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THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.12268/2018
Smt. Pooja Parihar Vs. State of M.P. and others

Gwalior, Dated :29/11/2018

Shri S.S. Bansal, Advocate for petitioner.

Shri Vivek Jain, Government Advocate for State.

Shri P.C. Chandil, Advocate for respondent no.6.

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

“1. It is therefore prayed that this petition may kindly be allowed with costs and the petitioner further prays to quash the order Annexure P/9 and also prayed to issue a writ of mandamus, quo warranto or any other writ, order or direction against the respondent No.4 and 5 not to take over charge of sarpanch from the petitioner and not to hand over the same to the respondent no.9 till Sarpanch of gram panchayat Sukhapatha is not duly elected.

2. Any other relief for the ends of justice may also be awarded.”

By resolution dated dated 21/5/2018 the Gram Panchayat Sukhapatha, Janpad Panchayat Dabra, District Gwalior had conducted a meeting in which the nomination papers for election for the post of officiating Sarpanch were considered and as none of the candidates withdrew their nomination form, accordingly, voting was done. The petitioner got eight votes, whereas respondent no.6 got twelve votes and accordingly, respondent no.6 was declared elected for the post of officiating Sarpanch.

Challenging the proceedings of the Gram Panchayat, in

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which respondent no.6 was elected as an officiating Sarpanch, it is submitted by the counsel for the petitioner that the petitioner had contested the election for the post of UP-Sarpanch Gram Panchayat Sukhapatha, whereas respondent no.6 had contested the election for the post of Panch. Petitioner was elected for the post of Up-Sarpanch, whereas respondent no.6 was elected as Panch. One Pratap Singh Parihar was elected as Sarpanch of the Gram Panchayat. As Pratap Singh Parihar was taken into custody by Police Station Pichhore, District Dabra in Crime No.106/2017 registered for offence under Sections 302, 323, 324, 294, 506, 147, 148 and 149 of IPC, therefore, the petitioner was given the charge of the post of Sarpanch under Rule 3 of M.P. Panchayat (Powers and Functions of Sarpanch and UP-Sarpanch of Gram Panchayat, President and Vice-President of Janapad Panchayat and Zila Panchayat) Rules, 1994 (hereinafter referred to as "the Rules of 1994"). It is submitted that thereafter Pratap Singh Parihar by order dated 7/5/2018 was suspended from the post of Sarpanch, as he was detained in jail. On 14/5/2018 the Secretary, Gram Panchayat Sukhapatha issued a notice to the effect that Pratap Singh Parihar, Sarpanch, has been removed from the post of Sarpanch under Section 39 (1) (a) of the Panchayat Raj Awam Gram Swaraj Adhinyam, 1993 (in short "the Adhinyam of 1993"), therefore, in view of Section 38 (1) (b) of the Adhinyam of 1993, the election for filling the vacancy would take place in a meeting of the Gram Panchayat to be held on 21/5/2018. Another notice dated 15/5/2018 was issued for the same purpose. Accordingly, on 21/5/2018 the nomination papers by the

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petitioner as well as respondent no.6 were submitted and none of the candidates withdrew their candidature and accordingly, the election was held and the petitioner got eight votes and respondent no.6 got twelve votes. Accordingly, by the impugned resolution, respondent no.6 has been declared elected for the post of officiating Sarpanch. It is submitted that in fact Pratap Singh Parihar was never removed from the post of Sarpanch. He was merely placed under suspension and, therefore, the election should have been held under Section 39 of the Adhinyam of 1993, whereas the election was held under Section 38 of the Adhinyam of 1993 and accordingly, the entire election proceedings are vitiated.

Per contra, it is submitted by the counsel for the respondent no.6 that the petitioner was working as UP-Sarpanch. A meeting was convened by the Secretary, Gram Panchayat Sukhpatha for electing Sarpanch in place of Pratap Singh Parihar. The petitioner herself participated in the election proceedings and after having lost the said election, she has filed the present petition, whereas she is estopped from doing so. It is further submitted that there appears to be some error in the drafting of the notice dated 14/5/2018. In the notice itself it is specifically mentioned that under Section 39 (1) (a) of the Adhinyam of 1993 Pratap Singh Parihar has been removed, whereas under Section 39 (1) (a) of the Adhinyam deals with suspension of an office bearer. Thus, it appears that the Secretary, Gram Panchayat Sukhpatha committed a mistake in drafting the notice, however, since the procedure for conducting the election under Section 38 as well as 39 of the Adhinyam of 1993 is same and, therefore, merely because it

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was mentioned in the notice that the election under Section 38 of the Adhiniyam of 1993 would be held, would not make any difference in the matter. It is further submitted that the petitioner has not submitted as to how she got prejudiced by mentioning of Section 38 in the notice in place of Section 39 of the Adhiniyam of 1993.

Heard learned counsel for the parties.

One Pratap Singh Parihar was the elected Sarpanch of the Gram Panchayat Sukhapatha, whereas the petitioner is the elected Up-Sarpanch of the Gram Panchayat and the respondent no.6 is the elected Panch of the said Gram Panchayat. Admittedly, Pratap Singh Parihar was arrested in connection with the criminal case registered for offence under Section 302 of IPC and accordingly, by order dated 3/10/2017 (Annexure P/3), 8/11/2017 (Annexure P/4), and 8/11/2017 (Annexure P/5), the petitioner was given the additional charge of the post of Sarpanch.

It is submitted by the counsel for the petitioner that as the petitioner was already given the additional charge of the post of Sarpanch, therefore, the election should not have been conducted for the post of officiating Sarpanch.

The submission made by the counsel for the petitioner is misconceived. Rule 3 (2) of the Rules of 1994 reads as under:-

“3. Powers and Functions of Sarpanch and Up-Sarpanch of Gram Panchayat.- (1) xxxx
(2) In the absence of the Sarpanch, the powers and functions of the Sarpanch shall be exercised and performed by the Up-Sarpanch.”

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Thus, from the plain reading of Rule 3 (2) of the Rules of 1994 it is clear that in the absence of the Sarpanch, the powers and functions of the Sarpanch shall be exercised and performed by the Up-Sarpanch. The petitioner, who was working as Up-Sarpanch, was asked to exercise the powers and functions of the Sarpanch because of the absence of Pratap Singh Parihar, Sarpanch of Gram Panchayat Sukhpatha. Thus, where the petitioner was directed to exercise and perform the powers of Sarpanch because of his absence, then it cannot be said that the petitioner was appointed as an officiating Sarpanch. Rule 3 (2) of the Rules of 1994 is merely a stopgap arrangement, where the Up-Sarpanch can exercise the powers of Sarpanch in the absence of Sarpanch. However, undisputedly later on Pratap Singh Parihar was placed under suspension by order dated 7/5/2018 (Annexure P/6). Section 39 of the Adhiniyam of 1993 deals with suspension of an officer bearer of the Panchayat, which reads as under:-

“39. Suspension of office-bearer of Panchayat.-

(1) The prescribed authority may suspend from office any office-bearer,-

(a) against whom charges have been framed in any criminal proceedings under [Chapters V-A, VI, IX], IX-A, X, XII, Sections 302, 303, 304-B, 305, 306, 312 to 318, 366-A, 366-B, 373 to 377 of Chapter XVI, Sections 395 to 398, 408, 409, 458 to 460 of Chapter XVII and Chapter XVIII of the Indian Penal Code, 1860 (XLV of 1860) or under any Law for the time being in force for the prevention of adulteration of food stuff and drugs, [suppression of immoral traffic in women and children, Protection of Civil Rights and Prevention of Corruption]; or

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[(b) x x x.]

(2) The order of suspension under sub-section (1) shall be reported to the State Government within a period of ten days and shall be subject to such orders as the State Government may deem fit to pass. If the order of suspension is not confirmed by the State Government or authorised officer within 90 days from the date of receipt of such report it shall be deemed to have revoked.

[(3) In the event that the Sarpanch of Gram Panchayat, President of Janpad Panchayat or Zila Panchayat, as the case may be, is suspended under sub-section (1), the Secretary or the Chief Executive Officer of the concerned Panchayat shall cause to be called a special meeting of the Panchayat immediately, but not later than fifteen days from the date of receipt of information from prescribed authority and the members shall elect from amongst themselves, a person to hold the office of Sarpanch or President temporarily, as the case may be, and such officiating Sarpanch or President shall perform all the duties and exercise all the powers of Sarpanch or President as the case may be, during the period for which such suspension continues :

Provided that if the office of the Sarpanch or President is reserved for the member of Scheduled Castes or Scheduled Tribes or Other Backward Classes or for a woman, the officiating Sarpanch or President shall be elected from amongst the members belonging to the same category :

Provided further that where the office of Sarpanch or President is reserved for a woman belonging to Scheduled Castes or Scheduled Tribes or Other Backward Classes and there is no other woman member of the Panchayat belonging to that category who can be elected to officiate as Sarpanch or

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President, as the case may be, any other woman member belonging to the other reserved categories, may be elected to officiate as Sarpanch or President as the case may be],

(4) A person who has been suspended under sub-section (1) shall also forthwith stand suspended from the office of member or office-bearer of any other Panchayat of which he is a member or office-bearer. Such person shall also be disqualified for being elected [x x x] under the Act during his suspension.”

Section 38 of the Adhiniyam of 1993 deals with filling up of vacancies, which reads as under:-

“38. Filling up of vacancies.- [(1) (a) In the event of death, resignation, no confidence motion, or removal of an office-bearer of a Panchayat or on his becoming a member of State Legislative Assembly or a member of either House of Parliament before the expiry of his term, a casual vacancy shall be deemed to have occurred in his office and such vacancy shall be filled as soon as may be by election in accordance with the provisions of the Act and the rules made thereunder;

[(b) in the event of occurrence of a casual vacancy in the office of the Sarpanch of a Gram Panchayat, the Secretary of the Gram Panchayat, as the case may be, shall cause to be called a special meeting of the Panchayat immediately, but not later than fifteen days from the date of receipt of information from the prescribed authority regarding the vacancy and the members shall elect from amongst themselves a person to hold the office temporarily till a new Sarpanch, as the case may be, is elected in accordance with the provisions of this Act and the rules made thereunder and such officiating Sarpanch, as the case may be, shall perform

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all the duties and exercise all the powers of Sarpanch, during the pendency of election :

Provided that if the office of the Sarpanch is reserved for the member of Scheduled Castes or Scheduled Tribes or Other Backward Classes or for a woman, the officiating Sarpanch shall be elected from amongst the members belonging to the same category :

Provided further that where the office of Sarpanch is reserved for a woman belonging to Scheduled Castes or Scheduled Tribes or Other Backward Classes, and there is no other woman belonging to that category who can be elected to officiate as Sarpanch, any other woman belonging to the other reserved categories may be elected to officiate as Sarpanch during the casual vacancy.]

(c) If the out-going office-bearer fails to hand over any record, article, money or property of the Panchayat forthwith to his successor the prescribed authority may by order in writing direct him to do so and on his failure to comply with such direction the prescribed authority may proceed against him in accordance with Section 92 and take necessary steps to prosecute him under Section 98.]”

From the plain reading of Section 38, it is clear that the casual vacancy means either death, resignation, no confidence, removal of an office-bearer of a Panchayat or on his becoming a member of State Legislative Assembly or either House of Parliament, before expiry of his term. Thus, it is clear that the case of Pratap Singh Parihar is not covered by Section 38 of the Adhiniyam of 1993. By order dated 7/5/2018 Pratap Singh Parihar was suspended from the post of Sarpanch, Gram Panchayat Sukhpatha and, therefore, the case of Pratap Singh Parihar is covered by Section 39 of the

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Adhiniyam of 1993. However, in either case, whether it is the case of casual vacancy or it is the case of suspension, it is provided under Sections 38 (1) (b) and 39 (3) of the Adhiniyam of 1993 that the Secretary shall cause to be called a special meeting of the Panchayat immediately, but not later than fifteen days from the date of receipt of information from the prescribed authority regarding the vacancy or suspension and the members shall elect from amongst themselves a person to hold the office of Sarpanch temporarily. In the case of election under Section 38 of the Adhiniyam of 1993, the term of the said Sarpanch would be till a new Sarpanch is elected in accordance with the provisions of this Adhiniyam and under Section 39 of the Adhiniyam of 1993 the term of the Sarpanch would be during the period for which the suspension of the regular Sarpanch continues. Thus, if the provision of Section 38 of the Adhiniyam of 1993 is considered, then the following situation would arise:-

1. There has to be a casual vacancy.
2. The Secretary of the Gram Panchayat within fifteen days from the date of receipt of information from the prescribed authority shall convene the special meeting of the Panchayat.
3. The members shall elect from amongst themselves a person to hold the office temporarily.
4. Such elected person would perform the duties of Sarpanch till the new Sarpanch is elected.

Similarly, the following situation would arise in case of

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suspension of an office-bearer under Section 39 of the Adhiniyam of 1993:-

1. An office-bearer of the Panchayat is placed under suspension.
2. The Secretary of the Gram Panchayat within fifteen days from the date of receipt of information from the prescribed authority shall convene the special meeting of the Panchayat.
3. The members shall elect from amongst themselves a person to hold the office temporarily.
4. the said person shall perform all the duties and exercise all the powers of Sarpanch during the period for which such suspension continues.

Thus, if the provisions of Sections 38 and 39 of the Adhiniyam of 1993 are considered conjointly, then it would be clear that the condition nos.2 and 3, which are concerning the process of election, in both the circumstances remain the same. In both cases, special meeting of the Gram Panchayat has to be convened within a period of fifteen days from the date of receipt of information and secondly, the election shall be held for electing an officiating or temporary Sarpanch amongst the elected members of the Panchayat.

In the present case, the petitioner being the Up-Sarpanch of the Gram Panchayat was well aware of the fact that Pratap Singh Parihar has been placed under suspension. The notice dated 14/5/2018 and 15/5/2018, issued by the Secretary, are

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addressed to the petitioner, being the Up-Sarpanch and incharge of the post of Sarpanch. The petitioner knew that Pratap Singh Parihar has not been removed but has been placed under suspension and thus the election under Section 39(3) of the Adhinyam, 1993 has to be conducted and not under Section 38 of the Adhinyam, 1993. the petitioner at the relevant time kept quite and allowed the election to take place under Section 38 of the Adhinyam, 1993 and did not try to correct the typing mistake in the notice. Even otherwise, the special meeting of the Panchayat was convened within fifteen days from the date of receipt of the information and the election was held amongst the members of the Panchayat, therefore, whether it was an election under Section 38 or 39 of the Adhinyam of 1993, would not cause any sort of prejudice to the petitioner, who herself had participated in the election by submitted her nomination paper. When there is no difference in the manner of conducting the election, then this Court is of the considered opinion that the merely because in the notice dated 14/5/2018 issued by the Secretary of the Gram Panchayat, it was mentioned that the election under Section 38 of the Adhinyam of 1993 would be held would not make any difference and would not vitiate the entire election process, in which even the petitioner had participated.

So far as the fact that the petitioner was initially granted charge of the post of Sarpanch under Rule 3 (2) of the Rules of 1994 is concerned, this Court is of the considered opinion that the said orders are of no use to the petitioner because those orders were passed considering the absence of the Sarpanch, Pratap Singh Parihar whereas the election was conducted

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considering the suspension of the Sarpanch. Even during arguments the petitioner could not point out any prejudice, which had caused to her because of mentioning of Section 38 of the Adhinyam of 1993 in the notice. Furthermore, after participating in the election proceedings knowing fully well that the election is being held because of suspension of Pratap Singh Parihar, this Court is of the considered opinion that, now the petitioner is estopped from challenging the correctness of the election proceedings. Accordingly, this petition is dismissed being devoid of merits.

This Court by order dated 18/6/2018 had stayed the operation and effect of the resolution dated 21/5/2018. The interim order is hereby vacated. No order as to costs.

Arun*

(G.S. Ahluwalia)
Judge