

Municipal Committee, Kalka *v.* Dr. Des Raj, etc. (Gurdev Singh, J.)

malfeasance, misfeasance or non-feasance takes place. The cheque having been issued on 18th July, 1956, the suit which was instituted on 15th July, 1959, was clearly barred by time. Accordingly, the appeal of Dr. Des Raj (R.S.A. 1324 of 1963) must succeed. I accept the same, and setting aside the judgment and the decree of the trial Court dismiss the plaintiff's suit. So far as the other appeal (R.S.A. 1292 of 63), instituted by the Municipal Committee against Kanti Kumar is concerned, it must fail for the reasons already indicated and the same is hereby dismissed. In the circumstances of the case, I consider it just and proper to leave the parties to bear their own costs throughout, especially in view of the fact that the appeal of Dr. Des Raj succeeds on a technical point, though the allegations of misconduct and negligence have been held to be proved against him.

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R. N. M.

LETTERS PATENT APPEAL

*Before Mehar Singh, C.J., and A. N. Grover, J.*

PREM CHAND AND OTHERS,—*Appellants*

*versus*

BISHAN SINGH AND OTHERS,—*Respondents*

Letters Patent Appeal No. 352 of 1966

February 22, 1967

*Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 6(5)—Person holding part time employment or office of profit under Government—Whether debarred from seeking election to Panchayat or Samiti—Constitution of India (1950)—Article 191—Representation of the People Act (XLIII of 1951)—S. 8—Disqualifications prescribed therein—Whether apply to persons seeking election to Panchayats or Samitis.*

*Held*, that a person who holds part-time employment or office of profit under the Government is not disqualified for election to the Panchayat or the Samiti owing to the limited nature of the work and functions of these bodies. Section 8 of the Representation of the People Act, which deals with disqualifications on conviction for certain offences, would be attracted by virtue of clause (a) of section 6(5) of the Punjab Gram Panchayat Act but the disqualifications embodied in

Article 191 of the Constitution would not be attracted in the context of the entire scheme of sub-section (5) of section 6 of the Punjab Gram Panchayat Act with particular reference to clause (g). Article 191 cannot be imported by necessary implication in sub-section (5) of section 6 of the Act which provides disqualifications independently of Article 191 with particular reference to the peculiar conditions relating to the election of panches.

*Letters Patent Appeal under Clause X of the Letters Patent against the order, dated 7th October, 1966, delivered by the Hon'ble Mr. Justice P.D. Sharma passed in Civil Writ No. 271 of 1965.*

RAJINDER SACHAR AND M. R. AGNIHOTRI, ADVOCATES, for the Appellants.

H. S. DOABIA AND L. S. WASU, ADVOCATES, for the Respondents.

#### ORDER

GROVER, J.—The facts giving rise to this appeal under clause 10 of the Letters Patent may be succinctly stated. In May, 1960 Amba Dutt appellant was appointed as extra-departmental Sub-Postmaster, Saproon, with effect from 20th June, 1960, his remuneration as given in the appointment letter being Rs. 40 per mensem plus D.A. Rs. 25. The appointment was made on temporary basis and he was removable from the post at any time without notice and without assigning reasons. He was elected as Panch of Gram Panchayat, Dangri on 2nd January, 1964. Thirty-seven persons including Amba Dutt filed nomination papers for the election to the Panchayat Samiti, Dharampur Block. His name appeared in the list of voters prepared under rule 3 of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961. Bishan Singh respondent raised an objection under rule 9 of the Rules against the nomination of Amba Dutt as a candidate for election to the Samiti on the ground that he was in the employment of the Government of India. The returning Officer overruled the objection. Amba Dutt along with 15 others was declared elected to the Samiti in the election held on 22nd January, 1965. Bishan Singh filed a petition under Articles 226 and 227 of the Constitution in this Court challenging that election on the ground *inter alia* that Amba Dutt was disqualified from being elected as a Panch of the Gram Panchayat as also of the Panchayat Samiti. According to him the entire election of the Samiti was liable to be set aside. Amba Dutt maintained that he was not in the employment of the Government and was only an extra-departmental Sub-Postmaster on part-time basis and he was

Prem Chand, etc. *v.* Bishan Singh, etc. (Grover, J.)

fully eligible under the law to be a Panch of the Gram Panchayat, Dangri.

The learned Single Judge held that Amba Dutt was holding an office of profit under the Government when he was elected as a Panch of the Gram Panchayat, Dangri on 2nd January, 1964 and he was, therefore, not qualified to stand for election of a Panch. Since he participated in the elections to the Panchayat Samiti, the entire election of that body was liable to be set aside. The writ petition was allowed and the election of 16 members to the Panchayat Samiti including Amba Dutt was set aside. The present appeal has been filed by 10 members of the Samiti including Amba Dutt. It may be mentioned that the other members of the Samiti have been impleaded as respondents in addition to Bishan Singh and others.

Now, section 6(5)(a) of the Punjab Gram Panchayat Act, 1952 (hereinafter called the Act) provides that no person, who is not qualified to be elected as a member of the Legislative Assembly, shall be entitled to stand for election as, or continue to be a Sarpanch or Panch. Article 173 of the Constitution relates to qualification for membership of the State Legislature. This Article reads as follows:—

“A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

- (a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;
- (b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament”.

Under the Sub-head “Disqualifications of Members” in Part IV, Article 190 relates to vacation of seats. Article 191 provides the

disqualifications for membership. These in the language of the Article are—

- “(1) A person shall be disqualified for being chosen, as, and for being, a member of the Legislative Assembly or Legislative Council of a State—
- (a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;
  - (b) if he is of unsound mind and stands so declared by a competent court;
  - (c) if he is an undischarged insolvent;
  - (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;
  - (e) if he is so disqualified by or under any law made by Parliament.
- (2) For the purposes of this Article, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.”

The learned Single Judge was of the view that section 6(5)(a) of the Act had to be read with reference to both the Articles, namely, 173 and 191 and since Amba Dutt held office of profit under the Government of India, he was disqualified from being elected as a Panch.

Mr. Rajinder Sachar for the appellants contends that section 6(5)(a) of the Act expressly employs language which can take in only Article 173 and not Article 191. Article 173 relates to qualification for membership and gives the categories of persons who shall not be qualified to be chosen to fill in a seat in the Legislature of a State. Article 191 uses different language which relates to disqualifications for membership. A distinction, therefore, has been made between qualification and disqualifications. Section 6(5)(a) would only attract the provisions of Article 173 and not those of Article 191. The

Prem Chand, etc. *v.* Bishan Singh, etc. (Grover, J.)

scheme of section 6(5) of the Act shows that the qualifications stated in a negative form are to be the same as in Article 173 whereas the disqualifications have been independently given in clauses (b) to (l) of the aforesaid sub-section thus:—

“No person who is not a member of the Sabha and who—

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- (b) has been convicted of any offence involving moral turpitude unless a period of five years has elapsed since his conviction; or
- (c) has been subjected to an order by a criminal court and which order in the opinion of Government or of the officer to whom Government has delegated its powers of removal, implies a defect of character unfitting him to be a Sarpanch or Panch, unless a period of five years has elapsed since the date of order; or
- (d) has been convicted of an election offence; or
- (e) has been ordered to give security for good behaviour under section 110 of the Code of Criminal Procedure, 1898; or
- (f) has been notified as disqualified for appointment in public service; except on medical grounds; or
- (g) is a whole-time salaried servant of any local authority or State or the Union of India; or
- (h) is registered as a habitual offender under the Punjab Habitual Offenders (Control and Reforms) Act, 1952; or
- (i) is an undischarged insolvent; or
- (j) has not paid the arrears of the tax imposed by the Gram Panchayat; or
- (k) is an employee of Sabha or Gram Panchayat; or
- (l) is a tenant or lessee holding a tenancy or lease under the Gram Sabha or is in arrears of rent of any lease or tenancy held under the Gram Sabha, or is a contractor of the Gram Sabha;

shall be entitled to stand for election as, or continue to be a Sarpanch or Panch.”

It is significant that clause (g) provides only for the disqualification of a whole-time salaried servant of any local authority or State or the Union of India. If the intention of the Legislature was to cover within the sweep of clause (a) of section 6(5) of the Act the disqualifications embodied in Article 191 of the Constitution, clause (g) would be either wholly redundant or would come into conflict with the provisions contained in Article 191. For instance, assuming that Amba Dutt was holding an office of profit under the Government, he would be disqualified from being elected as a member of the Legislative Assembly under Article 191, but he would not be disqualified for being elected as a Panch because only a whole-time salaried servant has been disqualified under clause (g) of section 6(5) of the Act.

It is further noteworthy that under clause (c) of Article 173, it is permissible to look to any other qualifications as may be prescribed by or under any law made by Parliament. "Elector" as defined in the Representation of the People Act, 1951, means a person whose name is entered in the electoral roll of that constituency and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950. Section 16 of the Act of 1950 is:—

"16. (1) A person shall be disqualified for registration in an electoral roll, if he—

- (a) is not a citizen of India; or
- (b) is of unsound mind and stands so declared by a competent court; or
- (c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with election.

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll in which it is included:

Provided that the name of any person struck off the electoral roll of a constituency by reason of a disqualification under clause (c) of sub-section (1) shall forthwith be reinstated in that roll if such disqualification is, during

Prem Chand, etc. *v.* Bishan Singh, etc. (Grover, J.)

the period such roll is in force, removed under any law authorizing such removal."

The word "disqualified" has been defined in the Act of 1951 as meaning "disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State". Section 8 deals with disqualifications on conviction for certain offences. All these provisions would be attracted by virtue of clause (a) of section 6(5) of the Act but it is difficult to see how the disqualifications embodied in Article 191 would be attracted in the context of the entire scheme of sub-section (5) of section 6 with particular reference to clause (g). The argument of Mr. Sachar has, therefore, a good deal of substance that the provisions of Article 191 cannot be imported by necessary implication in sub-section (5) of section 6 of the Act which provides disqualifications independently of Article 191 with particular reference to the peculiar conditions relating to the election of Panches. This is clear from clauses (j) to (l) which have reference only to a Panchayat or the Gram Sabha. It has further been pointed out by Mr. Sachar that in the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (Punjab Act No. 3 of 1961) disqualifications of candidates for election as primary members have been given in section 6 and clause (b) thereunder originally stood as follows:—

"is in the employment of the Government or the Government of India or any other State or any Local authority;"

However, by subsequent amendment clause (b) has been substituted and it now runs as follows:—

"is a whole-time salaried servant of the Government \* \* \*".

This clause has, therefore, been brought in line with clause (g) of section 6(5) of the Act. All this shows that the Punjab Legislature never intended or could intend that the holding of an office of profit under or being in part-time employment of the Government would be a disqualification under the Act or under Punjab Act No. 3 of 1961 which result would have essentially flowed if the argument which appealed to the learned Single Judge were to be accepted as correct. It is not possible to accede to the contention or suggestion made by Mr. H. S. Doabia for Bishan Singh, respondent that both the disqualifications would be applicable in case of

Panchayat and Samiti elections, namely, those given in Article 191 as also the disqualifications contained in section 6(5) of the Act and section 6 of Punjab Act No. 3 of 1961. As has been pointed out before, such an argument would lead to the strange result that although under these enactments a part-time employee of the Government is not disqualified for standing in the election nor is a person holding an office of profit under the Government so disqualified but by invoking Article 191 of the Constitution it will have to be held that he is disqualified. While it is never safe to speculate on the intention of the Legislature I venture to think that in the matter of Panchayat and Samiti elections it was not considered necessary that such persons who hold part-time employment or offices of profit under the Government should be disqualified for election to the Panchayat or the Samiti owing to the limited nature of the work and functions of these bodies whereas in case of legislators it was contemplated that such persons should be debarred from being elected to them on the ground that their functions of law-making, etc., required a stricter and more exclusive standard, particularly in the matter of association with the Government.

Once the above conclusion is reached it would become unnecessary for the purposes of the present appeal to decide the other points which have been canvassed by Mr. Sachar. These may, however, be mentioned. According to Mr. Sachar, Amba Dutt was a mere extra-departmental agent and did not hold any office of profit under the Government. In *Ch. Venkata Swamy v. Superintendent, Post Offices* (1), it was held that such an extra-departmental Branch Postmaster was not a Government servant nor did he hold a civil post under the Union Government within the meaning of Article 311(2) of the Constitution. To the same effect was the decision in *V. Subbarayalu v. Superintendent of Post Offices* (2). In *Dinabandhu Sahu v. Jadumoni Mangaraj* (3), it was said that it was possible to urge with some force that extra-departmental agents having regard to their functions were not Government servants. It would, however, *prima facie* appear that according to the tests laid down in *Guru Gobinda Basu v. Sankari Prasad*

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(1) A.I.R. 1957 Orissa 112.

(2) A.I.R. 1961 Mad. 166.

(3) A.I.R. 1954 S.C. 411.



Prem Chand, etc. v. Bishan Singh, etc. (Grover, J.)

*Ghosal* (4), Amba Dutt would be holding an office of profit under the Government. Since the appeal will be allowed owing to the decision on the first point it is wholly unnecessary to express any final opinion on the question whether Amba Dutt was holding an office of profit under the Government within the meaning of Article 191 of the Constitution.

Mr. Sachar next says that the name of Amba Dutt being on the roll of electors which had been prepared under the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, and no objections having been preferred at any previous stage to the inclusion of his name in the roll, it was not open to anyone to challenge the same at a subsequent stage. Moreover, it was open to Bishan Singh to have filed an election petition which he never did and he had not fulfilled all the conditions and requirements for the exercise of the issue of a writ of *quo warranto* by which alone the election of all the members of the Samiti could now be set aside. He has relied *inter alia* on the decisions in *Miss Avi, J. Cama v. Banwarilal Aggarwal* (5), *The Queen v. Lofthouse and Wilson* (6), *The Queen v. Morton* (7), and *Telu Ram and another v. Nathu Ram and others* (8).

In the result, the decision of the learned Single Judge is set aside and the writ petition is dismissed on the ground that the disqualifications contained in Article 191 of the Constitution were not applicable to the case of Amba Dutt and the election, therefore, was a good and valid election. In view of the entire circumstances the parties are left to bear their own costs throughout.

MEHAR SINGH, C.J.—I agree.

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R.N.M.

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(4) A.I.R. 1964 S.C. 254.

(5) A.I.R. 1953 Nag. 81.

(6) (1866) 1 Q.B. 433.

(7) (1892) 1 Q.B.D. 39.

(8) I.L.R. (1966) 1 Punj. 687=1966 P.L.R. 93,