents.

ORDER

Dua, J.

DUA, J.—The facts giving rise to this reference to Division Bench are stated in my referring order dated 2nd March 1964 in which I expressly directed that the matter being urgent should be expedited so that the petition should be disposed of within two weeks. As a matter of fact, even the admitting Bench had on 12th November, 1963, directed that the petition should be disposed of within two months. It is unfortunate that in spite of the order of the admitting Bench, the case should not have been disposed of till today. It is desirable that cases relating to elections whether the election pertains to Parliament, Legislative Assembly or Panchayat Samiti must be disposed of with due despatch because our system of Government attaches great constitutional importance to representative form of Government and it is in the Panchayat that a common villager in this country will get training in the art of local self-Government. It is, therefore, desirable that election controversies are disposed of with the utmost despatch possible.

This petition must be allowed because the Addition^{al} Deputy Commissioner, who disposed of the election petition had no jurisdiction to do so; such jurisdiction having been vested only in the Deputy Commissioner. An election petition presented under section 121 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, must be presented to the Deputy Commissioner within whose jurisdiction the Panchayat Samiti or Zila Parishad is situated as per Rule 4 of the Punjab Panchayat Samitis and Zila Parishads (Election Petition Rules) 1961. The Deputy Commissioner, according to this Rule, is the prescribed authority under section 121. The Deputy Commissioner under section 2(3) means the Deputy Commissioner of a district including any officer not below the rank of an Extra Assistant Commissioner specially appointed by the Government to perform the functions of a Deputy Commissioner under this Act, but such officer is expressly

debarred by means of the proviso from performing any function in respect of which the decision of the Deputy Commissioner under this Act is made final. Rule 8(e) of the Election Petition Rules mentioned above makes the order of the prescribed authority final. These rules, it may be pointed out, have been made under section 115 of the Act and sub-section (2) (b) (ii) and (iii) specifically empower framing of rules relating to investigation of allegations of corrupt practices and for avoiding elections, etc. These rules under sub-section (4) have to be laid before each House of the State Legislature for a specified number of days and are liable to be modified by the Houses of Legislature. It is thus obvious that these rules have the same force as the main statute and indeed this is not disputed before us at the bar. *Prima facie*, therefore, it is the Deputy Commissioner alone, who has been given the jurisdiction to entertain and dispose of the election petition. The respondents have, to begin with, pleaded that the election petition was initially presented to Shri Sunder Singh, who was the Deputy Commissioner, but later he became the Additional Deputy Commissioner and the proceedings continued before him. Afterwards, Shri Lal Singh Ahuja, succeeded Shri Sunder Singh, to the office of Additional Deputy Commissioner and, therefore, he after conducting the proceedings disposed of the election petition in accordance with law. It is in the circumstances contended that the election petition was presented to the prescribed authority, having jurisdiction, and, therefore, there is no violation of any statutory provision. I am not impressed by this contention.

It is obvious that under section 121(2), it is the prescribed authority which is authorised to dispose of the petition and the presentation of the election petition to the prescribed authority in the context clearly connotes and means that it is this authority alone which has to try the petition and finally dispose it of. To hold otherwise would lead to illogical results. The object of conferring authority on the Deputy Commissioner to entertain the petition would seem to me to be frustrated, if after entertaining it, its trial and disposal could be entrusted to an individual, who does not fall within the definition of "prescribed authority" as provided by Rule 4. The respondents' contention is no doubt ingenious but it is patently devoid of merit and is hereby repelled.

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It has next been contended that the Additional Deputy Commissioner has been performing the functions of the Deputy Commissioner and, therefore, the orders passed by the former must be deemed to be orders passed by the latter. Here again, I am unable to sustain the argument. The Deputy Commissioner, in the case in hand, is, in my opinion, a *persona designata* and, therefore, it is the Deputy Commissioner alone, who can as such perform the functions which the statute and the rules made thereunder confer on him. The order of the Governor Annexure "R. 1" dated 13th December, 1962, declaring the ex-cadre posts of Additional Deputy Commissioners to be equivalent in status and responsibility to the cadre posts of Deputy Commissioners, seems to me to be unhelpful to the respondents. This order does not, and indeed cannot, modify the statutory provision, according to which, an election petition has to be presented to the Deputy Commissioner because an officer specially appointed to perform the functions of a Deputy Commissioner is expressly debarred from performing any function in respect of which the decision of the Deputy Commissioner is made final. It may be remembered that when judicial and *quasi-judicial* functions are entrusted to a specified officer as *persona designata*, then such functions are *prima facie* meant to be performed only by the officer designated, and such designated authority possesses no inherent or implied power to delegate its functions to someone else. Performance of such functions by any other authority would *prima facie* be unauthorised and *non-est*. By way of analogy, reference may be made to cases dealing with appeals under the East Punjab Urban Rent Restriction Act: *Devi and others v. Desa* (1), and other similar cases.

A faint attempt has, as a last resort, been made by the respondents to urge that an Additional Deputy Commissioner on whom had been conferred equal status and responsibility by the Governor's orders, having disposed of the election petition, this Court should in its discretion decline to quash the impugned order on the writ side; the argument being that there is no manifest injustice suffered by the petitioner because a responsible senior experienced officer has *bona fide* and in good faith adjudicated on and disposed of the election petition on the merits. Here again, I

(1) (1954) 56 P.L.R. 284.

find myself unable to sustain the contention which betrays unawareness of the true concept of rule of law. In cases where unauthorised persons lacking inherent jurisdiction purport to perform judicial or *quasi-judicial* functions, the orders passed by them are generally treated as void and, therefore, nullities; they do not exist in the eye of law. To accede to the respondents' submission would indeed cut at the root of the rule of law which is one of the basic pillars of our constitutional set-up; and to strengthen which, seems to me to be, the most emergent and urgent need of this Republic today. A large number of cases have come up to this Court disclosing an increasing tendency on the part of even some senior administrators to unceremoniously disregard the rule of law under which alone they can lawfully claim and exercise their authority; this tendency does not seem to ensure healthy future of our democratic existence, and for one thing it is not calculated to inspire in the common man faith in our form of Government which is the essential pre-requisite for its successful working—nay, for its survival. On the contrary, it may encourage mental drift towards absolutism or dictatorship. The administrator, it may appropriately be pointed out, while dealing with the citizens' rights can exercise only those powers which the law gives him and possesses no power outside the law. The rule of law accordingly serves as a beacon-light or a guide-post to the administrator and is not an irksome obstruction in his way, as some may choose to believe. This Court would thus be failing in the performance of its solemn duty as guardian of the rule of law if it were to decline to quash the impugned order on this ground.

This writ petition accordingly succeeds and allowing the same, I quash the impugned order, but without costs. In case the election petition was initially presented to the prescribed authority, then it would have to be tried and disposed of by it, otherwise the entire proceedings would stand quashed and set aside.

D. K. MAHAJAN, J.—I agree.

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Mahajan, J.