

## Halke Mahate Harlal Vs H. C. Kamthan and others

**Court:** Madhya Pradesh High Court

**Date of Decision:** March 12, 1969

**Acts Referred:** Madhya Pradesh Land Revenue Code, 1959 " Section 222

**Citation:** (1970) MPLJ 346

**Hon'ble Judges:** R. J. Bhawe, J; G. P. Singh, J

**Bench:** Division Bench

**Advocate:** Y. S. Dharmadhikari, for the Appellant; K. K. Dube and V. S. Dabir, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

R. J. Bhawe, J.

This order will dispose of Miscellaneous Petitions Nos. 21 of 1966 and 1 of 1967.

The petitioner in both these petitions is one Halke, who is a Panch of Dinara Gram Panchayat constituted under the Madhya Pradesh Panchayats

Act 1962. The elections to the Gram Panchayat took place in January, 1966 and the petitioner as well as Ramnath, Shiv Dayal, Govind Kumari

and some others were elected as Panchas of the Panchayat. Thereafter, the election of Sarpanch of the Panchayat was held on 31st January, 1965

in which Ramnath was declared elected defeating Govind Kumari, who was the only rival candidate at the election. It is not disputed that Ramnath

is and has been from before the date of his election as a Panch, a Patel of village Dinara appointed u/s 222 of the Madhya Pradesh Land Revenue

Code, 1959. The petitioner filed an election petition before the Sub-Divisional Officer claiming that the election of Ramnath as Sarpanch should be

declared void and Govind Kumari should be declared to be elected. The petition was based on the ground that Ramnath being a Patel was in the

service of the State Government and was for that reason disqualified to be elected Sarpanch and his nomination paper was wrongly accepted and

Govind Kumari, the only duly nominated candidate should have been declared to be elected without any contest. There were other points raised in

the election petition, but it is not necessary now to go into them. The Sub-Divisional Officer, who tried the election petition, held that a Patel is not

a person in the service of the State Government, and that Ramnath was not disqualified from being elected as Sarpanch and his election was valid.

On the finding, the election petition was dismissed. Against this order the petitioner has filed Miscellaneous Petition No. 21 of 1966, In this petition

the relief claimed is that the order of the Sub-Divisional Officer dismissing the election petition be quashed, the election of Ramnath as Sarpanch be

declared void and Govind Kumari be declared to be elected. The petitioner has also filed Miscellaneous Petition No. 1 of 1967, in which he seeks

issuance of a writ in the nature of que warranto calling upon Bamnath and Sniv Dayal to show under what authority they are holding the office of

Panch. The petitioner claims that Ramnath being a Patel and Shiv Dayal being a Patwari, they were disqualified for being elected or for continuing

as Panch. It is not necessary to say anything concerning Shiv Dayal any further, because he has resigned his office of Panch. The question whether

his election as a Panch or his continuance as a Panch was valid is now merely academic and the Miscellaneous Petition No. 1 of 1967 has become

infructuous to that extent.

We first take up the Miscellaneous Petition No. 21 of 1960. The first question in this petition is whether Bamnath being a Patel was in the service

of the State Government and therefore, not qualified to be elected as Sarpanch,

The relevant statutory provisions are contained in sections 14 and 17 (1) (d) which read as follows:

S. 14, Qualification of candidate- Every person whose name is included in the list of voters shall, unless disqualified u/s 17 or under any other law

for the time being in force, be qualified to be elected, appointed or co-opted, as the case may be, under this Act as Sarpanch, Up-Sarpanch or a

Panch of a Gram Panchayat.

S. 17. Disqualifications for being Panch, Sarpanch or Up-Sarpanch of Gram Panchayat-

(1) No person shall be eligible to be a Panch, Sarpanch or an Up-Sarpanch of Gram Panchayat who-

...

...

(d) holds an office of profit under the Panchayat or is in the service of any local authority or the Central or State Government;

The argument of the learned counsel appearing for Bamnath is that a Patel appointed u/s 222 of the Madhya Pradesh Land Revenue Code is not a

person in the service of the State Government, and therefore, such a person is not disqualified for being chosen a Panch or Sarpanch. This point is

however, concluded in favour of the petitioner by the decision of a Divisional Bench of this Court in Manoharlal Gupta v. Gangaram 1968 M P L

J 898, where it was held that a Patel is in the service of the State Government and is disqualified u/s 17 (1) (d) of the Panchayat Act. Following

that case, we hold that Ramnath, being a Patel, was disqualified to be Sarpanch. As the disqualification existed at the time of election, he was not

qualified, u/s 14 to be elected as Sarpanch, for in terms of that section a person to be qualified must not be disqualified u/s 17. The disqualification

u/s 17 (1) (d) being for both, a Panch and Sarpanch, it is of no consequence that on the date of election of Sarpanch Ramnath, although

disqualified, was holding the office of a Panch. He being a Patel, was disqualified to be a Sarpanch and his nomination paper ought not to have

been accepted. As there were only two candidates at the election, the only candidate that remained in the field after eliminating Ramnath was

Govind Kumari and she should have been declared as elected uncontested. Under Rule 6 of the Madhya Pradesh Panchayats (Election Petitions,

Corrupt Practices and Disqualification For Membership) Rules, 1962 relief can be claimed in an election petition for declaration that the election of

the returned candidate is void and that any other candidate has been duly elected. Under Rule 24, the prescribed authority is given power to make

an order declaring the election of the returned candidate to be void and also declaring that any other candidate has been duly elected. In the instant

case, the Sub-Divisional Officer refused to make the declarations claimed by the petitioner on an apparent error of law that Ramnath, although a

Patel, was not disqualified u/s 17 of the Act. The order of the Sub-Divisional Officer dismissing the election petition has, therefore, to be quashed

under Article 226 of the Constitution. We can also make the requisite declarations in exercise of our power under Article 227 of the Constitution,

Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, ; and we are of the view that this is a fit case where that should be exercised.

We now come to the Miscellaneous Petition No. 1 of 1967 which challenges the continuance in office of Ramnath as a Panch on the ground that

he being a Patel is disqualified to hold that office.

The main contention of the learned counsel for the respondent Ramnath is that the petitioner having not filed an election petition should not be given

any relief under Article 228, for a writ in the nature of quo warranto to challenge an election is taken away when a statutory provision is made for

challenging it by an election petition. It is not disputed that the petitioner did not file any election petition challenging the election of Ramnath as a

Panch.

It is necessary first to refer to the relevant statutory provisions. Sections 14 and 17 (1) (d) of the Act have already been set out. Section 14

provides for qualification of candidates. It states who are persons ""qualified to be elected, appointed or co-opted"" as a Sarpanch, Up-Sarpanch or

a Panch of a Gram Panchayat. Section 17 (1) lays down the disqualifications for ""being Panch, Sarpanch or Up-Sarpanch"". No person suffering

from the disqualifications listed in section 17 (1) is ""eligible to be a Panch, Sarpanch or an Up-Sarpanch."" Section 17 (2) provides that if a Panch

or Sarpanch or an Up-Sarpanch of a Gram Panchayat having been elected, appointed or co-opted subsequently becomes subject to any of the

disqualifications mentioned in sub-section (1), he subject to the provisions of sub-section (3) ceases to be a Panch or Sarpanch or an Up-

Sarpanch and his office becomes vacant. The question whether a person has become subject to any such disqualification after his election and

whether the office had become vacant is to be decided under sub-section (3) by the Collector and until the Collector so decides the person

concerned continues to hold his office and the vacancy does not occur. The provision for election petition is made in section 367, which provides

that no election or co-option shall be called into question except by a petition presented to the prescribed authority.

On a plain reading, section 14 is limited to the qualification of a candidate at the time of election. That is the import of the words ""qualified to be

elected"" as they occur in the section. The heading of section 17 (1) on the other hand uses the words ""disqualifications for being Panch, Sarpanch

or Up-Sarpanch."" The word ""being"" as used in this heading is of a wider import and is not limited to the stage of election; it means ""holding"", [see

R. v. Beer (1903) 2 K. B. 693, 695], and signifies that the disqualifications listed in section 17 (1) are for holding the office of Panch, Sarpanch

etc. Similarly, the opening words of section 17 (1) are to the effect ""no person shall be eligible to be a Panch, Sarpanch etc."" The words ""eligible to

be"" are here used in contrast to the words ""qualified to be elected"" used in section 14 and that suggests that in the context they have different

meaning. The word ""eligible"" may be used in two senses; it may be used in a limited sense to mean ""fit to be chosen or elected"", or in a wider sense

to mean ""capable of serving, legally qualified to serve, or capable of holding office""; (see: Black's Law Dictionary, P. 612, also see: Baker v. Lee

11 E.R. 522 at page 523). Having regard to the difference in language in sections 14 and 17 (1) and taking assistance from the word ""being

occurring in the heading of section 17, which as already stated means ""holding"" we are of opinion that the words ""eligible to be"" in section 17 (1)

are used in a wider sense meaning thereby that no person who suffers from the disqualifications mentioned in subsection (1) shall be legally

qualified to hold office of a Panch, Sarpanch or an Up-Sarpanch. The remedy of an election petition provided u/s 357 is available to challenge an

election on grounds mentioned in rule 22 of the Mad by a Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification for

Membership) Rules, 1962. The section is limited to challenging the election and rule 22 takes notice of the disqualifications existing at the time of

election. Neither the section nor the rule embraces any remedy for challenging the holding of office by a disqualified person. If a disqualification is

incurred subsequent to the date of election, the Collector u/s 17 (3) has the jurisdiction to decide about it and to declare a vacancy. But this

provision does not cover a case of a disqualification existing at the time of election and continuing thereafter. Thus, the Act does not make any

provision for challenging the holding of office by a person on the ground that such a person suffers from a continuing disqualification u/s 17 (1) of

the Act. In such cases, therefore, there can be no objection if quo warranto proceedings are taken under Article 226 of the Constitution. This

conclusion is supported by the English case of Rex v. Beer. In that case an adjudged bankrupt was disqualified u/s 32 of the Bankruptcy Act,

1883 from being elected to or holding the office of a Municipal Councilor. Section 87 of the Municipal Corporation Act, 1882 provided that a

Municipal election may be questioned on the ground that the person whose election is questioned was at the time of election disqualified, and shall

not be questioned on that ground except by an election petition. Section 39 of the same Act applied to a disqualification incurred after the election.

A person who was an adjudged bankrupt was elected a Councilor; but no election petition was filed challenging his election. In a proceeding for an

information in the nature of a writ of quo warranto it was held by the Court of Kings Bench that bankruptcy was a disqualification not merely for

election but also for holding the office of councilor and that quo warranto was not displaced for questioning the holding of the office either by

section 87 or section 39 of the Act, for such a case of a continuing disqualification was not covered by either of the sections Now let us apply

there principles to the instant case. Ramnath was a Patel at the time of his election as a Panch and he continued to be a Patel while holding office as

a Panch. He was not qualified for being elected as a Panch u/s 14 of the Panchayat Act read with section 17 (1) of the same Act. Further, he was

disqualified u/s 17 (1) as interpreted by us for holding the office of a Panch. This was therefore, a case of a continuing disqualification. The

petitioner had no remedy under the Act for challenging the holding of office by a person who suffered from a continuing disqualification from before

the date of his election. He was, therefore, entitled to move this Court for issue of a writ in the nature of quo warranto. Moreover, even if the Act

had provided a remedy to cover a case like the present, that would not have deprived this Court of its jurisdiction to issue a writ in the nature of

quo warranto which is conferred by the Constitution. It is well settled that jurisdiction conferred on the Supreme Court and High Courts by the

Constitution cannot be taken away by statutory provisions [see Raj Krushna Bose Vs. Binod Kanungo and Others, , p. 204.; Durga Shankar v.

Raghuraj Singh (6) A I R 1959 S.C. 520, p. 522. The question then would have been whether we in the exercise of our discretion should decline

to interfere under Article 226 of the Constitution on the ground that the petitioner did not avail of an alternative remedy. We think that when it has

come to our notice that a person who continues to be clearly disqualified is holding office of a Panch, we should not in our discretion refuse to

interfere even if the petitioner may have had some other alternative remedy. We are therefore of the view that the petitioner is entitled to succeed.

For the foregoing reasons, we order as follows:

(a) The Miscellaneous Petition No. 21 of 1966 is allowed. The order of the Sub-Divisional Officer dated 4-7-1966 dismissing the election petition

is quashed and instead it is declared that the election of Ramnath as Sarpanch of the Gram Panchayat, Dinara is void and that Govind Kumari has

been duly elected as Sarpanch of the said Panchayat. There will be no order as to costs. The security amount shall be refunded to the petitioner.

(b) The Miscellaneous Petition No. 1 of 1967 is allowed. We order Bamnath not to discharge any of the functions of the office of a Panch of the

Gram Panchayat, Dinara and we declare the office of the Panch so far held by him to be vacant. There will be no order as to costs of this petition

and the security amount shall be refunded to the petitioner.