

## LETTERS PATENT APPEAL.

*Before Prem Chand Pandit and S. S. Sandhawalia, JJ.*

MAHABIR PARSHAD—Appellant.

*versus.*

STATE OF HARYANA AND OTHERS,—Respondents.

**Letters Patent Appeal No. 216 of 1970.**

July 27, 1970.

*The Punjab Gram Panchayat Act (IV of 1953)—Sections 10 and 11—The Punjab Gram Panchayat Rules—Rule 40—Process of election under section 10 not exhausted—Appointments under section 11—Whether can be made—Words, “if for any reason” in section 11—Meaning and interpretation of—Authorities staying the election of the Sarpanch of Panchayat and appointing one under section 11—Such appointment—Whether valid.*

*Held*, that the purpose, the context and the language of sections 10 and 11 of Punjab Gram Panchayat Act, 1952, tend clearly to show that these are co-related, complementary and have to be read and construed together. When so interpreted it is clear that both at the original stage and the subsequent occurrence of a casual vacancy, the paramount mode of filling the office of the Sarpanch and the Panches is by an election. It is only in the solitary contingency when the process of election visualised under section 10 read with rule 40 of the Punjab Gram Panchayat Rules has been complied with and exhausted and nevertheless no person is elected to these offices that a resort is possible to section 11. The provisions of section 11 cannot be invoked whilst the process of section 10 is yet continuing. It is only when the filling of the casual vacancy by the procedure under section 10 read with rule 40 has been frustrated that as a last resort, the appointment by the prescribed authority under section 11 is to be invoked. (Para 9)

*Held*, that the words “if for any reason” used in section 11 of the Act are not to be torn out of their context to give a wide and unguided power to the prescribed authority for appointing its own nominees to the office of the Sarpanch or Panch instead of holding an election to fill the same. The words “if for any reason” are clearly related to the words “are not elected” and read in this context it is implied that the reason must be one connected with the failure of the primary election process. The reason thus has to be one which is not created or does not have the effect of defeating and nullifying the provisions of section 10 and rule 40 which prescribe a mandatory elective procedure for filling the casual vacancies.

(Para 10)

*Held*, that authorities under the Act cannot by their own act first thwart the process of election by ordering a stay of the same and then

Mahabir Parshad v. State of Haryana, etc. (Sandhawalia, J.)

to make this very stay order a ground for by-passing the mandatory provisions of holding an election. This obviously is not a proper use of power under section 11 of the Act and the appointment of a Sarpanch so made is consequently invalid. (Para 10)

*Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Prem Chand Jain, passed in C. W. No. 2770 of 1969 on 3rd March, 1970. (Krishan Kumar and another Vs. State of Haryana and others.)*

SURINDER SARUP, ADVOCATE, for the appellant.

H. S. WASU AND L. S. WASU, ADVOCATES, for the respondent.

#### JUDGMENT

S. S. SANDHAWALIA, J.—This appeal under clause 10 of the Letters Patent is directed against the order of the learned Single Judge quashing the appointment of the appellant as Sarpanch under section 11 of the Punjab Gram Panchayat Act, 1952.

(2) The facts disclose a tortuous course of litigation between the aspirants to the office of the Sarpanch in village Elenabad. Krishan Kumar, respondent No. 3, was declared elected as Sarpanch of the Gram Panchayat of the above-said village in an election held on the 8th of January, 1964. This election was challenged by way of an election petition filed before the prescribed authority which was allowed and the election of respondent No. 3 was set aside by an order, dated the 7th of September, 1967. Aggrieved by this, respondent No. 3 filed Civil Writ No. 2121 of 1967 against the above-said order but failed and his petition was dismissed *in limine* on the 4th of October, 1967. Meanwhile the records of the Gram Panchayat were entrusted to one Tara Chand but in a meeting of the Gram Panchayat held on the 30th of December, 1967, one Des Raj was elected as the Sarpanch. This election again in turn was challenged by way of civil writ No. 293 of 1968 and the appointment of Des Raj as Sarpanch was set aside by the order of Shamsheer Bahadur, J., dated the 29th of March, 1968. Thereafter the Deputy Commissioner, Hissar, exercising his powers under section 10 of the Act read with rule 40 of the Gram Panchayat Election Rules directed the Sub-Divisional Officer, Sirsa, to frame a programme for holding an election to fill the vacancy. In pursuance of these directions, the election of the Sarpanch was actually fixed for the 29th June, 1968. However, before it could be held for reasons

which are not fully apparent on the record, a telegram was received by the Sub-Divisional Officer from the Development Commissioner, Haryana, dated the 26th of June, 1968, directing as follows:—

“Election sarpanch Elenabad fixed for 29th June, 1968, be stayed till further orders.

*Vikas.”*

Consequent upon these directions the election continued to be stayed. However, after some time the Deputy Commissioner, Hissar, purporting to exercise his powers under section 11 of the Act passed the order, dated the 19th of May, 1969, appointing the appellant as the Sarpanch which order was impugned by way of writ petition by respondent No. 3 and stands quashed by the learned Single Judge.

(3) Before the learned Single Judge no return was filed on behalf of the official respondents, namely, the State of Haryana and the Deputy Commissioner, Hissar, nor was any appearance entered on their behalf. The writ petition was contested only by the present appellant.

(4) The learned Single Judge was of the view that section 11 of the Act did not warrant the appointment of the appellant as Sarpanch by the prescribed authority. He held that the words “if for any reason” employed in section 11 were not to be construed so widely as to include cases where owing to the act of the Government itself the casual vacancy could not be filled within the prescribed time. He further held that the reason mentioned in section 11 must not be one which is created with a view to defeat and nullify the provisions of section 10 and rule 40 which prescribed the mandatory procedure for filling the casual vacancies.

(5) Mr. Surrinder Sarup in support of the appeal has contended that the election to the office of the Sarpanch had been stayed by the orders of the Government and this stay had continued for an inordinately long period. In this interregnum, the work of the Panchayat had remained stalled owing to the absence of any incumbent of the office of the Sarpanch. It was argued that in such circumstances the prescribed authority had indeed no option, but to resort to the provisions of section 11 for appointing the appellant. It was forcefully contended that the action of the prescribed authority was within the four corners of section 11 and hence was unassailable.

Mahabir Parshad v. State of Haryana, etc. (Sandhwalia, J.)

(6) I regret my inability to agree. That the offices of the Sarpanch and the Panches of the Gram Panchayat are manifestly elective offices is patent by a reference to the general scheme and the relevant provisions of the Gram Panchayat Act, 1952. One may first turn to the provisions of section 6(1) of the Act which is in the following terms:—

“6(1) Every Sabha shall, in the prescribed manner, elect from amongst its members a Chairman of the Sabha and an executive committee consisting of such number of persons not being less than five or more than nine including the Sarpanch of the Executive Committee as the Government may determine taking into account the population of the Sabha area.”

The above-quoted provisions make it self-evident that the legislature has prescribed in mandatory terms that every Sabha is to elect from its members the Sarpanch and the Panches and the prescribed authority is given no choice except to hold elections for the filling of these offices. There remains, therefore, no doubt that the office of the Sarpanch in its inception is an elective office.

(7) What is to follow, if such an office, which in its very essence is elective falls vacant due to any contingency. Provision therefor is made by section 10 of the Act, which lays down procedure for the filling of such casual vacancies. The language of this provision deserves notice *in extenso*—

“Whenever a vacancy occurs by the death, resignation or removal of a Panch, or a Sarpanch, *a new Panch or Sarpanch, as the case may be, shall be elected in such manner as may be prescribed*, and the person so elected shall hold office for the unexpired portion of the term for which the person in whose place he was elected would have otherwise continued in office.”

The portion underlined above in section 10 high-lights the mandatory nature of the direction that casual vacancies are again to be filled by a prescribed elective process. The details of this process are provided by rule 40 of the Punjab Gram Panchayat Rules in the following terms:—

“*Procedure for filling casual vacancies.—Where a vacancy occurs among the elected members of the Panchayat by death,*

resignation or removal of any member and a new member is to be elected in his place in accordance with the provisions of section 10, such election shall be held within 60 days of the occurrence of the vacancy in accordance with these rules:

Provided that limit of sixty days prescribed in this rule may be extended by the Deputy Commissioner, if in his opinion there are sufficient grounds for such extension."

(8) Construing the above-said two provisions of section 10 and Rule 40 together, it is apparent that the legislature has laid down in no uncertain terms that all casual vacancies are also to be filled in by a process of election and the rule even lays down a mandatory period within which such an election is to be held subject of course to the power of the Deputy Commissioner to extend such period on sufficient grounds.

(9) It is in this background that the provisions of section 11 (around which the controversy primarily revolves) which obviously follows section 10 have to be construed. It is convenient to set it down for facility of reference:—

*Section 11.*

*"Appointments in cases of default.—If for any reason a Sarpanch or a sufficient number of Panches are not elected, or a casual vacancy is not filled within the time prescribed, the prescribed authority may appoint the necessary number of duly qualified persons as a Sarpanch or Panch, as the case may be, and any such person shall hold office for the unexpired portion of the term for which the person in whose place he was appointed would have otherwise continued in office."*

Learned counsel for the appellant had faintly sought to argue that sections 10 and 11 of the Act are independent and should be deemed to stand apart. I am wholly unable to accede to this contention. Indeed the purpose, the context and the language of these two provisions tend clearly to show that these are co-related, complementary and have to be read and construed together. When so interpreted

it is clear that both at the original stage and the subsequent occurrence of a casual vacancy, the paramount mode of filling the office of the Sarpanch and the Panches is by an election. It is only in the solitary contingency when the process of election visualised under section 10 read with rule 40 has been complied with and exhausted and nevertheless no person is elected to these offices that a resort is possible to section 11. To my mind the provisions of section 11 cannot be invoked whilst the process of section 10 is yet continuing. It is only when the filling of the casual vacancy by the procedure under section 10 read with rule 40 has been frustrated that as a last resort, the appointment by the prescribed authority under section 11 is to be invoked.

(10) The words "if for any reason" used in section 11 are, therefore, not to be torn out of their context to give a wide and unguided power to the prescribed authority for appointing its own nominees to the office of the Sarpanch or Panch instead of holding an election to fill the same. In my view the words "if for any reason" are clearly related to the words "are not elected" and read in this context it is implied that the reason must be one connected with the failure of the primary election process. To visualise one of numerous such possibilities, a situation may well arise when no qualified person is available or nobody comes forward to seek election to the office. The reason thus has to be one which is not created or does not have the effect of defeating and nullifying the provisions of section 10 and rule 40 which prescribe a mandatory elective procedure for filling the casual vacancies. In any case the authorities cannot by their own act first thwart the process of election by ordering a stay of the same and then to make this very stay order a ground for by-passing the mandatory provisions of holding an election. This in my view would not obviously be a valid use of the power under section 11.

(11) The construction placed by the learned Single Judge on the relevant statutory provisions appears to me to be unassailable. I find no merit in this appeal which must fail and is dismissed with no order as to costs.

P. C. PANDIT, J.—I agree.

N. K. S.