

## MISCELLANEOUS CIVIL

Before D. K. Mahajan and C. G. Suri, JJ.

KARNAIL SINGH,—Petitioner.

versus

THE STATE OF HARYANA, ETC,—Respondents.

C.W. No. 1048 of 1967.

October 3, 1973.

*Punjab Land Revenue Rules—Rule 17(ii)—Constitution of India (1950)—Articles 14, 15 and 16—Selection of a successor to the office of a village headman—Rule 17(ii) confining such selection to male lineal descendant or the nearest collateral—Whether ultra vires the Constitution.*

Held, that where a successor to the office of village headman has to be selected in an estate or sub-division thereof owned chiefly or in its entirety by the Government, the criteria mentioned in the various clauses of rule 15 of the Punjab Land Revenue Rules, can be taken into consideration under sub-rule (i) of rule 17 of the Rules. In all other estates or villages or their sub-divisions, the successor has to be appointed under sub-rule (ii) of rule 17 and the criteria in rule 15 do not come in. Under this sub-rule a successor is appointed by the rule of primogeniture unless some special social custom of succession is proved. In such exceptional cases also, the appointment is confined to a collateral of the fourth or nearer degree. The sub-rule thus attaches too much importance to the claim of heredity and the selection of the successor is sought to be confined to a male lineal descendant or the nearest collateral. The rule, therefore, makes a discrimination or distinction on the ground of heredity or family connection and hence is *ultra vires* the fundamental rights guaranteed by Articles 14, 15 and 16 of the Constitution of India.

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus or any other appropriate writ, order or direction be issued quashing the orders of respondent Nos. 1 to 3 appointing the respondent No. 4, as a Lambardar and declaring Rules 15(a) and 17(2) of Punjab Land Revenue Rules as ultra vires of the Constitution of India in so far as it makes discrimination on the ground of descent.*

R. N. Narula, Advocate, for the petitioner.

Naubat Singh, District Attorney (Haryana), for Respondents Nos. 1 to 3.

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**JUDGMENT**

Judgment of the Court was delivered by:—

SURI, J.—Civil Writ Petitions Nos. 1048 of 1967, 666 of 1970 and 696 of 1970 involving common questions of law have come up before us under the following circumstances:—

(2) These petitions came up before me on 18th May, 1970 when I was sitting alone. Amongst other things, the vires of rule 17(ii) of the Land Revenue Rules dealing with matters to be considered in the appointment of a successor to the village headman or lambar-dar had been challenged by the petitioners on the ground that this rule recognised only a claim on the strength of heredity and was violative of the fundamental rights guaranteed by Articles 14, 15 and 16 of the Constitution of India. The petitioner in each case had applied for appointment to the office of the village headman or lambar-dar on the death of the last incumbent but his claims had been ignored in favour of the son or the grandson of the deceased by virtue of provisions of rule 17(ii) of the Land Revenue Rules. As there was no earlier decision of this Court with regard to the vires of the rule which had been challenged in these petitions, the case was referred by me for decision by a larger Bench. That is how the petitions came up before us today. As all these petitions involve common questions of law, these are being disposed of together.

(3) The relevant extracts from the Land Revenue Rules, are being reproduced below:—

“Land Revenue Rule 15.—In all first appointments of head-man, regard shall be had among other matters to—

- (a) his hereditary claims;
- (b) extent of property in the estate possessed by the candidate;
- (c) services rendered to the State by himself or by his family;
- (d) his personal influence, character, ability and freedom from indebtedness;

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- (e) the strength and importance of the community from which selection of a headman is to be made;
- (f) services rendered by himself or by his family in the national movements to secure freedom of India.

In case of ex-headman of an estate or sub-division thereof in the territory now comprising the State of Punjab who had resigned or was dismissed on account of his participation in a national movement before partition and another headman was appointed in his place, the present incumbent of the post shall be removed irrespective of the provisions of rule 16 and the ex-headman would be appointed in his place if he has not rendered himself unfit for appointment for any of the reasons given in rule 16 except imprisonment for a political offence before 15th August, 1947. In case the ex-headman is no longer alive, a person of his family who would under the rules have been entitled to be headman if the resignation or dismissal had not intervened, would be appointed a headman. But where no such person exists there would be no need to remove the existing lambardar.

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Land Revenue Rule 17.—(i) In an estate, or sub-division thereof, owned chiefly or altogether by Government, a successor to the office of headman shall be selected with due regard to all the considerations, other than hereditary claims stated in Rule 15:

Provided that in such an estate, or sub-division thereof notified for the purpose by the Financial Commissioner, the selection shall, as far as possible, be made in the manner prescribed by sub-rule (ii) if a suitable heir is forthcoming.

- (ii) In other estates the nearest eligible heir according to the rule of primogeniture shall be appointed unless some social custom of succession to the office be distinctly proved but subject in every case to the following provisions:—
  - (a) The claim of a collateral relation of the last incumbent to succeed shall not be admitted solely on the ground

of inheritance, unless the claimant is a descendant in the male line of paternal great-grand-father of the last incumbent.

(b) Where a headman has been dismissed in accordance with the provisions of rule 16, the Collector may refuse to appoint any of his heirs:—

(1) If the circumstances of the offence, dereliction of duty, or disqualification, for which the headman was dismissed, make it probable that he would be unsuitable as headman;

(2) if there is reason to believe that he has connived at the offence or dereliction of duty for which the headman has been dismissed;

(3) if any disqualification for which the headman has been dismissed attaches to him;

(4) if he may reasonably be supposed to be under the influence of the dismissed headman or his family to an undesirable extent.

If a dismissed headman's heir is considered fit to succeed, regard shall be had to the property which he will inherit, in like manner as if he had already inherited it.

(c) The Collector may also refuse to appoint a person claiming as an heir on any ground which would necessitate or justify the dismissal of that person from the office of headman.

(d) A female is not ordinarily eligible for the office, but may be appointed when she is the sole owner of the estate for which the appointment has to be made, or, for special reasons, in other cases.

(iii) Failing the appointment of an heir, a successor to the office shall be appointed in the manner, and with regard to the considerations, described in rule 15.

(iv) \* \* \* \* \*

(4) It may appear obvious that rule 15 (*supra*) applies only at the time of all first appointments of village headman or lambardars. Clauses (e) and (f) laying down two further criteria for consideration in the matter of selection of an incumbent to this office were added afterwards in the years 1945 and 1954, respectively. The paragraph under the clauses was added by the Government of Punjab (India) on 14th July, 1954. The last two sentences in this paragraph may seem to lay further emphasis on heredity or family connections. The criteria mentioned in the various clauses of rule 15 can be taken into consideration under sub-rule (i) of rule 17 where a successor to the office of village headman has to be selected in an estate, or sub-division thereof, owned chiefly or in its entirety by the Government. In all other estates or villages or their sub-divisions, the successor has to be appointed under sub-rule (ii) of rule 17 and the criteria mentioned in rule 15 do not seem to come in. The sub-rule on the other hand says that the successor shall be appointed by the rule of primogeniture unless some special social custom of succession is proved. In such exceptional circumstances also, the appointment is to be confined to a collateral of the fourth or nearer degree. In making the appointment of respondent No. 4 in Civil Writ No. 1048 of 1967 and the other private respondents in Civil Writ Nos. 666 and 696 of 1970, rule 17(ii) has been invoked and the person appointed is either the son or the grandson of the deceased lambardar. The claim of heredity may appear to have prevailed as against all other considerations. It is true that some additional qualifications of the heir appointed have also been mentioned at places but there has been no judging of the claims of the rival candidates by making a comparison of their respective qualifications. The main consideration that may appear to have prevailed is that the person selected was connected by ties of blood or heredity with the last incumbent. Shri Naubat Singh, the learned District Attorney for the State of Haryana, has argued that in actual practice other qualifications are also taken into consideration and the appointments are not made in all cases on the grounds only of heredity. Practice apart, rule 17(ii) may seem to attach too much importance to the claim of heredity and the selection of the successor is sought to be confined to a male lineal descendant or the nearest collateral. Rule 17(ii) may seem to make discrimination or distinction on the ground of heredity or family connections. This rule may, therefore, appear to be violative of the fundamental rights guaranteed by Articles 14, 15 and 16 of the Constitution of India. Reference

could in this connection be made to the Supreme Court rulings in *Gazula Dasaratha Rama Rao v. State of Andhra Pradesh and others* (1), and *The State of Assam and others v. Kanak Chandra Dutta* (2). Shri Naubat Singh has cited before us a Division Bench ruling of the Madras High Court in *Rishikesavan Naidu v. S. Srinivasa Reddiar* (3), but the facts in that case were altogether different. The person who had been selected to the hereditary office in that case had no other rival in the field. He would have been selected unopposed independently of his family connections with the deceased. It was under these circumstances that it was held that heredity was no disqualification for being selected to a particular post or appointment.

(5) For reasons given above, we declare sub-rule (ii) of Land Revenue Rule 17 to be *ultra vires* and unconstitutional. The appointments under this sub-rule of respondent No. 4 in Civil Writ No. 1048 of 1967, respondent No. 3 in Civil Writ No. 696 of 1970 and respondent No. 4 in Civil Writ No. 666 of 1970 is quashed and the State Government is directed to make fresh appointments after considering the claims of all the contesting candidates. The three writ petitions are allowed but we make no order as to costs.

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B.S.G.

APPELLATE CIVIL

*Before Harbans Singh, C.J., and P. C. Jain, J.*

NARINDER SINGH,—Appellant.

*versus*

THE STATE OF PUNJAB, ETC.,—Respondents.

L.P.A. No. 370 of 1973.

October 3, 1973.

*Punjab Co-operative Societies Act (XXV of 1961)—Section 55 (2) (c)—Punjab Co-operative Societies Rules, 1963—Appendix 'C', Part I, Rules 6 and 12 (2)—Dispute relating to election of a Co-operative Society—Whether can be referred to arbitration before the declaration of the result of such election.*

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(1) A.I.R. 1961 S.C. 564.

(2) A.I.R. 1967 S.C. 884.

(3) A.I.R. 1965 Mad. 178.