

Ram Sarup v. Samunder Singh, etc. (Koshal, J.)

the assessee as a statutory agent to discharge a statutory duty unconnected with the business, though the occasion for the imposition arose because of the territorial nexus afforded by the accident of its doing business in India.”

It cannot be said that the interest on payment of delayed tax has any connection with the business of the assessee within the four corners of the aforesaid test. The assessee paid interest in order to get adjustment from the Department to pay the income-tax by instalments, and this has nothing to do with his business activity. The liability to tax, though arising out of business activity, cannot be said to be in any manner a liability which has anything to do with the business of the assessee. It is merely a consequence of income accruing in such business and nothing more. We do not agree with the observations of the Tribunal that the treatment of interest earned on refund of tax, as income of the tax-payer, has anything to do with interest which an assessee incurs in order to raise money to discharge his income-tax liability. This interest will derive its colour from the principal payment, and will partake of it. The interest earned by the Department is interest on tax and must be held to be part of the tax. This does not follow when the assessee earns interest on excess payment of tax. The two situations are totally different.

(7) For the reasons recorded above, we answer the question referred to us in the negative, that is, in favour of the Department and against the assessee. There will be no order as to costs.

N. K. S.

CIVIL MISCELLANEOUS

Before A. D. Koshal, J.

RAM SARUP,—*Petitioner.*

versus.

SAMUNDER SINGH ETC.,—*Respondents.*

Civil Writ No. 2764 of 1971

and C. M. 5002 of 1971

September 7, 1971.

Punjab Gram Panchayat Act (IV of 1953) as amended by Punjab Gram Panchayat (Haryana Amendment) Act, (XIX of 1971)—Section 5(4), First

proviso clause (a)—Gram Panchayat falling within the ambit of clause (a)—Whether can have more than one members belonging to the Scheduled Castes.

Held, that clause (a) of the First proviso to sub-section (4) of section 5 of the Punjab Gram Panchayat Act as amended, directs that every Gram Panchayat **must** have one Panch belonging to the Scheduled Castes. It does not further provide that the number of such panches on any Panchayat covered by it *shall not be more than one*. In other words, it provides reservation of one seat for persons belonging to the Scheduled Castes while the other seats are "general" or "open" seats to which any person whether belonging to the Scheduled Castes or not may get elected. Therefore, according to clause (a) it is incumbent on the Gram Panchayat to have one Panch belonging to the Scheduled Castes but the clause does not give mandate to reserve the other five seats for persons not belonging to the Scheduled Castes. These seats are liable to be filled by candidates securing the highest number of valid votes whether or not they belonged to the Scheduled Castes. (Para 3).

Petition under Article 226 of the Constitution of India praying that an appropriate writ, order or direction be issued, quashing the election of respondent No. 2 as a Panch of Gram Panchayat Palwali and declaring the petitioner elected as the 6th member of the Gram Panchayat Palwali, District Gurgaon, and further praying that pending the final disposal of the above noted writ petition the respondent No. 2 not be allowed to take oath as Panch.

C.M. 5002/71.

Application under Section 151 of the Code of Civil Procedure praying that the oath taking of respondent No. 2 Shri Ram Sarup be stayed pending final disposal of the above noted writ petition.

Harbhagwan Singh, Advocate, for petitioner.

Nemo, for the respondents.

JUDGMENT

KOSHAL, J.—(1) Elections to the Gram Panchayat of village Palwali which was to consist of six members were held on the 1st of July, 1971. Out of the 11 candidates for the election, the first six who secured the highest number of valid votes and who included two belonging to the Scheduled Castes, namely, Nand Kishore (securing 64 votes) and Kishan Chand, respondent No. 2 (62 votes)

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were declared elected in pursuance of the provisions of sub-section (4) of section 5 of the Punjab Gram Panchayat Act, as amended by the Punjab Gram Panchayat (Haryana Amendment) Act, 1971.

(2) It is the case of the petitioner, who secured 54 votes and was next below respondent No. 2 amongst the candidates securing the highest number of valid votes, that the Gram Panchayat could not have as its members more than one Panch belonging to the Scheduled Castes in view of the contents of clauses (a) and (b) of the first proviso to sub-section (4) *ibid* which state:

“Provided that for the period expiring on the 26th January, 1980—

- (a) every Gram Panchayat shall, subject to the provisions of sub-clause (b), have one Panch belonging to the Scheduled Castes if their population is five per centum or more of the population of the Sabha area concerned ;
- (b) every Gram Panchayat with seven or more Panches shall have two Panches who are members of the Scheduled Castes if their population is ten per centum or more of the population of the Sabha area concerned ;”

According to the petitioner, the Gram Panchayat of village Palwali falls within the ambit of clause (a) of the proviso which, he urges, does not permit the election to it of more than one Panch belonging to the Scheduled Castes and he, therefore, prays that the election of respondent No. 2 as a Panch be quashed and that he (the petitioner) be himself declared duly elected as such.

(3) There is no force in the petition. All that clause (a) of the proviso directs is that every Gram Panchayat must have one Panch belonging to the Scheduled Castes. It does not further provide that the number of such Panches on any Panchayat covered by it *shall not be more than one*. In other words, it provides reservation of one seat for persons belonging to the Scheduled Castes while the other seats are “general” or “open” seats to which any person whether belonging to the Schedule Castes or not may get elected. The interpretation sought to be put on the clause on behalf of the

petitioner is not made out from the language used but even if it could be held that the language is ambiguous so as to admit of that interpretation in the alternative, the same would have to be discarded as not conforming to the intention of the legislature in view of the provisions of Article 15 of the Constitution according to which legislation providing for reservation of the members of the Scheduled Castes or Backward Classes or of women, etc., is permissible in certain cases but which do not recognise the reservation of seats for persons not belonging to the categories just above mentioned. The legislature could not have intended to mean what the Constitution does not permit it to enact when another intention in conformity with the Constitution is derivable from the language employed in clause (a). It would thus appear that according to that clause while it was incumbent on the Gram Panchayat to have one Panch belonging to the Scheduled Castes, it cannot be said that it had any mandate to reserve the other five seats for persons not belonging to the Schedule Castes. Those seats were thus liable to be filled by candidates securing the highest number of valid votes whether or not they belonged to the Scheduled Castes.

(4) In the result, the petition fails and is dismissed but with no order as to costs.

N. K. S.

CIVIL MISCELLANEOUS

Before A. D. Koshal, J.

HARBHAJAN SINGH,—*Petitioner.*

versus.

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 978 of 1970

September 9, 1971.

Punjab Co-operative Societies Act (XXV of 1961 as amended by Act XXVI of 1969)—Section 26-B(2)—Conditions of ineligibility to serve on the committee of a cooperative society—Whether apply only to persons serving on such committee on the date of the enactment of the sub-section—Persons not on the committee on that date but having served the committee for not less than 6 years—Whether ineligible to stand for the election