Rajasthan High Court
Mahavir Prasad vs State Of Rajasthan And Ors. on 27 July, 1965
Equivalent citations: AIR 1966 Raj 256
Author: Dave
Bench: D Dave, K Singh
JUDGMENT Dave, C.J.

1. This is a writ application under Article 226 of the Constitution of India by one Mahavir Prasad, who is a resident of Ratan Nagar in District Churu.

2. The petitioner's case is that in the year 1922 the erstwhile State of Bikaner had established a Municipal Board for the area of Ratan Nagar Town. Although its boundaries were extended from time to time. The Municipal Board continued to function during the continuance of the former Bikaner State and even after the formation of the State of Rajasthan. The last elections to the Municipal Board were held in December, 1963, when ten members including the petitioner were elected. Thereafter co-option proceedings were conducted and two lady members were co-opted. The petitioner was elected Chairman of the said Board and he took charge from the Administrator on 31st January, 1964.

By a notification published in the Rajasthan Rajpatra Part IV (c), dated 24th August 1960, the State of Rajasthan constituted a Committee called Re-delimitation committee for the purpose of re-delimitation of the Panchayat circles in the State and the powers under Section 86A of the Rajasthan Panchayat Act were delegated to that Committee. The said Committee in exercise of the powers conferred upon it by Sub-section (2) of Section 3 of the Rajasthan Panchayat Act, 1953, read with notification No. F. 15(1) PTS/56819 dated 3rd September 1960 directed by Notification No. F. 15(27) 4/PTS/63455 dated 26-3-64, that a Gram Panchayat shall be established for the whole of the area included within the limits of the Ratan Nagar Municipality. This notification was followed by a letter of the Collector, Churu dated the 11th May, 1964 whereby the petitioner and other members of the Board were required to hand over the charge of the Board and to work as elected Panchas. The petitioner was required to function as a Sarpanch It is the validity of these two orders dated 26th March, 1964 and 11th May 1964 Exs. 1 and 2 respectively, which is sought to be challenged by this writ application.

3. It is urged by learned counsel for the petitioner that Section 3(2) of the Rajasthan Panchayat Act, 1953, which was inserted by Section 4 of the Rajasthan Act, No. 37 of 1959, is ultra vires of Section 1 of the Rajasthan Panchayat Act, No. 21 of 1953, which will hereinafter be referred to as the "Act" The relevant portion of Section 1 of the Act on which reliance has been placed by learned counsel runs as follows:

"Section 1.

(1) x x xx xxx (2) It shall extend to the whole of that State of Rajasthan except such areas thereof, as have been, or may hereafter be, declared as, or included in, a Municipality and other areas specifically or generally exempted by the State Government from the operation of this Act from time

to time by notification in the official gazette. '

4. Sub-section (2) of Section 3 of the Act, which according to learned counsel offends against Section 1(2) of the Act, reproduced above, reads as follows:

"Section 3.

(1) xx xx xx

(2) The State Government may by like notification-

(a) establish a Panchayat for the whole or a part of any area included within the limi

(b) include any such area or part in any Panchayat circle.

Provided that, in doing so, it shall not be necessary for the State Government to obser

(1) the procedure laid down in the law governing such municipality for declaring that t

(2) the procedure laid down in Section 86 for the inclusion of any area in a panchayat

5. It is pointed out by learned counsel that the Act, as originally framed was not to be applied to those areas which were already included within the limits of the Municipal Board and thus the Municipal Board, Ratannagar, which was in existence long before the year 1953 when the Act came into force, was outside the ambit of the application of the Act and its provision could not be made applicable to it. Learned counsel proceeds to say that Sub-section (2) of Section 3 of the Act purported to empower the State Government to establish by notification a Panchayat for the whole or a part of any area included within the limits of the municipality, that this provision clearly offended against the provisions of Sub-section (2) of Section 1 of the Act and according to learned counsel, Sub-section (2) of Section 1 should be held to prevail over Sub-section (2) of Section 3 of the Act, because if it could not apply to the municipality, the State Government could not in exercise of the powers given by Sub-section (2) of Section 3 apply that section to the municipality and establish a panchayat for the whole or part of any area included within the limits of the municipality.

It is contended that so long as the Legislature does not amend Section 1(2) of the Act this court should hold Section 3(2) of the Act as unenforceable and that since the State Government was not authorised to exercise this power under Section 3(2), Ex. 1, which was issued by the Re-delimitation Committee in exercise of the powers delegated to it by the State Government should be struck down. It is further urged that Ex. 2, which was only a consequential order following Ex 1 should be similarly struck down.

6. In reply, it is candidly conceded by learned Deputy Government Advocate that there is an apparent conflict between the provisions of Section 1(2) and Section 3(2) of the Act. But simply because of that conflict, Section 3(2) should not be held ultra vires of Section 1(2) of the Act. It is urged that perhaps by inadvertence Section 1(2) was not amended when Section 3 was amended by Act No. 37 of 1959 and that this court should construe both these sections harmoniously. It is further contended that Sub-section (2) of Section 3 was amended by the latter Act No. 37 of 1959 and it should be presumed that the Legislature meant to allow its sway over Section 1(2) which appeared in the original Act

7. Learned counsel for the petitioner has urged that even if this court tries to harmonise Sub-section (2) of Section 3 with Sub-section (2) of Section 1, there would remain a number of anomalies in spite of harmony. It is pointed out that according to Section 13 of the Act, every Sarpanch is required to be able to read and write Hindi and that if he does not know Hindi, he is not qualified to be elected as a Sarpanch. No such qualification is prescribed for the Chairman of a Municipality in the Rajasthan Municipalities Act. Thus, an illiterate Chairman of the Municipal Board who becomes Sarpanch of a Panchayat by operation of law may find himself disqualified to function as a Sarpanch.

8. It is next pointed out that according to Section 11 of the Act a person can hold the office of a Panch if he is not under the age of twentyfive years, but under Sections 17 and 18 of the Rajasthan Municipalities Act, a person can become a member of the Board if he is twenty-one years of age. Thus, a member of the Municipal Board, may find himself disqualified as a Panch.

9. It is again pointed out that under Section 4 of the Rajasthan Panchayat Act, 1953 the number of Panchas of the Panchayat should not be less than five or more than fifteen. No such limit is laid down for the strength of the Municipal Board. A Municipal Board having more than fifteen members would thus present great difficulty if it is converted into a Panchayat. It is also pointed out that the term of a Municipal Board as given under Section 11 of the Rajasthan Municipalities Act, 1959, is three years from the date of the first meeting thereof. The term of a Panchayat under Section 7 of the Act is also three years, but Section 3 does not lay down as to what will be the term of the Municipal Board when it will be converted into a Panchayat. By holding fresh election of a panchayat, its term may be shortened.

10. We have given due consideration to the arguments of the learned counsel for both the parties and it cannot be gainsaid that some or more problems may arise if the State Government proceeds to establish a Panchayat for the whole or a part of any area included within the limits of a municipality. But the only question which arises in the present case, is, whether this court can declare Sub-section (2) of Section 3 as void or inapplicable so long as Section 1(2) is not amended. It may be observed that the said anomalies would not be resolved simply by the amendment of Sub-section (2) of Section 1. In order to remove those anomalies, other necessary changes will have to be made in the Rajasthan Panchayat Act. Therefore, Sub-section (2) of Section 3 cannot be declared ultra vires of Section 1(2) of the Act on account of the said anomalies. It would certainly be proper if the Legislature proceeds to remove the anomalies by necessary amendment.

For the present, we have only to see whether the State Government or, for that matter, its delegate, i.e., the redelimitation committee had validly issued the notification Ex. 1. It is not contested by learned counsel for the petitioner that the Redelimitation Committee could issue notifications under Sub-section (2) of Section 3 of the Act. His only objection is that Sub-section (2) of Section 3 could not be applied since it is in conflict with Section 1(2) of the Act. In our opinion, it would not be proper to hold that the State Government could not exercise its powers under Sub-section (2) of Section 3 so long as Section 1(2) is not amended simply because there is an apparent conflict between the two provisions of the same Act. If any provision like Sub-section (2) of Section 3 were made in the Rules and the Rules were to go beyond the scope of the Act, the conflicting rule could be held ultra vires of the Act, but one section of the Act cannot be held ultra vires of another section of the Act.

In a contingency like this, the only course open to us is to put a harmonious interpretation on Section 3(2) of the Act. In Raj Krushna Bose v. Binod Kanungo, AIR 1954 SC 202 it was observed by their Lordships of the Supreme Court that "it is usual, when one section of an Act takes away that another confers, to use a "non obstante" clause and say that "notwithstanding anything contained in section so and so, this or that will happen", otherwise, if both sections are clear, there is a head on clash. It is the duty of courts to avoid that and, whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise."

Similarly, in J. K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of Uttar Pradesh, AIR 1960 SC 1170 it was observed by their Lordships of the Supreme Court that "in the interpretation of statutes the courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. These presumptions will have to be made in the case of rule making authority also."

If a harmonious interpretation is given to Section 1(2) and Section 3(2) of the Act, it would only mean that the Rajasthan Panchayat Act, 1953, would not generally apply to those areas which have been declared or included in a municipality so long as they continue to be included in the municipality. But this would not mean that the State Government would not under Section 3(2) of the Act, be able to establish a panchayat for the whole or any part of the area included within the limits of the municipality by virtue of the powers given therein. It is not in dispute between the parties that Section 3(2) was inserted by Section 4 of the Rajasthan Panchayat Act No. 37 of 1959 and this being a later amendment, it would prevail over the earlier provision, namely Section 1(2) of the Act.

11. For the aforesaid reasons, we do not consider it proper to strike the notification Ex. 1. Since the next order dated 11th May, 1962, Ex. 2 is only consequential to Ex. 1 that too cannot be struck down. In the circumstances of the case, the writ petition is hereby dismissed. The parties are, however, left to bear their own costs.