

Ram Rattan Shukla v. State of Punjab and others
(S. S. Kang, J.)

tenant-petitioner to vacate the premises in dispute on the condition that he deposits the entire amount of arrears of rent along with future rent for three months within one month from today. On his failure to comply with this condition, respondent No. 1 shall be entitled to take out execution and recover possession of the premises in dispute forthwith.

H.S.B.

Before : H. N. Seth, CJ., and S. S. Kang, J.

RAM RATTAN SHUKLA,—Petitioner.

versus

STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 4774 of 1986

December 10, 1986

Punjab Gram Panchayat Act (IV of 1953)—Section 10—Punjab Gram Panchayat Election Rules, 1960—Rule 40—Office of Sarpanch falling vacant on removal of previous incumbent—Block Development and Panchayat Officer informing Deputy Commissioner of vacancy and summoning meeting of Panches to elect an acting Sarpanch pending regular elections—Petitioner claiming to be elected acting Sarpanch in the said meeting—Deputy Commissioner notifying election programme for election of a regular Sarpanch—Rule 40 requiring vacancy to be filled within 60 days—Election, however, not held within this period nor the period extended by the Deputy Commissioner—Rule 40—Whether directory in nature—Election—Whether can be held beyond a period of 60 days from the date the vacancy occurs.

Held, that the provisions of Rule 40 of the Punjab Gram Panchayat Act, 1952, are in the nature of a command to the prescribed authority to hold elections within 60 days of the occurrence of vacancy or in an extended period. This rule casts a public duty on the Deputy Commissioner to fill in the vacancy expeditiously and within the prescribed period so that the Gram Panchayats continue to function with their full complement of elected representatives and no seats remain unfilled over long periods of time. The purpose in drafting the Rules was not to defeat or weaken the democratic process of direct elections. It is not the spirit of the

statute that if the prescribed authority for some reason or the other is unable to hold the elections within the prescribed time of 60 days, the election cannot be held then. Such an interpretation will run counter to the spirit of the Act, whose main purpose was to establish institutions of Local Self Government in the shape of Panchayats at the primary units of the community. It is well settled that if the statute casts a public duty on a public functionary and if any action taken by such a public authority is invalidated for non-compliance of certain statutory prescriptions, it will cause injustice or injury to persons who had no control over the public functionary performing the statutory duties. Such prescriptions as in Rule 40 of the Rules are generally held to be directory. The office of the Sarpanch in its inception is an elective office. Even the casual vacancies occurring due to death, resignation or removal of a Sarpanch have to be filled in by election of a candidate in the prescribed manner. The offices of Sarpanch and Panches in the regular elections or on any subsequent occurrence of a casual vacancy have primarily to be filled in by an election. It is only when the process or election envisaged under Section 10 of the Act and the Rules has been set in motion but for one reason or the other does not culminate in the election of a Sarpanch or the Panches, as the case may be, that the Deputy Commissioner can appoint a Sarpanch or the Panches. The real object of setting up instrumentalities of Local Self Government manned by elected representatives of the village community cannot be frustrated by inaction, inertia, negligence or wilful design of a State functionary. These institutions cannot be robbed of their democratic character by outside agents. Therefore, it has to be held that Rule 40 of the Punjab Gram Panchayat Election Rules, 1960, is directory in nature the breach thereof cannot debar the elections from being held beyond a period of 60 days from the date the vacancy occurs.

(Paras 4, 5 and 6).

Writ Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble High Court may be pleased to :—

- (a) *issue an appropriate writ, order or direction especially a writ in the nature of certiorari quashing the impugned election programme as contained in Annexure P-7 being illegal, void, malafide, arbitrary, without jurisdiction and in violation of the provisions of the Punjab Gram Panchayat Act and the Punjab Gram Panchayat Election Rules;*
- (b) *issue a writ in the nature of mandamus declaring that the petitioner is the legally elected Acting Sarpanch of the Gram Panchayat, Khizrabad;*

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- (c) *stay the holding of the election to be held on September 9, 1986, during the pendency and till the decision of the present writ petition;*
- (d) *dispense with the requirement of advance notice of motion for the purpose of grant of prayer as at (c) above;*
- (e) *dispense with the requirement of filing certified copies of Annexure P-1 to P-7 to the writ petition;*
- (f) *award the costs of the writ petition in favour of the petitioner and against the respondents;*
- (g) *issue any other appropriate writ, order or direction as this Hon'ble High Court may deem just and proper in the circumstances of the present case.*

K. K. Cuccria, Advocate, for the Petitioner.

H. S. Bedi, D.A.G., Punjab, for Respondents 1 to 4.

JUDGMENT

(1) Pandit Ram Rattan Shukla, petitioner and six others were elected Panches of Gram Panchayat, Khizrabad, tehsil Kharar, district Ropar in the elections held in 1982. Shri Lal Singh was elected Sarpanch. For having committed various irregularities in the discharge of his duties as Sarpanch, Shri Lal Singh aforementioned was removed from the office of Sarpanch,—*vide* order, dated July 3, 1986. Shri Lal Singh did not file any appeal and order of his removal became final. However, he died on July 23, 1986. The Block Development and Panchayat Officer summoned a meeting of the Panches of Gram Panchayat, Khizrabad to elect an Acting Sarpanch for August 12, 1986. This meeting was postponed and another meeting was called for August 21, 1986. The meeting was attended by three Panches, apart from the petitioner. Three other Panches did not attend the meeting, nor did the Block Development and Panchayat Officer. The petitioner claims to have been elected as an Acting Sarpanch in that meeting.

(2) Deputy Commissioner, Ropar, issued election programme (copy Annexure P-7 to the writ petition) under rule 3(1) of the Punjab Gram Panchayat Election Rules, 1960 (hereinafter called 'the Rules') for holding election to the office of Sarpanch by the

Gram Sabha. The petitioner challenges this action of the authorities through this writ petition.

(3) Shri K. K. Cuccria, Advocate, learned counsel for the petitioner, has argued that a conjoint reading of Section 10 of the Punjab Gram Panchayat Act, 1952 ('the Act' for short) and rule 40 of the Rules, it is crystal clear that when a vacancy occurs by death, resignation or removal of a Sarpanch, an intimation to that effect shall be given by the Block Development and Panchayat Officer to the Deputy Commissioner, who shall cause the vacancy to be filled within sixty days of the occurrence of the vacancy as far as may be, in accordance with the provisions of the Rules. The limit of sixty days may be extended by the Deputy Commissioner if, in his opinion, there are sufficient grounds for such extension. In the present case, the vacancy for the office of Sarpanch occurred on July 3, 1986, with the removal of Shri Lal Singh, the previous Sarpanch. The election to this office could be held within 60 days thereof. The Deputy Commissioner has not extended the time for holding the election. After the lapse of sixty days from the occurrence of the vacancy, no election for the office of Sarpanch can be held in view of the clear mandate of rule 40 of the Rules. In the present case, admittedly the notice for holding the election has been given for a date beyond sixty days of the occurrence of vacancy. In support of this contention, the learned counsel has relied upon a Single Bench decision of this Court in *Tara Chand and others v. State of Haryana and others*, (1).

(4) We are not impressed with this contention of Shri Cuccria. The Punjab Gram Panchayat Act was enacted to provide for better administration in the rural areas of Punjab. It has introduced democracy at the grass-roots if we may use that expression. Sections 4 and 5 empower State Government to constitute a Sabha area and establish a Gram Sabha by name in every Sabha area. Every person who is entered as a voter on the electoral roll of the Legislative Assembly pertaining to the area of such Sabha shall be a member of that Sabha. Section 6 prescribes that every Sabha shall, in the prescribed manner, elect from amongst its members a Gram Panchayat consisting of such number of Panches as the Government may determine. The election shall be held in the prescribed manner by secret ballot and direct vote and the candidate securing the highest number of valid votes shall be deemed to have

(1) 1968 Cur. L.J. 470.

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been duly elected. Detailed and elaborate procedure has been laid down by the Rules for the election of Sarpanch and members of the Panchayat and resolution of election disputes. The affairs of the Gram Sabha are entrusted to the Gram Panchayat which has its executive body and whose members are elected by the voters of the Gram Sabha. The office of the Sarpanch in its inception is an elective office. Even the casual vacancies occurring due to death, resignation or removal of a Sarpanch have to be filled in by election of a candidate in the prescribed manner. The offices of Sarpanch and Panches in the regular elections or on any subsequent occurrence of a casual vacancy have primarily to be filled in by an election. It is only when the process of election envisaged under Section 10 of the Act and the Rules has been set in motion but for one reason or the other does not culminate in the election of a Sarpanch or the Panches, as the case may be, that the Deputy Commissioner can appoint a Sarpanch or the Panches. The real object of setting up instrumentalities of Local-Self Government manned by elected representatives of the village community cannot be frustrated by inaction, inertia, negligence or wilful design of a State functionary. These institutions cannot be robbed of their democratic character by outside agents.

(5) The provisions of rule 40 of the Rules are in the nature of a command to the prescribed authority to hold elections within 60 days of the occurrence of a vacancy or in an extended period. This rule casts a public duty on the Deputy Commissioner to fill in the vacancies expeditiously and within the prescribed period so that the Gram Panchayats continue to function with their full complement of elected representatives and no seats remain unfilled over long periods of time. The purpose in drafting the Rules was not to defeat or weaken the democratic process of direct elections. It is not the spirit of the statute that if the prescribed authority for some reason or the other is unable to hold the elections within the prescribed time of 60 days, the elections cannot be held then. Such an interpretation will run counter to the spirit of the Act, whose main purpose was to establish institutions of Local-Self Government in the shape of Panchayats at the primary units of the community, i.e., villages.

(6) It is now well-settled that if a statute casts a public duty on a public functionary and if any action taken by such a public authority is invalidated for non-compliance of certain statutory prescriptions, it will cause injustice or injury to persons who had

no control over the public functionary performing the statutory duties. Such prescriptions are generally held to be directory. In this respect it will be advantageous to refer to a celebrated passage from the Interpretation of Statutes by Maxwell (Tenth Edition—1953):

“On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance of Government and those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them. It has often been held, for instance, when an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, that the Act was directory only and might be complied with after the prescribed time.”

It was further observed :

“To hold that an Act which required an officer to prepare and deliver to another officer a list of voters on or before a certain day, under a penalty, made a list not delivered till a later day invalid, would in effect, put it in the power of the person charged with the duty of preparing it to disfranchise the electors, a conclusion too unreasonable for acceptance.”

(7) This principle was applied by the final Court in *Dattaraya Moreshwar v. The State of Bombay and others*, (2), Their Lordships observed:

“.....When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote

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the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only the neglect of them not affecting the validity of the acts done."

(8) The same principle has been eloquently articulated in the Full Bench decision of this Court in *Shri Karam Singh Grewal v. The State of Punjab and others* (3), Speaking for the majority, P. S. Pattar, J., observed :

"The provisions of a statute creating public duties are directory and those conferring private rights are imperative. The use of word 'shall' in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceedings or the outcome of the proceedings, would be invalid. On the other hand, it is not always correct to say that where the word 'may' has been used, the statute is only permissible or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. The distinction between a mandatory provision of law and that which is merely directory is this that in a mandatory provision there is implied prohibition to do the act in any other manner while in a directory provision substantial compliance is considered sufficient. In those cases where strict compliance is indicated to be a condition precedent to the validity of the act itself, the neglect to perform it is fatal. But, in cases where although a public duty is imposed and the manner of performance is also indicated in imperative language, the provision is usually regarded as merely directory when general injustice or inconvenience results to others and they have no control over those exercising the duty."

(9) So, the provisions of rule 40 of the Rules tested on the above anvil of judicial construction do not bear the construction canvassed by Shri Cuccaria that if the Deputy Commissioner is unable to arrange for the elections to fill in a casual vacancy of a Sarpanch within the prescribed period, then no election for this office can be held at a later date.

(3) 1975(2) S.L.R. 189.

(10) The decision in *Tara Chand's* case (supra) is of no help to the petitioner. In that case, Shri Krishan Kumar, Sarpanch of Gram Panchayat, Elenabad was suspended. The records of the Gram Panchayat were entrusted to Tara Chand. The election of Shri Krishan Kumar was set aside in an election petition. He filed a writ petition challenging the order of the Tribunal, which was dismissed *in limine* on October 19, 1967. A meeting of the Gram Panchayat was held on December 30, 1967, and Des Raj was elected as a Sarpanch by the members of the Gram Panchayat. Tara Chand and two other Panches of the Gram Panchayat Elenabad challenged the election of Des Raj as Sarpanch by the members of the Gram Panchayat. This writ petition was allowed and the election of Des Raj by the members of the Gram Panchayat was set aside. A reference was made to Section 10 of the Act and rule 40 of the Rules, but it has nowhere been laid down that election to the office of Sarpanch or Panch cannot be held beyond a period of 60 days. The election was set aside because Des Raj had been elected as a Sarpanch by the members of Gram Panchayat. It was not set aside because the meeting had been held beyond a period of 60 days. In accordance with the provisions of the Act, it was the members of the Gram Sabha who had to elect the Sarpanch.

(11) In the present case, on the removal of Shri Lal Singh, the previous Sarpanch, the office of Sarpanch fell vacant. It had to be filled in by election. The election programme had been framed by the Deputy Commissioner. According to this programme the date of election falls beyond the period of 60 days. If that election programme is quashed, the inevitable result will be that the Government will nominate someone as the Sarpanch. Instead of taking recourse to this undemocratic method, the Deputy Commissioner, Ropar has chosen to fill in the vacancy by election. No fault can be found with this procedure adopted by the prescribed authority. The petitioner has no right to continue as Acting Sarpanch for the remaining period. In fact, the elections to the Gram Panchayat have already taken place. It is only because of the orders of this Court that the result has not been declared. The electoral process should continue and a person who is democratically elected should be allowed to function as Sarpanch.

(12) We find no merit in this writ petition and dismiss the same *in limine*.

R. N. R.