

Sardar Gurmej Singh vs Sardar Pratap Singh Kairon on 30 September, 1959

Bench: S.K. Das, A.K. Sarkar, K. Subba Rao, M. Hidayatullah

CASE NO. :

Appeal (civil) 324 of 1959

PETITIONER:

SARDAR GURMEJ SINGH

RESPONDENT:

SARDAR PRATAP SINGH KAIRON

DATE OF JUDGMENT: 30/09/1959

BENCH:

S.R. Das (CJ) & S.K. Das & A.K. Sarkar & K. Subba Rao & M. Hidayatullah

JUDGMENT:

JUDGMENT 1960(1)SCR 909 (Appeal by special leave from the judgment and order dated the 12th March, 1959, of the Punjab High Court, in Civil Writ No. 170 of 1959.), decided on September 30, 1959.

The Judgment was delivered by SUBBA RAO J. :

SUBBA RAO J. for the This appeal by special leave raises the question of true construction of the provisions of s. 123(7) of the Representation of the People Act, 1951 (hereinafter called "the Act"). The material facts may be briefly stated : Sardar Gurmej Singh, the appellant, Sardar Partap Singh Kairon, the present Chief Minister of the State of Punjab and respondent herein, and others were the contesting candidates in the general election held in February 1957, from the Sarhali constituency. The respondent secured the highest number of votes and was duly declared elected to the Punjab Legislative Assembly. On April 11, 1957, the appellant filed an election petition (Election Petition No. 22 of 1957) for the declaration that the election of the respondent was void under s. 100 of the Act. It was, inter alia, alleged by him that the respondent and his election agent had appointed a number of persons as the respondent's counting and polling agents at different centres and that the said persons were, at the material time, working as lambardars, and, therefore, the respondent was guilty of corrupt practice within the meaning of s. 123 of the Act. The respondent denied the material allegations made in the petition. On the pleadings as many as 12 issues were framed, and issues 3 and 8 were taken up for trial as preliminary issues. Issue 8, which is the only relevant issue for the present enquiry, reads;

"Is Lambardar a person in the service of Government or is it covered by any of the clauses of section 123(7) of the Representation of the People Act, 1951 ?"

The Election Tribunal held against the respondent on both the preliminary issues. On issue 8 it held that a lambardar was a revenue officer and village accountant in the service of Government within the meaning of cl.

(f) of sub-s. (7) of s. 123 of the Act. On the basis of the findings on the preliminary issues, the Tribunal directed that the remaining issues be set down for hearing. The respondent canvassed the correctness of that order by filing a petition in the High Court of Punjab at Chandigarh under Arts. 226 and 227 of the Constitution. The petition was heard by a Division Bench of the Punjab High Court, consisting of Falshaw and Mehar Singh, JJ. the learned Judges by their order, dated March 12, 1959, confirmed the order of the Election Tribunal on issue 3, but set aside its order on issue 8. The learned Judges held that "Lambardars are undoubtedly a class of revenue officers appointed by the Government for the purpose of collecting the land revenue and receiving a statutory percentage on the sums realised by them as their remuneration for so doing, but whereas they were included along with village accountants who are called Patwaris in this State and by other names set out in the section in other parts of India, they are clearly excluded by the provisions of clause (f)."

Though the scope of this finding was subject to some controversy, it is clear that the learned Judges intended to hold that, though a lambardar was disqualified under the corresponding sub-s. (8) of s. 123 of the Act before it was amended in 1956, he was excluded from the operation of that section by cl. (f) of sub-s. (7) of the amended section. On the basis of that finding, the High Court set aside the decision of the Tribunal on issue 8 and confirmed the same in other respects. The appellant filed the present appeal by obtaining the special leave of this Court. Mr. N. C. Chatterjee, the learned counsel for the appellant, contends that a lambardar is both a revenue officer and village accountant within the meaning of cl. (f) of sub-s. (7) of s. 123 of the Act, and therefore, the respondent in engaging in lambardars as his counting and polling agents for different centres in his constituency, was guilty of a corrupt practice. On the other hand, Mr. Pathak, the learned Counsel for the respondent, contends that a lambardar is neither a revenue officer nor a village accountant within the meaning of the said clause.

The question raised turns upon the relevant provisions of s. 123 of the Act. The said section reads :

S. 123. Corrupt practices. - The following shall be deemed to be corrupt practices for the purposes of this Act :-

(7) The obtaining or procuring or abetting to obtain or procure by a candidate or his agent or, by any other person, any assistance (other than the giving of vote) for the furtherance of the prospects of the candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely :

(f) revenue officers including village accountants, such as, patwaris, lekhpals, talatis, karnams and the like but excluding other village officers.

Explanation - (1) In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of candidate's election if he acts as an election agent, or a polling agent, or a counting agent of that candidate.

Under this section, so far as it is material to the present enquiry, a candidate cannot appoint a person as his election agent if such person is in the service of Government and is one of the officers governed by cl. (f) of sub-s. (7). A lambardar to be a disqualified officer should not only be in the service of Government but should be revenue officer within the meaning of cl. (f) of sub-s. (7) of s. 123 of the Act. If he was not one of the revenue officers within the meaning of cl. (f) of the said sub-section, the question whether he was in the service of Government would not arise for consideration. We shall, therefore, proceed to consider whether a lambardar is one of the officers covered by cl. (f) of sub-s. (7) of s. 123 of the Act. Clause (f) of sub-s. (7) of s. 123 of the Act mentions three categories of officers, namely, (i) revenue officers; (ii) village accounts; and (iii) other village officers. Who are the officers that fall under each of these categories ?

(i) Revenue Officers : Revenue officers are a well-known class of officers who are entrusted with the revenue administration of the various States though there are some variations in regard to nomenclatures and designations given to them from State to State. They consist of an hierarchy with the Revenue Board or a Commissioner at the apex and the village officers at the bottom. Baden-Powell in his book "Land-Systems of British India," Vol. I, describes generally the machinery of the British land administration at p. 323. He points out the different officers that are in charge of the revenue administration in the various States at the State, district, taluk and village levels. He allots different chapters for various States and describes minutely the various limbs of the revenue administration in each of the States. Coming to the Punjab State, he describes the revenue officers with the following designations : Financial Commissioner, Director of Land-Records and Agriculture, the Commissioner, the Deputy Commissioner (Collector), Subordinate Officers, Tahsil Officers and Village Officers. The same pattern with slight variations prevails in the other States. It may, therefore, be held without contradiction that a revenue officer is one who is employed in the business of revenue, and the terms is comprehensive enough to take in all such revenue officers in the chain of hierarchy in the revenue administration of the State.

It is not necessary in this case to express our opinion on the question whether the officers in the service of a State or the Union, who are not in charge of land revenue but are connected with other sources of revenue such as customs, income-tax or the like, fall within the category of "revenue officers." (ii) Village Accountants : The second group of officers in cl.

(f) of sub-s. (7) of s. 123 of the Act are the village accountants, such as, patwaris, lekhpals, talatis karnams and the like. A careful study of the functions of the enumerated officers discloses that they are only local equivalents of a patwari. Clause (f) itself supplies the dictionary to ascertain the meaning of the words "village accountants." The phrase "such as" immediately following the words

"village accountants," and the phrase "the like" following the enumerated officers indicate that the examples are intended to provide a definition by illustration. To put it differently, the enumerated categories of officers and the like indicate precisely the content and connotation of the words "village accounts."

(iii) Other Village Officers : Other village officers are obviously village officers other than the village accountants. The point to be emphasized is that unlike in the case of revenue officers, who include officers whose jurisdiction is not confined to the respective villages alone, this category of officers are confined to those exercising jurisdiction within a village.

It is an elementary rule that construction of a section is to be made of all the parts together and not of one part only by itself, and that phrases are to be construed according to the rules of grammar. So construed the meaning of the clause is fairly clear. The genus is the "revenue officer,"

and the "including" and "excluding" clauses connected by the conjunction "but" show that the village accountants are included in the group of revenue officers, but the other village officers are excluded therefrom. If X includes A but excludes B, it may simply mean that X takes in A but ejects B. It is not necessary in this case to consider whether the inclusive definition enlarges the meaning of the words "revenue officers", or makes them explicit and clear, viz., that the enumerated officers are within the fold of "revenue officers"; for in either construction the village accountants would be revenue officers. But we cannot accept the argument that what is excluded was not part of that from which it is excluded, and that lambardars were not revenue officers and yet had to be excluded by way of abundant caution. If so, it follows that the village officers, who included lambardars, were excluded from the group of revenue officers, with the result that they are freed from the disqualification imposed by the provisions of the said clause. But it is said that this construction would make the words "revenue officers" and the words "excluding other village officers" unnecessary, for, the same result could be achieved by enacting simply "village accountants, such as, patwaris, lekhpals, talatis, karnams and the like"

. This argument, if we may say so, overlooks the difference between the terms "revenue officers" and "village officers". "Revenue officers", as we have pointed out, is a more comprehensive term and takes in all officers who are employed in the revenue business, whereas the jurisdiction of the village officers is confined to their respective villages. Village officers do not exhaust the content of revenue officers, and even after their exclusion there will be many revenue officers at higher levels who would be governed by cl. (f). If this be the construction, every word used in the clause is given a meaning and no words become a surplusage.

Now let us test the correctness of the other two interpretations of the section suggested by the learned Counsel for the appellant. Firstly, it is argued that the words "village officers" are used in abundant caution in view of the long list of officers enumerated in the earlier Act, lest the public might interpret the word "like" in such a way as to take in all the village officers who are not revenue officers. To accept this argument is to impute to the Legislature want of precision. The words

"revenue officers", in whatever sense they are used, cannot obviously comprehend officers who are not revenue officers, and in that situation there is no necessity to exclude such officers from the group of revenue officers. The Legislative device of exclusion is adopted only to exclude a part from the whole, which, but for the exclusion, continues to be part of it. This interpretation must be rejected as it involves the recognition of words which are surplusage. Nor has the alternative construction any higher merits. The genus, the argument proceeds, is the village accountants, and the exclusion is from the category of village accountants only. This construction suffers from two defects. Firstly, the village officers cannot be the species carved out of the genus "village accountants", for the words "village officers" have a wider connotation than the words "village accountants". To accept this interpretation is to read "village accountants" as "village officers". Secondly, if the words were so substituted, both the groups of words "village officers" and "other village officers" become surplusage, as the same result can be achieved by enacting simply "revenue officers including the enumerated officers; for according to the learned Counsel, the object of the inclusive clause is only to bring in the enumerated officers. This interpretation also deserves to be rejected for the reason that its acceptance involves the re-writing of the clause and the recognition of the unnecessary words therein. It also involves excluding something from a category which ex hypothesi does not include it; the exclusion in that view is wholly redundant.

Learned Counsel for the appellant relied upon the decision of this Court in *Raja Bahadur K. C. Deo Bhanj v. Raghunatha Misra* [19 E.L.R. 1], and contended that this Court has accepted the interpretation which he seeks to put on cl. (f). The question raised in that case was whether the sarpanch of a Grama Panchayat constituted under the Orissa Gram Panchayats Act, 1948, was a person in the service of the Government of the State of Orissa. The Court held that sarpanch was not a person in the service of the Government within the meaning of s. 123(7)(f) of the Act. That conclusion was enough to dispose of the appeal but the Court considered also the alternative argument that even if sarpanch was a person in the service of the Government he was not one of the officers covered by cl. (f) of the said sub-section. It was held that sarpanch was neither a revenue officer nor a village accountant within the meaning of the said clause. But in the course of the judgment certain observations were made in regard to the construction of the said clause on which reliance is placed by the learned Counsel for the appellant. The relevant observations are found at p. 596, and they are as follows :"

Clause (f), in the first instance, speaks of a person in the service of the Government who is a revenue officer and then further extends the class to village accountants. The words "such as patwaris, lekhpals, talatis, karnams and the like" are merely descriptive of the words "Revenue officers including village accountants". Under cl. (f) it is essential that a person in the service of the Government must be a revenue officer or a village accountant, by whatever name such officer or village accountant may be described. The exclusion of every other village officer from the provisions of cl. (f) compels the conclusion that before this clause can apply to a Sarpanch of the Grama Panchayat under the Orissa Act it must be proved that he is either a revenue officer or a village accountant.

"It is contended that the said observations show that this Court interpreted the terms of cl. (f) in a manner different from that we have indicated. While we have held that the words "such as etc. . ." and "the like" are only descriptive of village accountants, the observations extracted above seems to suggest that the said words are descriptive of the composite expression "revenue officers including village accountants". Even in that view, we do not think that that excluding clause refers to village accountants only and not to revenue officers. The learned Judges were concerned with a sarpanch, and they held that he was not a village officer. If he was not a village officer, he was not excluded from the category of revenue officers in the clause, and, therefore, the said clause would apply to him if he was a revenue officer or a village accountant. Therefore, when the learned Judges said that it must be proved that sarpanch was a revenue officer or a village accountant before the clause could be applied to him they must have used the words "revenue officers" in the sense of revenue officers within the meaning of that clause, namely, revenue officers excluding other village officers. That decision did not really proceed on an interpretation of the excluding clause, but proceeded on the footing that the sarpanch of that case was firstly not in the service of Government and secondly not a revenue officer within the meaning of the Act, because he did not perform revenue functions; nor was he a village accountant. For the reasons mentioned, we hold, accepting the plain meaning of the words used in the section that lambardars, being village revenue officers, are excluded from the operation of cl. (f) of sub-s. (7) of s. 123 of the Act. This leads us to the consideration of the question whether a lambardar is a village accountant within the meaning of the said clause.

The history of the village administration of our country from the earliest times shows a clear demarcation of status and functions between a headman and a patwari, known by different names in different parts of our country. So far as the State of Punjab is concerned, it is common case that a village headman has all along been described as a lambardar. Baden-Powell in his book "Land-Systems of British India", Vol. I, describes a village headman thus, at p. 21 :"

Again, I may well use the English term Headman to indicate the person who in some forms of village tenure is an essential part of the community, an hereditary officer of some consideration. Even where such a person is not essential to the social constitution of the village, the Government has generally appointed or recognized a headman in some form or other, because it is more convenient to deal with one man and make him the medium of communication and the representative."

Speaking of a patwari, the learned author says, at p. 22 :

" Another very common Indian revenue term is Patwari, meaning the person who keeps the village accounts, and above all, looks after the maps and records of rights, and registers changes in land proprietorship and in tenancies. Some books call him 'village accountant,' others 'village registrar'; but neither term is satisfactory. Synonymous with Patwari (in Northern India and the Central Provinces) is the name

'Karnam' in the South, and 'Kulkarni' in the West.

"In Vol. II of the said book, the learned author again describes a lambardar and a patwari in Punjab in the following terms, at p. 740 :"

In the Punjab, the headman is styled 'lambardar'. As many, if not most, villages have several sections, there are usually several 'lambardars', and thus the advantage of representation of many co-sharers by one man is to some extent lost. It is thought necessary, therefore, to have as agent for a number of representatives, a single chief headman, with whom it is easier to communicate, and who can be held responsible."

Dealing with patwaris, the learned author says at p. 733 :

" This official is of the utmost importance to the system. On his being duly trained and being competent carefully to prepare the village records and statistics, really depends (in the last resort) the hope of diminishing the labour and trouble to the people which the recurrence of Settlement proceedings occasions.

"The learned author mentions the other duties of the patwaris at p. 735. The most important of the duties of a patwari is the preparing and keeping up of the Annual Land-Records. Historically, therefore, there is a clear demarcation between the status and the functions of these two categories of officers.

The same pattern was followed in Punjab. The Punjab Land Administration Manual, compiled by Sir James McC. Douie, considered to be a standard book on the subject, describes in detail the nature and the respective duties of a village headman and a patwari. Chapter VIII deals with the duties of a village headman. A village headman has duties to the Government and to the land-owners and tenants of the estates in their relations with the State. His duties to the Government are as follows :

A. 1. To collect and pay into the treasury the land revenue and all sums recoverable as land revenue.

2. To report to the tahsildar -

(a) the deaths of assignees and pensioners, and their absence for over a year;(b) encroachments on, or injury to, Government property.

3. To aid -

(a) in carrying out harvest inspections, surveys, the record of mutations and other revenue business;

(b) in providing, on payment, supplies or means of transport for troops and officers of Government.

B. Duties to landowners and tenants of estate :

1. To acknowledge every payment received from them in their parcha books.
2. To collect and manage the common village fund (malba), and account to the shareholders for all receipts and expenditure. - (since 1953 the lambardar has been relieved of this duty, as, at present, there are no common lands.) One of the other chief duties of a headman is to aid in the prevention and detection of crime.

The duties of a patwari are given in Chapter VII of the said Manual. His three chief duties are :

- (1) The maintenance of a record of the crops grown at every harvest;
- (2) the keeping of the record of rights up to date by the punctual record of mutations; and (3) the accurate preparation of statistical returns embodying the information derived from the harvest inspections, register of mutations, and record of rights.

Chapter XI of the said Manual describes the particulars of the registers kept by a patwari. They are :

- (1) Area statement or milan rakba.
- (2) Kharif crop statement or jinswar.
- (3) Rabi crop statement or jinswar.
- (4) Revenue account or jama wasil baki.
- (5) Statement of transfers of rights of owners and occupancy tenants.
- (5-A) Statement of sales and mortgages of ownership of classes of land.
- (6) Statements of ownership, mortgages and revenue assignments.
- (7) Statements of cultivating occupancy.
- (8) Statement of rent paid by tenants-at-will.(9) Statement of agricultural stock.

For better particulars of the respective duties of a village headman and a patwari, the provisions of the Punjab Land Revenue Act, 1887 (Act XVII of 1887), and the Rules made thereunder, particularly r. 20 thereof, and Chapter III of the Punjab Land Records Manual may conveniently be referred to.

A comparative study of the respective duties of a village headman and a patwari brings out the distinction between the two, namely, that the former is not only an agent of the State in the village but also the recognized representative of the village, and the latter is a comparatively minor officer

entrusted with the duty of maintaining the accounts and other relevant records pertaining to the revenue business.

With this background the Parliament passed s. 123 of the Act. Originally s. 123(8), which corresponded to s. 123(7) of the Act, read as follows;"

123. Major corrupt practices. The following shall be deemed to be corrupt practices for the purposes of this Act, -

(8) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person.

Explanation : For the purposes of this clause -

(a) a person serving under the Government of India shall not include any person who has been declared by the Central Government to be a person to whom the provisions of this clause shall not apply;

(b) a person serving under the Government of any State shall include a patwari, chaukidar, dafedar, zaildar, shanbagh, karnam, talati, talari, patil, village munsif, village headman or any other village officer, by whatever name he is called, employed in that State, whether the office he holds is a whole-time officer or not, but shall not include any person (other than any such village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply." Under this section, obtaining assistance from any person serving under the Government was a corrupt practice, and all the village officers were, by inclusive definition, declared to be persons serving under the Government. The list of village officers given in the section included a patwari and similar officers and also a village headman and similar officers. For reasons best known to the Parliament, that section was amended in 1956. Section 123(7)(f) as amended in 1956 has already been extracted. Under this clause, village officers other than village accountants such as patwaris etc., were excluded from the definition of revenue officers. When Parliament, with the knowledge of the clear distinction between the two categories of officers, expressly included the one within the definition of revenue officers and excluded the other village officers from it, it would be unreasonable to construe the clause in such a way as to include the village headman in the category of village accountants. It would be doing violence to the language used in the clause; for, the words "village accounts", as defined in the clause, have acquired a secondary meaning by convention and statute.

It is said that there cannot be any logical basis for disqualifying a patwari and qualifying a headman in the matter of elections, for, the argument proceeds, a headman has greater influence on the electorate than a patwari. This Court is not concerned with the policy underlying the statute, but only with the expressed intention of the Parliament. Clause

(f) of sub-s. (7) of s. 123 was amended by Act LVIII of 1958, and the amended clause runs as follows :

S. 123(7). (f) : revenue officers, other than village revenue officers known as lambardars, malgujars, patels, desh mukhs, or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; Under the amended clause, lambardars are apparently excluded from the definition of "revenue officers." We are referring to this latest amendment not as a help to the construction of the clause, but to meet the argument that there could not have been any policy underlying the distinction between the said two categories of village officers. The fact that Parliament in its latest amendment has prima facie sustained the distinction may be an indication that in its view there is relevant difference between a lambardar and village accountants. We would therefore, hold that a village headman cannot be brought within the words "the like" in the said clause.

In this view, it is not necessary to express our opinion on the question whether a lambardar is a person in the service of the Government within the meaning of s. 123(7) of the Act.

Before parting with this case, we must express our feeling that the final disposal of the election petition should not have been delayed so long. The elections were held on February 24, 1957, the respondent was declared elected on February 25, 1957, and the election petition was filed on April 11, 1957. Though 2 1/2 years have elapsed, the petition has not yet been finally disposed of. We hope that the election petition would be disposed of on other issues as expeditiously as possible.

In the result, the appeal fails and is dismissed with costs.