

Ranjit Singh v. The State of Haryana, etc. (Gurdev Singh, J.)

not void. It has got to be set aside. The only difference is that when no notice is served, the period of limitation will start running for setting aside such *ex-parte* decree from the date the defendant has knowledge of the *ex-parte* decree. It would be another matter if the decree is obtained by fraud. For instance, if the allegation in the plaint was that the present award was obtained by fraud, there would be no award. In that event, section 82(3) of the Act would not bar the jurisdiction of the Civil Courts. But this is not the case here. That being so, we must hold, in agreement with the trial Court, that the jurisdiction of the civil Courts is barred.

(18) So far as the decision of the Kerala High Court is concerned, that was given under Article 226 of the Constitution of India. The jurisdiction of the High Court under Article 226 in such a case would not be barred, and if the appellant is so advised, he can move this Court under Article 226, but so far as the remedy by way of suit is concerned; it is specifically barred by section 82(3) of the Act.

(9) The next contention of the learned counsel for the appellant is that the dispute between him and the Society is not covered by section 55 of the Act. We have examined the provisions of section 55 and we are unable to agree with the learned counsel. The section itself is very clear. The position of the appellant is that of an employee of the Society.

(10) That being so, there is no merit in this appeal. The same fails and is dismissed, but there will be no order as to costs.

K.S.K.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Gurdev Singh, J.

RANJIT SINGH,—Appellant.

versus.

THE STATE OF HARYANA, ETC.—Respondents.

Letters Patent Appeal No. 335 of 1969.

March 24, 1971.

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—
Sections 5, 6, 8 and v5—Member elected to a Panchayat Samiti in Haryana
under section 5 (2) (a) (iii) as representing the Market Committee in the

Block—Such member ceases to be a member of the Market Committee before the expiry of his term as a Panchayat Samiti member—Whether also ceases to be the member of the Panchayat Samiti or becomes disqualified from continuing as such.

Held, that section 5 of the Punjab Panchayat Samitis and Zila Parishads Act, which lays down the constitution of the Panchayat Samiti, leaves no doubt that one of its members must be elected by the Market Committees within the Block and must be a producer-member of one of such Committees. Section 8 of the Act as amended by Act III of 1961, fixes the term of the office of such members as five years. Section 15 of the Act, however, provides that a member shall forthwith cease to be a member and his office shall become vacant if "he becomes subject to any of the disqualifications specified in section 6". In this section, however, it is nowhere stated that a member shall cease to be a member of the Samiti if he has ceased to be a member of the Market Committee. In view of the clear provision contained in clause (iii) in sub-section (2) (a) of section 5 of the Act, there cannot be any dispute that for election as member of the Panchayat Samiti a person returned to the Samiti by the Market Committees must be one of their producer-members, but that is a qualification which he must fulfil at the time of the election to the Panchayat Samiti. There is nothing in the Act, or even in sections 6 and 15 of the Act, which lays down that as soon as producer-member of the Panchayat Samiti ceases to be a member of any Market Committee in the Block on expiry of his term in such Committee, he must vacate his office or he becomes disqualified to hold his seat. The disqualification mentioned in clause (k) of section 6 is similar to that referred to in preceding clause (j) of the section. Hence a member elected to a Panchayat Samiti in Haryana under section 5(2) (a) (iii) of the Act as representing the Market Committee in the Block does not cease to be a member of the Panchayat Samiti or become disqualified from continuing as such if before the expiry of his term as a Member of the Panchayat Samiti he ceases to be a member of a Market Committee in the Block.

(Paras 3, 5 and 6)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment passed by the Hon'ble Mr. Justice Bal Tuli, dated 30th May, 1969 in Civil Writ No. 1709 of 1968.

N. C. JAIN, ADVOCATE, for the appellants.

R. K. JAIN, ADVOCATE FOR ADVOCATE-GENERAL, HARYANA, for the respondents.

JUDGMENT

The judgment of this Court was delivered by:—

Gurdev Singh, J.—Under Section 5 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (hereinafter referred to as the Act) one of the members of the Panchayat Samiti for a Block has to

be "a Member representing the Market Committees in the Block elected by the members of such Committees from amongst the producer members residing within the jurisdiction of the Panchayat Samiti." In 1964 Amrik Singh (respondent No. 4) was so elected to the Panchayat Samiti, Nilokheri. Before the expiry of his term of membership of the Samiti, fresh elections to the Market Committees in the Block took place, but he was not returned. He, however, continued to function as a Member of the Panchayat Samiti at Nilokheri when the Commissioner, Agricultural Production and Rural Development and Secretary to Government, Haryana, Development and Panchayat Department, wrote to all the Deputy Commissioners in the State of Haryana that if a member representing Market Committees had ceased to be a member of any Market Committee, he had become "disqualified for being elected as Member to the Panchayat Samitis or Zila Parishad. Accordingly, the Deputy Commissioner, Karnal, considered that Amrik Singh respondent could not remain a member of the Panchayat Samiti, Nilokheri, and fresh election had to take place in the seat thus vacated by him. Thereupon the Market Committees concerned elected the petitioner Ranjit Singh to represent it in the Panchayat Samiti, Nilokheri under section 5(2)(a) (iii) of the Act.

(2) Before this election of Ranjit Singh could be notified by the Deputy Commissioner under section 10 of the Act, the Government withdrew instructions contained in its memorandum No. OREO-PE-2-67/4690-96, dated 18th August, 1967, being contrary to the legal advice received. Thereupon the Deputy Commissioner not only refused to gazette the election of Ranjit Singh as a Member of the Panchayat Samiti, Nilokheri, but also cancelled his earlier notification, dated 12th December, 1967, declaring that Amrik Singh respondent had ceased to be a member of the Market Committee. Being thus aggrieved, Ranjit Singh came to this Court under Article 226 read with Articles 227 of the Constitution praying for a writ directing the respondent-authorities to notify his name as a duly elected member of the Panchayat Samiti, Nilokheri. His petition having been rejected by a learned Single Judge of this Court, he has appealed under clause (x) of the Letters Patent.

(3) The short question for our consideration is: "Does a member elected to a Panchayat Samiti in Haryana under section 5(2)(a) (iii) of the Act as representing the Market Committees in the Block cease to be a member of the Panchayat Samiti or become disqualified from continuing as such if before the expiry of his term as a Member

of the Panchayat Samiti he ceases to be a member of a Market Committee in the Block?"

(4) Before proceeding further it may here be stated at once that so far as Punjab is concerned, the matter has been set at rest by section 2 of the Punjab Samitis and Zila Parishads (Amendment) Act 15 1968 which has added clause (c) to sub-section (1) of section 15 of the principal Act, reading thus:

"He ceases to have the qualification on the basis of which he was elected as Member of the Panchayat Samiti."

(5) Section 5 of the Act, which lays down the constitution of the Panchayat Samiti, leaves no doubt that one of its members must be elected by the Market Committees within the Block and must be a producer-member of one of such Committees. Section 8 of the Act, as amended by Act III of 1961, fixes the term of the office of such members as five years. Section 15 of the Act, however, provides that a member shall forth-with cease to be a member and his office shall become vacant if "he becomes subject to any of the disqualifications specified in section 6". On reference to section 6, we find that it is nowhere stated that a member shall cease to be a member of the Samiti if he has ceased to be a member of the Market Committee. Clause (k) of this section, on which reliance is placed on behalf of the appellant, reads thus :—

"No person shall be eligible for election as a Primary Member if such person —

(k) is disqualified for being elected or co-opted as a member."

(6) The learned counsel for the appellant argues that since under Section 5(2)(a)(iii) no person who is not a member of a Market Committee can become a Member of the Panchayat Samiti, it follows that if a person ceases to be a member of a Market Committee within the Block, he becomes disqualified from retaining his seat as a Member of the Samiti. In view of the clear provision contained in clause (iii) of sub-section (2)(a) of section 5 of the Act, there cannot be any dispute that for election as member of the Panchayat Samiti a person returned to the Samiti by the Market Committees must be one of their producer-members, but that is a qualification which he must fulfil at the time of the election to the Panchayat Samiti. There is nothing in the Act, or even in sections 6 and 15 of the Act.

Ranjit Singh v. The State of Haryana etc. (Gurdev Singh, J.)

which lays down that as soon as producer-member of the Panchayat Samiti ceases to be a member of any Market Committee in the Block on expiry of his term in such Committee, he must vacate his office or he becomes disqualified to hold his seat. The disqualification mentioned in clause (k) of section 6, in our opinion, is similar to that referred to in the preceding clause (j) of that section, which provides that no person shall be eligible for election as a Primary Member if such person "is disqualified from membership of a Municipal Committee, Gram Panchayat, Panchayat Samiti, Zila Parishad or any other local authorities as a result of his election having been set aside under rules made under this Act or any other enactment for the time being in force relating to Municipalities, Panchayats or other local authorities."

(7) This becomes abundantly clear, on reference to rule 10 of the Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules, 1961, which admittedly apply to the State of Haryana as well. Under sub-rule (2) of rule 10, the prescribed authority while disposing of an election petition is required to record a finding whether any corrupt practice has or has not been proved to have been committed and further to specify the names of the persons who had been proved at the trial to have been guilty of any corrupt practice or of conniving at or abetting the same and to fix the period for which such persons shall be incapable of becoming members of Panchayat Samitis or Zila Parishads. In setting aside the election on proof of any corrupt practice, the prescribed authority may come to the conclusion that not only the member concerned has been guilty of corrupt practices but also others as well. Thereupon, he proceeds to disqualify all of them from becoming members of Panchayat Samiti or Zila Parishad for a specific period. The disqualification mentioned in clause (j) of section 6 of the Act covers only the case of a member whose election has been set aside and not of the others who may also be guilty of such practices or conniving at or abetting the same. It is to cover the case of such disqualified persons (other than the member whose election is set aside) that clause (k) is intended.

(8) Section 15 of the Act, which bears the heading "Vacation of Seats", specifies the circumstances in which the Chairman, Vice-Chairman or a Member of a Panchayat Samiti after entering upon his office shall forthwith cease to be the Chairman, Vice-Chairman or member, as the case may be. According to it, a member vacates his seat the moment he becomes subject to any of the disqualifications specified in section 6, or absents himself without the

permission of the Panchayat Samiti from more than three consecutive ordinary meetings. Had the legislature intended that a member returned to the Samiti from among the producer-members of Market Committees should vacate his seat on his ceasing to be a member of such Committee, the legislature could not have failed to say so while enacting section 15.

(9) We thus find that the appellant was not entitled to any relief. The appeal is dismissed with costs.

K. S. K.

APPELLATE CIVIL

BEFORE C. G. SURI, J.

BHAKRA MANAGEMENT BOARD.—Appellant.

versus

S. C. SARIN ETC.—Respondents.

First Appeal From Order No. 166 of 1970.

March 26, 1971.

Punjab Reorganisation Act (XXXI of 1966)—Sections 67 and 79—Contract, containing an arbitration clause between the Government contractor and Punjab Electricity Board, before 1966—Dispute arising out of the contract—Whether can be referred to the Superintending Engineer of the newly constituted Punjab Electricity Board after the reorganisation of Punjab in 1966—Bhakra Management Board constituted under section 79—Whether a successor to the Punjab Electricity Board and such a dispute—Whether can be referred to the arbitration of Superintending Engineer of the Bhakra Board.

Held, that under clause (b) of sub-section (4) of section 67 of Punjab State Electricity Board all assets, rights and liabilities which would otherwise have passed to the State of Punjab by or under the provisions of sub-section (3), passed to the new Board of that name instead of to the successor State of Punjab. Where a contract, containing an arbitration clause was entered into between a Government contractor and Punjab Electricity Board before 1966 and a dispute arises out of the contract, such a dispute can be referred to the Superintending Engineer of the newly constituted Punjab State Electricity Board. The fact that the Bhakra Management Board has been constituted under section 79 of the Act for the administration, maintenance and operation of certain specified works has no bearing