

sections 110 and 116 of publication in the Official Gazette so as to notify that any one who might be interested in prosecuting the petition might apply and get himself substituted in place of the party concerned to prosecute the petition to the conclusion of its trial.

It is for those responsible for legislation to remedy the defects and remove the lacuna if my views find some measure of agreement.

D. K. MAHAJAN, J.—I have nothing to add to what has been observed by my learned brother Grover, J., and Harbans Singh, J. In the circumstances of this case leave to withdraw the election petition should be declined with costs, which have been assessed at Rs. 200.

B. R. T.

FULL BENCH

Before A. N. Grover, Harbans Singh and Daya Krishan Mahajan, JJ.

UMRAO SINGH—*Petitioner*

versus

DARBARA SINGH AND OTHERS,—*Respondents*

Election Petition No. 28 of 1967.

September 19, 1967

Constitution of India (1950)—Art. 191—Chairman of Panchayat Samiti receiving a consolidated allowance of Rs. 100 per mensem—Whether holds an office of profit—Such office—Whether held under the State of Punjab—Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Ss. 95 and 115—The Punjab Panchayat Samitis and Zila Parishads Non-Official Members (Payment of Allowance) Rules, 1961 as amended in 1965—Rules 3 to 6—Nature of the allowance provided under—Whether profit to the Chairman.

Held, that the combined reading of the 1961 and 1965 Rules [The Punjab Panchayat Samitis and Zila Parishads Non-Official Members (Payment of Allowance) Rules] discloses that the Chairman was to be paid a consolidated amount towards his daily allowance and travelling allowance for performing

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all official duties and journeys concerning the Panchayat Samitis within the district including attending of meetings, supervision of plans, etc. The mileage allowance was only admissible to him when he had to perform any official work outside the district. In essence, the payment under both sets of Rules (that is 1961 and 1965) remained the same, namely, a compensation for out of pocket expenses. The amount of Rs. 100 can, in no manner, under the circumstances, be said to be profit to the Chairman. After considering the nature of the work to be performed by the Chairman of a Panchayat Samiti under the Punjab Panchayat Samitis and Zila Parishads Act, 1961, and the nature of the emoluments paid to him, there can be no manner of doubt that the payment of Rs. 100 per mensem to him is not profit earned by the Chairman but is compensation simpliciter for out-of-pocket expenses. A Chairman of a Panchayat Samiti cannot be said to hold an office of profit because of the payment of the consolidated allowance of Rs. 100 per mensem to him under the above-said Rules and is not disqualified for being chosen as, and for being a member of the Legislative Assembly or Legislative Council of a State within the meaning of Article 191(1)(a) of the Constitution of India.

Held, that the Chairman of a Panchayat Samiti does not hold an office under the State of Punjab. It is quite apparent from the various provisions of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, that Government has no power of appointment of the members of the Panchayat Samiti or its Chairman. They are elected or co-opted. There is no absolute power of removal vested in the Government. That power is only given under certain stated circumstances and the exercise of that power is justiciable. The allowance, that is paid to the Chairman, is paid out of the Samiti funds which certainly has money contributed by the Government. The allowances of members are fixed by the Rules framed by the Government in accordance with sections 95 and 115 of the Act. There are certain governmental functions that are entrusted to the Panchayat Samitis and the Government does not exercise a certain measure of control over this body. The most pertinent fact, however, is that the Panchayat Samiti is a local authority being a corporate body having perpetual succession and common seal. It has the power to acquire, hold and dispose of property and to enter into contracts. It can sue and be sued as such. The combined reading of these provisions leaves no manner of doubt that by no stretch of reasoning, can the Panchayat Samiti be termed either as a department of the Government or a body belonging exclusively to the Government. Moreover, the Panchayat Samiti cannot be equated with Government. The various tests laid down by the Supreme Court do not make the Chairman of the Panchayat Samiti an holder of office under the State Government or the Government of India.

Case referred by the Hon'ble Mr. Justice D. K. Mahajan on 23rd August, 1967 for the decision of an important question of law involved in the case and the case was finally decided by the Full Bench consisting of the Hon'ble Mr. Justice A. N. Grover, Hon'ble Mr. Justice Harbans Singh and the Hon'ble Mr. Justice D. K. Mahajan, on 19th September, 1967.

Election Petition presented under the provisions of Part VI Chapter II, sections 80 and 81 and 84 of the Representation of the People Act, 1951 and Rules made thereunder, calling in question the election of respondent No. 1 and praying that the election of the returned candidate Shri Darbara Singh be declared void and the petitioner be declared elected as a member of the Punjab Legislative Assembly having secured the majority of valid votes and after excluding the number of votes thrown away.

N. C. CHATTERJEE, SENIOR ADVOCATE WITH A. S. SARHADI, P. PARAMESWARA AND J. S. REKHI, ADVOCATES, for the Petitioner.

J. N. KAUSHAL, SENIOR ADVOCATE WITH H. S. TOOR, AND B. S. KHOJI, ADVOCATES, for Respondent No. 1.

SHRI GOPAL SINGH, ADVOCATE-GENERAL, for the Punjab State.

ORDER OF THE FULL BENCH

MAHAJAN, J.—This order will dispose of this petition under section 81 of the Representation of the People Act, 1951 (hereinafter referred to as the Act).

The petitioner is Umrao Singh, who is defeated by respondent No. 1, Shri Darbara Singh (hereinafter referred to as the respondent). The petitioner as well as 10 other candidates including respondent No. 1 contested the election to the Punjab Vidhan Sabha (Assembly) from Nakodar constituency, district Jullundur. The petitioner polled 8,437 votes, whereas the respondent polled 11,755 votes. The petitioner contested the election on Congress ticket, and the respondent as an independent candidate.

Before us, all other contentions have been dropped excepting one, namely, that the respondent, being the Chairman of the Panchayat Samiti, at the relevant time, held an office of profit under the Government; inasmuch as he was paid a sum of Rs. 100 per mensem as consolidated allowance in pursuance of a notification, dated the 21st of August, 1965, published in the *Punjab Government Gazette*, dated the 27th of August, 1965 (Part III page 929).

The recording of evidence in this petition concluded on the 31st of July, 1967, when I adjourned the case for arguments to 21st of August, 1967. It appears that the Government got panicky and issued the Ordinance (Ordinance No. 10 of 1967) on the 19th of August, 1967.

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When the case came up for hearing on the 21st of August, 1967, an application was made by the petitioner for amendment of the petition in view of the promulgation of the Ordinance. As the attack to the Ordinance was purely on legal grounds, I permitted the petitioner to urge those grounds and did not deem it necessary to cause a formal amendment of the petition to be made. It is obvious that the Ordinance has been promulgated to remove any disqualification, which the respondent may have incurred, by reason of the respondent being the Chairman of the Panchayat Samiti and to get over the provisions of Article 191(1)(a) of the Constitution of India. This ordinance added section 2(b) to the State Legislature (Prevention of Disqualification) Act, 1952, and is in these terms:—

“It is hereby further declared that the office of Chairman of a Panchayat Samiti or Zila Parishad shall be deemed never to have disqualified and shall not disqualify the holder thereof for being chosen as, or for being, a Member of the Punjab State Legislature.”

I heard arguments in the petition on the 23rd of August, 1967. After hearing the learned counsel for the parties, I was of the view that the questions involved, which require determination, were of considerable importance and should be settled by a larger Bench preferably a Full Bench. That is how the matter has been placed before the Full Bench.

The questions, that fall for determination by the Full Bench, are:—

- (1) Whether in the instant case, the respondent by virtue of his being the Chairman of the Panchayat Samiti, who was being paid a consolidated allowance of Rs. 100 per mensem, held an office of profit at the relevant time?
- (2) Whether such an office is an office under the State of Punjab?
- and (3) In case it is held that the respondent held an office of profit under the State at the relevant time, whether the Ordinance removing that disqualification is a valid piece of legislation for various reasons set out in the amendment application?

It is not necessary to refer to the third question in view of our considered decision against the petitioner on the first two questions.

All we need say is that the Ordinance merely reiterated the true legal position.

The first question, that requires determination, is whether the Chairman of the Panchayat Samiti who is paid a consolidated allowance of Rs. 100 per mensem, holds an office of profit? Article 191(1)(a) of the Constitution of India provides as follows:—

“191(1). A person shall be disqualified for being chosen as, and for being a member of the Legislative Assembly or Legislative Council of a State

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder.

* * * *

The only exceptions to this provision are:—

(a) an office declared by the legislature of the State by law not to be disqualification;

and (b) a Minister either of the Union or of the State does not hold office of profit under the Government of India or the Government of the State [Article 191(2)].

To incur disqualification under this provision, two things must necessarily co-exist:—

- (1) The office must have some profit attached to it; and
- (2) The office must be an office under the Government of India or the Government of a State.

If either of the two things is missing, there would be no disqualification under Article 191.

Thus the first question that requires determination is whether the payment of Rs. 100 as consolidated allowance is a profit to the

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Chairman of the Panchayat Samiti. This will require the determination as to what exactly is this payment and for what purpose. Section 95 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (hereinafter referred to as the Punjab Act) provides as follows:—

“95. Allowances to Members of Panchayat Samitis and Zila Parishads and Committees thereof. Every non-official Member of a Panchayat Samiti or Zila Parishad and a Standing or Consultative Committee thereof shall be paid such allowances as may be prescribed.”

Section 115 of the Punjab Act deals with the power of the Government to make rules. In pursuance of the powers conferred by the aforesaid provisions, the Governor of the Punjab was pleased to make the rules entitled as “The Punjab Panchayat Samitis and Zila Parishads Non-Official Members (Payment of Allowances) Rules, 1961.” Rule 3(1) provides for the travelling allowance and rule 3(3) for a daily allowance. This rule has a material bearing on the determination of the disputed question and, therefore, I have set out the same *in extenso* :—

“3. (1) Travelling Allowance:—

There shall be paid to each Member travelling allowance for attending the meetings from the usual place of residence to the place where the meeting is held; except that in respect of a journey performed by a Member for attending such meetings as are held within a radius of five miles from his place of residence or in a transport provided at the expense of the Zila Parishads/Panchayat Samitis or any other local authority or Government, he will not be entitled to draw any travelling allowance.

(2) Journey for any official work outside the jurisdiction of the Panchayat Samiti or Zila Parishad shall not be undertaken by the Members, Chairman or Vice-Chairman thereof, except with the sanction of the Chairman of the Zila Parishad in the case of Panchayat Samiti and the Commissioner of the Division concerned in the case of Zila Parishad.

(3) *Daily Allowance*:—

The Members shall be entitled to daily allowance for the days of halt:

Provided that—

- (i) in the case of Member who is treated as a State Guest during an official visit outside the State of Punjab, or the jurisdiction of the Panchayat Samiti or Zila Parishad, his daily allowance shall be limited to 1/4th, if he is provided free board and lodging officially and ½, if he is charged either for board or lodging;
- (ii) only ½ daily allowance shall be admissible for the days of journey;
- (iii) not more than one daily allowance shall be admissible for a day in any case; and
- (iv) a member shall not be entitled to any other allowance for the day for which he draws daily allowance.

* * * * *

Rule 4 puts the members in two grades. The Chairman and the Vice-Chairman fall in Grade I and all other members of the Samiti fall in Grade II. Rule 5 provides for class of accommodation and rate of travelling allowance. Rule 7 provides for a certificate by a member claiming travelling allowance and a daily allowance. Rule 8 requires countersignatures by the Executive Officer and rule 9 provides for the forms and mode of payment. Besides what these rules sanction, no other payment has been prescribed for the Chairman of the Panchayat Samiti. It will be apparent that only daily allowance and travelling allowance is provided for, which is nothing but compensation for out of-pocket expenses. The framers of the rules were meticulous and provided that in case the journey was undertaken in a vehicle provided by the Samiti, no travelling allowance could be claimed. Therefore, it will be idle to suggest that allowances paid under these rules are, in any manner, profits derived by the members or by the Chairman elected by the members. The only points of

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difference between the Chairman and the ordinary member in the rules are as follows:—

<i>Chairman</i>	<i>Ordinary Members</i>
(1) Can travel 1st Class	(1) Can travel II nd Class;
(2) Is entitled to 4 P. per mile as incidental charges;	(2) Same as Chairman.

Road Mileage.—(The only difference is in the case of a single seat in a Taxi, Motor, Omnibus or Lorry.)

(3) Is entitled to 15 P. per mile;	(3) Is entitled to 12 P. per mile;
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Daily Allowance:

(4) Rs. 6.25 P. per day:	(4) Rs. 4 per day.
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In other respects, the provisions of the rules are common to Grade I and Grade II.

These rules were superseded by the Punjab Government Notification No. GSR 184/PA-III/61 published in the Punjab Government Gazette, Legislative Supplement Ordinary, dated the 27th of August, 1965. Rule 12 of these rules repealed the 1961 rules. Rules 3, 4 and 5 of 1965 Rules are material and are set out below in *extenso*:—

“3. There shall be paid a monthly consolidated allowance, in lieu of all other allowances, at the following rates, to the Chairman of Panchayat Samiti and that of a Zila Parishad, for performing all official duties and journey concerning the Panchayat Samitis or Zila Parishad as the case may be, within the District, including attending of meeting, supervision of plans, projects, schemes and other works and also for the discharge of all lawful obligations and implementation of the Government directives:—

(a) Chairman, Panchayat Samiti	... Rs. 100
(b) Chairman, Zila Parishad	... Rs. 150

4. The Chairmen, Vice-Chairmen and Members shall, for the purpose of rates of mileage and daily allowances admissible to them under these rules, be divided into the following two categories:—

- (i) *Category I.*—This shall include Chairmen and Vice-Chairmen of the Panchayat Samitis and Zila Parishads.
- (ii) *Category II.*—This shall include all other Members of the Panchayat Samitis and Zila Parishads.

5. There shall be paid to the Chairmen, Vice-Chairmen and members, mileage allowance for journeys performed for any official work outside the district. Such journeys shall not be undertaken unless authorised by the Panchayat Samiti or the Zila Parishad, as the case may be.

Note.—The power under this sub-rule shall not be delegated to any other authority.

(2) The Vice-Chairman and the Member shall also be paid mileage allowance, in respect of a journey performed within the district, for—

- (a) attending the meetings; and
- (b) for any official work or for supervision of a cattle fair held by the Panchayat Samiti:

Provided that the Vice-Chairman and the Members shall not be entitled to mileage allowance under clause (b) unless the journey for such work or supervision has been approved by the Panchayat Samiti or Zila Parishad, as the case may be, and the number of Members deputed for supervision does not exceed five on any one day”.

Rule 6 deals with payment of mileage allowance and notes numbers (1) and (2) of this rule are very pertinent and are reproduced below:—

“* * * * *

Notes.—(1) A Chairman, Vice-Chairman or Member, using means of locomotion provided at the expenses of the Government, Panchayat Samiti, Zila Parishad or any other

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local authority shall not be entitled to any mileage allowance.

- (2) A Chairman, Vice-Chairman or Member travelling in a vehicle belonging to any other Member, Vice-Chairman or Chairman shall not be entitled to any mileage allowance. The mileage allowance of the owner of the vehicle shall, however, be regulated under clause (iv)."

The daily allowance of the Chairman was reduced to Rs. 6 per day and that of the members was maintained at Rs. 4 per day. The remaining provision are of a similar nature as in the repealed Rules.

The combined reading of the 1961 and 1965 Rules discloses that the Chairman was to be paid a consolidated amount towards his daily allowance and the travelling allowance for performing all official duties and journeys concerning the Panchayat Samitis within the district including attending of meetings, supervision of plans etc. The mileage allowance was only admissible to him when he had to perform any official work outside the district. In essence, the payment under both sets of Rules (that is 1961 and 1965) remained the same, namely a compensation for out-of-pocket expenses. The amount of Rs. 100 can, in no manner, under the circumstances, be said to be profit to the Chairman.

Our attention has been drawn to two recent decisions—one of the Rajasthan High Court in *Ramlal v. Vishveshwar Nath*, Election Petition No. 20 of 1967 decided on the 1st of August, 1967; and the other of the Bombay High Court (Nagpur Bench) in *Moti Singh v. Bhaiyyalal*, Election Petition No. 5 of 1967, decided on the 25th of July, 1967, wherein the emoluments drawn by the Chairman of the Zila Parishad were held to be office of profit. In both these cases the Chairman was being paid daily allowance travelling allowances and was provided with free transport and residential accommodation. In addition to this, an honorarium of Rs. 300 per mensem was paid to him. The argument in these cases, that all these payments were being made for out-of-pocket expenses, was rejected; and in our opinion rightly. But the trend of these decisions indicates that if only daily allowance and travelling allowance has been paid to those

members, the decision would have turned the other way and it would have been held that the office held by such Chairman was not an office of profit. After considering the nature of the work to be performed by the Chairman under the Punjab Act and the nature of the emoluments paid to him, there can be no manner of doubt that the payment of Rs. 100 per mensem is not profit earned by that Chairman, but is compensation simpliciter for out-of-pocket expenses. We do not agree with Mr. Chatterji's contention, that the amount of Rs. 100 is a profit to the holder of the office of the Chairman of the Panchayat Samiti. It is not established in the instant case that the Chairman of a Panchayat Samiti holds an office of profit and we hold accordingly.

Regarding the second point it will be proper at this stage to examine the relevant constitutional provisions, namely, Articles 58, 66(4), 102(1)(a) and 191(1)(a); and the decisions of the Supreme Court on the subject. The Supreme Court decisions do lay down the tests to be applied to find out whether a certain office is held under the Central Government, or the State Government.

The first decision of the Supreme Court, which is in point, is *Abdul Shakur v. Rikhab Chand* (1) the facts were that there was a Madrasa Durgah Khwaja Sahib Akbari, in which the appellant, before the Supreme Court, held the appointment of a Manager (Mohatmim). This Madrasa was managed and run by the Government of the Nizam of Hyderabad. In 1951, it was taken over by the Durgah Committee. On 28th of February, 1955, the appellant was appointed an Honorary Mohatmim of the School by the Administrator of Durgah Khwaja Sahib Akbari. He was to work under the Administration and was to hold charge of the school; and from May, 1955 was to receive Rs. 100 per mensem. This payment was described as salary and honoraria. The Election Tribunal set aside the election of the appellant to the State Legislature of Ajmer on the ground that he held an office of profit under the State Government. On appeal, after examining the various provisions of the Durgah Khwaja Sahib Act their Lordships observed as follows:—

“No doubt the Committee of the Durgah Endowment is to be appointed by the Government of India but it is a body corporate with perpetual succession acting within the four corners of the Act. Merely because the committee or the members of the Committee are removable

(1) A.I.R. 1958 S.C. 52.

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by the Government of India or the Committee can make bye-laws prescribing the duties and powers of its employees cannot, in our opinion, convert the servants of the committee into holders of office of profit under the Government of India. The appellant is neither appointed by the Government of India nor is removable by the Government of India nor is he paid out of the revenues of India. The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government though payment from a source other than Government revenue is not always a decisive factor. But the appointment of the appellant does not come within this test.

A number of election cases reported in the Election Law Reports were cited before us but they were decided on their own facts and are of little assistance in the decision of the present case. The test of the power of dismissal by the Government or by an officer to whom such power has been delegated which was pressed in support of his case by the respondent is equally inapplicable to the facts of the present case because the appellant cannot be dismissed by the Government or by a person so authorised by the Government. He is a servant of the statutory body which in the matter of its servants acts within the powers conferred upon it by the statute.

A comparison of the different articles of the constitution 58(2), 66(4), 102(1) and 191(1)(a) dealing with membership of the State Legislature shows in the case of members of the Legislatures unlike the case of the President and the Vice-President of the Union the disqualification arises on account of holding an office of profit under the Government of India or the governments of the States but not if such officer is under a local or any other authority under the control of these Governments. As we have said the power

of appointment and dismissal by the government or control exercised by the Government is an important consideration which determines in favour of the person holding an office of profit under the government, but the fact that he is not paid from out of the State revenue is by itself a neutral factor.

It has not been shown that the appellant's appointment as a mohatimim (manager) of the school satisfies any of the tests which have been discussed above. On the other hand on March 1, 1956, he was holding his appointment under a Committee which is a statutory body and such appointment cannot be called an appointment by or under the control of the Government of India nor is his salary paid out of the revenues of the Government but out of the funds of Durgah endowment. In the circumstances, the majority of the tribunal has erred in holding that the appellant held an office of profit under the government and the opinion of the Chairman to the contrary lays down the correct position."

In the second decision of the Supreme Court (*M. Remappa v. Sangappa and others* (2)), a question arose whether the office of a Patel (which is equivalent to the office of a Lambardar in Punjab) is an office of profit. Their Lordships of the Supreme Court, disagreeing with the High Court, held that it was an office of profit. The relevant observations occur at page 939 and are set out below for facility of reference:—

"Let us, however, ignore the restrictions on the hereditary right to the office mentioned in the Act and assume that the eldest heir in the eldest branch of the last holder of it, is entitled to succeed to the office when he vacates it. The question is, does this make the office one not under the Government? The learned Advocate for the respondent contended that it did not and this contention has been accepted by the High Court. The learned Chief Justice in his judgment said "can the Government prevent him from succeeding to the permanent vacancy? Such a person gets to that post not because he is appointed by

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the Government but by his own rights". He also supported his view by referring to *Mangal Sain v. State of Punjab* (3), where it had been held that the mere fact that the Government had under a statute a hand in the appointment and dismissal of the Executive Officer of a Municipality, does not make him its servant.

We think this view is untenable. It overlooks the fact that the heir of the last holder does not get the office till he is appointed to it by the Government. The statute, no doubt, gives him a right to be appointed by the Government in certain cases. Nonetheless, it is the appointment by the Government that perfects his right to the office and makes him the officer; without such appointment he does not hold the office. The Government makes the appointment to the office though it may be that it has under the statute no option but to appoint the heir to the office if he has fulfilled the statutory requirements. The office is, therefore, held by reason of the appointment by the Government and not simply because of a hereditary right to do it. The fact that the Government cannot refuse to make the appointment does not alter the situation.

If this were not so, the result would be curious. An office has to be held under someone for it is impossible to conceive of an office held under no one. The appointment being by the Government, the office to which it is made must be held under it, for there is no one else under whom it can be held. The learned Advocate said that the office was held under the village community. But such a thing is an impossibility for village communities have, since a very long time, ceased to have any corporate existence. The case of *Mangal Sain v. State of Punjab* (3), does not assist for there, there was the Municipality under which the office could be held though appointment to it was made by the Government.

* * * * *

(3) A.I.R. 1952 Punj. 58.

It is significant to note that the correctness of the decision of this Court in *Mangal Sain v. The State of Punjab* (3), wherein it was held that the mere fact that the Government has, under a Statute, hand in the admission and dismissal of Executive Officer of a Municipality does not make him its servant, was not doubted and the only observation; that the learned Judge made regarding this case, was that—

“There was the Municipality under which the office could be held though appointment to it was made by the Government.”

The last decision of the Supreme Court, which must be referred to, is *Guru Gobinda Basu v. Sankari Parshad Ghosal* (4). In this case the question arose, whether a Chartered Accountant, who was a partner of the firm of auditors which firm acted as auditors for the Life Insurance Corporation of India; The Durgapur Projects Limited and the Hindustan Steel Limited, held an office of profit under the State. It was held that the Accountant held an office of profit because the Companies—The Durgapur Projects, Limited, and the Hindustan Steel Limited—for which he worked, were hundred percent Government Companies. In arriving at this finding, their Lordships observed as follows:—

“* Therefore if we look at the matter from the point of view of substance rather than of form, it appears to us that the appellant as the holder of an office of profit in the two Government Companies, the Durgapur Projects, Limited and the Hindustan Steel Limited, is really under the Government of India, he is appointed by the Government of India, he is removable from office by the Government of India, he performs functions for two Government Companies under the control of the Comptroller and Auditor-General who himself is appointed by the President and whose administrative powers may be controlled by rules made by the President.”

(4) A.I.R. 1964 S.C. 254.

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This finding was given by their Lordships, after referring to their earlier decision in *Abdul Shakur's* case. While dealing with the decision in *Ramappa's* case, their Lordships observed as follows:—

“There again the decisive test was held to be the test of appointment. In view of these decisions we cannot accede to the submission of Mr. Chaudhuri that the several facts which enter into the determination of this question—the appointing authority, the authority vested with power to terminate the appointment, the authority which determines the remuneration, the source from which the remuneration is paid, and the authority vested with the power to control the manner in which the duties of the office are discharged and to give directions in that behalf must all co-exist and each must show subordination to Government and that it must necessarily follow that if one of the elements is absent, the test of a person holding an office under the Government, Central or State, is not satisfied. The cases we have referred to specifically point out that the circumstance that the source from which the remuneration is paid is not from public revenue is a neutral factor—not decisive of the question. As we have said earlier whether stress will be laid on one factor or the other will depend on the facts of each case. However, we have no hesitation in saying that where the several elements, the power to appoint, the power to dismiss, the power to control and give directions as to the manner in which the duties of the office are to be performed and the power to determine the question of remuneration are all present in a given case, then the officer in question holds the office under the authority so empowered.”

The various constitutional provisions have been noticed by their Lordships of the Supreme Court and, therefore, no specific reference has been made to them.

In order to examine, what precisely is the position of the Chairman of the Panchayat Samiti, it will be necessary to examine the various provisions of the Punjab Act to which the learned counsel for both the parties have been drawn our attention. Section 3 gives power to the Government to declare constitution of Panchayat

Samitis for Tahsils or Blocks and its relevant part is in the following terms:—

3. Power to declare constitution of Panchayat Samitis for tahsils or blocks;

(1) The Government may by notification direct that, with effect from such date as may be specified in the notification, there shall be constituted Panchayat Samitis either for every tahsil in a district or for every block in a district.

(2) Every Panchayat Samiti shall by the name of the Tahsil or block for which it is constituted, be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and shall by the said name sue or be sued.

(3) * * * * *

Section 5 relates to the constitution of Panchayat Samitis. It is significant to note that these Samitis are constituted mainly of elected members. Section 10 provides for the notification of elections and for the oath of allegiance. Section 11 provides for the resignation of members. The casual vacancies are again filled by election (Section 12). Section 17 provides for a Chairman and a Vice-Chairman and is in the following terms:—

“Chairman and Vice-Chairman.

The Deputy Commissioner concerned, or any gazetted officer appointed by him in this behalf, not below the rank of an Extra Assistant Commissioner, shall call the first meeting of the Panchayat Samiti in the manner prescribed, as soon as the election and co-option of all Members of the Panchayat Samiti is notified, to elect the Chairman and Vice-Chairman from amongst the Primary and Co-opted Members. The aforesaid officer shall preside at such meeting.”

Under section 18, the term of the Chairman and the Vice-Chairman is fixed at three years. But according to the proviso, he ceases to be a Chairman as soon as he ceases to be a member of the Panchayat

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Samiti or if a vote of no-confidence is passed against him in a meeting convened in the manner prescribed by majority of two-thirds. Section 19 permits the Chairman to resign and the resignation is to be submitted to the Panchayat Samiti and has to be accepted by the Panchayat Samiti. In the event of a resignation of a Chairman the Panchayat Samiti has the power to elect a new Chairman. Section 20 provides for the filling of casual vacancies of Chairman. The relevant parts of Section 21, on which considerable stress was laid, may be quoted *in extenso*—

“21. Executive Officer and Deputy Executive Officers of Panchayat Samitis.

(1) Where a Panchayat Samiti is constituted for a block, Block Development Officer shall be the *ex officio* Executive Officer of the Panchayat Samiti and where it is constituted for a tahsil there shall be a whole time Executive Officer who shall be appointed by the Government.

(2) The Executive Officer shall be under the administrative control of the Panchayat Samiti and his conditions of service shall be those which are applicable to the class of Government servants to which he belongs.

(3) * * * * *

(4) * * * * *

(5) * * * * *

(6) The Executive Officer and the Deputy Executive Officer shall have the right to speak in and otherwise take part in the proceedings of any meeting of the Panchayat Samiti but shall not be entitled to vote at any such meeting.”

Section 22 to 32 deal with the convening of the meetings of the Samitis, their adjournment, quorum, etc. Section 31 vests the executive authority of the Panchayat Samiti in the Chairman of the Samiti and the Executive Officer; and they have to perform their duties imposed or conferred on them by or under the Act. Section 40 provides that the servant of the Samiti will be a ‘public servant’ and is in the following terms:—

“*Servants, etc., to be public servants;*

Every servant of a Panchayat Samiti, or a Government servant placed at its disposal under section 35, every Member and

every Contractor or agent appointed for the collection of tolls and fees shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Section 41 lays down the duties of the Panchayat Samitis and the main items of duties are agriculture, animal husbandry, and fisheries, health and rural sanitation, communication, social education co-operation and a number of duties are set out under the head "miscellaneous" section 42 deals with the entrustment of various functions by the Government to the Panchayat Samitis and is in the following terms:—

"42. Entrustment of certain functions by Government of Panchayat Samitis:

- (1) The Government may entrust, conditionally or unconditionally to a Panchayat Samiti functions in relation to any matter to which the executive authority of the Government extends or in respect of functions which have been entrusted to the Government by the Central Government; and the Panchayat Samiti shall be bound to perform such functions.
- (2) Where functions are entrusted to a Panchayat Samiti under sub-section (1) the Panchayat Samiti shall, in discharge of such functions, act as agent of the Government.
- (3) Where by virtue of this section, power and duties have been conferred or imposed as agency functions upon a Panchayat Samiti, there shall be paid by the Government to the Panchayat Samiti such sum as may be determined by the Government in respect of any extra cost of administration incurred by the Samiti in connection with the exercise of those powers and duties.
- (4) In so far as the Panchayat Samitis are required to act under this section it shall be under the general control of and comply with such particular directions, if any, as may from time to time, be given to it by the Government, or any other authority appointed by the Government in this behalf."

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Section 43 deals with the Community Development Programme and is in the following terms:—

"43. Community Development Programme:

- (1) Within the area subject to its authority, a Panchayat Samiti shall be the agent of the Government for formulation and execution of the Community Development programme financed out of grants made by the Government to the Panchayat Samiti in this behalf.
- (2) Where the Government decides to advance loans under the Community Development Programme to persons within the area of a Panchayat Samiti, such loans shall be disbursed by the Panchayat Samiti to such persons as it thinks fit on the terms and conditions applicable to such loans."

Sections 78 and 79 deal with the Samiti funds and are reproduced below:—

"78. Samiti Fund:

There shall be formed for every Panchayat Samiti a fund to be called the "Samiti Fund" and there shall be placed to the credit thereof—

- (a) appointment made by the Government under section 118 out of the balance of district fund at the credit of District Board concerned;
- (b) all proceeds of local rate allotted to the Panchayat Samiti under section 63;
- (c) the proceeds of all taxes, cesses and fees imposed by the Panchayat Samiti under this Act;
- (d) all funds allotted to the Panchayat Samiti and income arising from all sources of income placed at its disposal under section 69;
- (e) all rents and profits accruing from property vested in or managed by the Panchayat Samiti;

- (f) all sums contributed to the Fund by the Central Government or any State Government or by any local authority including Gram Panchayat or any private person;
- (g) all sums received by the Panchayat Samiti in the discharge of functions exercised by it under this Act.
- (h) all sums paid by the Government to the Panchayat Samiti to meet expenses for the performance of agency functions;
- (i) all grants made by the Government for the implementation of Community Development Programme;
- (j) the all proceeds of all sources of income which the Government may order to be placed at the disposal of the Panchayat Samiti;

Provided that the Government may revoke any order made under clause (j);

79. Vesting custody and investment of Samiti Fund:

- (1) The Samiti Fund shall be vested in the Panchayat Samiti and the balance standing at the credit at the Fund shall be kept in Government treasury or sub-treasury or in the bank to which the Government Treasury business has been made over unless the Government in any case otherwise permits.
- (2) Subject to such rules as the Government may make in this behalf, a Panchayat Samiti may, from time to time with the previous sanction of the Deputy Commissioner concerned, invest any portion of the Samiti Fund in securities of the Central Government or invest it in such other securities or place it in such other manner as the Government may approve in this behalf and, with the previous sanction of the Deputy Commissioner concerned, may vary such investment or placement for another or others of like nature. The income resulting from such securities or placements and the proceeds of the sale of the same shall be credited to the Samiti Fund."

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Section 80 deals with the application of the funds. Section 101 deals with the supervision by the Deputy Commissioner and is in the following terms:—

“Supervision by Deputy Commissioner :

(1) The Deputy Commissioner concerned shall have power to—

(a) enter on and inspect, or authorise any other person to enter on and inspect, any immovable property within the limits of his jurisdiction occupied or vested in any Panchayat Samiti or Zila Parishad or any work in progress within such limits under the direction of such Panchayat Samiti or Zila Parishad;

(b) by order in writing call and inspect any documents, which, may, for the purposes of this Act, be in the possession or under the control of any Panchayat Samiti or Zila Parishad or any subordinate authority thereof;

(c) by order in writing require any Panchayat, Samiti or Zila Parishad to furnish such statements, accounts, reports or copies of documents as he may think fit;

(d) record in writing for consideration of any Panchayat Samiti or Zila Parishad any observations he may wish to make.

(2) Every Panchayat Samiti and Zila Parishad shall forward to the Deputy Commissioner concerned as soon as may be, a copy of the proceedings of its meetings and of its budget and annual report.”

Section 102 empowers the Government to cancel any resolution passed by the Panchayat Samiti under certain circumstances enumerated in the Section. But before doing so the Government has to afford opportunity to the Panchayat Samiti. Sub-section (4) of this Section also gives a power of revision to the Government. Section 103 deals with the suspension and removal of members and is

reproduced below because considerable stress was laid down on this provision:—

"Suspension and removal of Members:

- (1) The Government may, during the course of an inquiry, suspend a Member of a Panchayat Samiti or Zila Parishad for any of the reasons for which he can be removed, and debar him from taking part in any act or proceedings of the said body during the inquiry.
- (2) The Government may, after such inquiry as it may deem fit, remove any Member, who, in the opinion of the Government, has been guilty of misconduct in the discharge of his duties.
- (3) A person who has been removed under sub-section (2) may be disqualified for re-election or co-option for such period not exceeding five years as the Government may fix."

Section 105 deals with the consequences of supersession of the Panchayat Samiti and section 125 specifically states that—

"For the removal of doubts, it is hereby declared that a Panchayat Samiti and Zila Parishad shall be deemed to be a local authority for the purposes of any law for the time being in force."

After a reference to these provisions, Mr. N. C. Chhatterjee has argued that these provisions show that:—

- (i) in the appointment of a Chairman, the Government has a hand;
- (ii) the Chairman can be removed by the Government;
- (iii) the Government exercises full control over the Chairman and he is bound to carry out all Government orders; and
- (iv) that he is paid out of a fund to which Government contributes.

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and, therefore, it must be held that the Chairman of the Panchayat Samiti holds office under the State Government.

We are unable to agree with this contention. It will appear from these provisions that Government has no power of appointment of the members of the Panchayat Samiti or its Chairman. They are elected or co-opted. There is no absolute power of removal vested in the Government. That power is only given under certain stated circumstances and the exercise of that power is justiciable. The allowance, that is paid to the Chairman, is paid out of the Samiti funds which certainly has money contributed by the Government. The allowances of members are fixed by the Rules framed by the Government in accordance with sections 95 and 115. There are certain governmental functions that are entrusted to the Panchayat Samitis and the Government does exercise a certain measure of control over this body. The most pertinent fact, however; is that the Panchayat Samiti is a local authority being a corporate body having perpetual succession and common seal. It has the power to acquire, hold and dispose of property and to enter into contracts. It can sue and be sued as such. The combined reading of these provisions leaves no manner of doubt that by no stretch of reasoning, can the Panchayat Samiti be termed either as a department of the Government or a body belonging exclusively to the Government, like the Durgapur Project Limited and the Hindustan Steel Limited (*Guru Gobinda Basu's case*). Moreover, the Panchayat Samiti cannot be equated with Government. The various tests laid down by the Supreme Court do not make the Chairman of the Panchayat Samiti an holder of office under the State Government or the Government of India. The matter is not *res integra*. The Rajasthan High Court and the Bombay High Court have dealt with a similar statute as the Punjab statute in the cases to which a reference has been made. The cases before both these High Courts were of the Chairman of the Zila Parishad. We have gone through the provisions of the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959 and the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, and find that those provisions are, more or less analogous to the provisions of the Punjab Act. All that can be said for the petitioner is that the provisions in the Punjab Act, so far as Government control is concerned, are somewhat stricter. But, in our opinion, that does not make any difference so far as the question, which we have to decide, is concerned. We entirely agree with the reasoning of the Rajasthan and the Bombay High Courts.

and, in our opinion the Chairman of a Panchayat Samiti does not hold an office under the State of Punjab.

Mr. N. C. Chatterjee relied strongly upon the decision of the Election Tribunal, Bikaner, in *Hakikatullah v. Nathu Singh* (5). The facts of this case were totally different and are not *pari materia* with the facts of the case with which we are dealing. In any case, this decision has been considered by the Rajasthan High Court and held to be inapplicable. We entirely agree with the reasoning of the Rajasthan High Court that this decision does not support the contention that the Chairman of a Zila Parishad or a Panchayat Samiti holds office under the State Government.

No other contention has been advanced.

In view of our decision on the first two questions, the decision on the third will be purely academic. We, therefore, refrain from expressing any opinion thereon.

The result, therefore, will be that this petition is dismissed with no order as to costs.

A. N. GROVER, J.—I agree.

HARBANS SINGH, J.—I agree.

(5) 6 Election Law Reports 10.

B.R.T.