

SUPREME COURT OF INDIA

S. Umrao Singh

Vs.

Darbara Singh

C.A.No.1707 of 1967

(J. C. Shah and V. Bhargava, JJ.)

25.07.1968

JUDGEMENT

BHARGAVA, J.:-

1. The appellant, who was defeated by respondent No. 1 (hereinafter referred to as "the respondent"), the successful candidate, in the General Election of 1967 to the Punjab Vidhan Sabha from Nakodar Constituency, District Jullundur, challenged the election of the respondent in an election petition inter alia on the ground that he was disqualified from being chosen as a member of the Assembly, because he was holding an office of profit under the State Government at the relevant time. This was the only ground which was pressed at the trial of the election petition before the High Court of Punjab and Haryana at Chandigarh. The High Court dismissed the election petition rejecting this contention of the appellant and, consequently, the appellant has come up to this Court in this appeal under Section 116-A of the Representation of the People Act, 1951.

2. Admittedly, the respondent was the Chairman of a Panchayat Samiti, and the ground that he was disqualified from being a candidate was based on Rules 3 to 7 of the Punjab Panchayat Samities and

Zila Parishads, Non-official Members (Payment of Allowances) Rules, 1965 (hereinafter referred to as "the Rules") which are as follows:-

"3 There shall be paid a monthly consolidated allowance, in lieu of all other allowances, at the following rates, to the Chairman of a Panchayat Samiti and that of a Zila Parishad, for performing all official duties and journeys concerning the Panchayat Samities or Zilla Parishads as the case may be, within the district, including attending of meeting, supervision of plants, projects, schemes and other works and also for the discharge of all lawful obligations and implementation of Government directives:-

(a) Chairman, Panchayat Samiti Rs. 100

(b) Chairman, Zila Parishad 150

4. The Chairman, Vice-Chairman and Members shall, for the purpose of rates of mileage and daily allowance admissible to them wider these rules, be divided into the following two categories:-

(i) Category 1 - This shall include Chairman and Vice-Chairman of the Panchayat Samitis and Zila Parishads.

(ii) Category II- This shall include all other Members of the Panchayat Samitis and Zila Parishads.

5. There shall be paid to the Chairman, Vice-Chairman and Member, mileage allowance for journeys performed for any official work outside the district. Such journeys shall not be undertaken unless authorised by the Panchayat Samiti or the Zila Parishad, as the case may be.

Note.- The power under this sub-rule shall not be delegated to any other authority.

(2) The Vice-Chairman and the Member shall also be paid mileage allowance, in respect of a journey performed within the district, for-

(a) attending the meetings; and

(b) for any official work or for supervision of a cattle fair held by the Panchayat Samiti:

Provided that the Vice-Chairman and the Members shall not be entitled to mileage allowance under Clause (b) unless the journey for such work or supervision has been approved by the Panchayat Samiti or Zila Parishad, as the case may be, and the number of Members deputed for supervision does not exceed five on any one day.

6. The payment of mileage allowance to a Chairman, Vice-Chairman and Members for the purposes and journeys mentioned in Rule 5 shall be regulated as follows:-

(i) Mileage allowance by rail.- For a journey between the stations connected by rail, the Chairman and Vice-Chairman shall be entitled to travel by 1st Class and the Members by 2nd Class. The Chairman, Vice-Chairman and the Members shall be entitled to draw single fare of the Class of accommodation to which he is entitled:

Provided that if the journey is performed in lower class, the Chairman, Vice-Chairman and Members shall be entitled to the fare actually paid for that class.

(ii) Mileage allowance by bus.- For a journey between the places connected by road, where regular bus service plies, and also for a journey between the stations connected by rail but performed by bus by taking a single seat, the Chairman, Vice-Chairman and Members shall be paid the fare actually paid.

(iii) Mileage allowance for journeys between the stations partly connected by rail and partly by bus.- For a journey between stations partly connected by rail and partly by bus, the Chairman, Vice-Chairman and Members shall be paid actual railway fare limited to the class of accommodation to which he is entitled and the bus fare actually paid.

(iv) Mileage allowance by road.- (a) The mileage allowance by road shall be admissible, at the rates specified below, for the journeys performed by the Chairman, Vice-Chairman or Members between stations which are neither connected by rail nor by regular bus:-

Motor Cycle or Scooter

Ordinary cycle Other means of conveyance

Paise per mile 9 Paise per mile 25 Paise per mile

(b) If a Chairman, Vice-Chairman or Member performs a journey by Motor Cycle, Scooter, Ordinary Cycle or by other means of conveyance between the stations connected by rail or regular bus, the mileage allowance calculated at the rates prescribed above for each kind of conveyance shall be limited to rail or bus fare, had the journey been performed by rail or bus, as the case may be.

Notes.-- (1) A Chairman, Vice-Chairman or Member, using means of locomotion provided at the expense of the Government, Panchayat Samiti, Zila Parishad or my other local authority shall not be entitled to any mileage allowance.

(2) A Chairman, Vice-Chairman, or Member travelling in a vehicle belonging to any other Member, Vice-Chairman or Chairman shall not be entitled to any mileage allowance. The mileage allowance of the owner of the vehicle shall, however, be regulated under Clause (iv). .

7. Subject to the provisions of Rule 3.

-(1) the daily allowance to a Chairman, Vice-Chairman and Members shall be admissible at the following rates.-

Category I	..	Rs. 6.00 per day
Category II	..	Rs. 4.00 per day

(2) A Chairman, Vice-Chairman, or Member shall be allowed:-

(a) full daily allowance for the day he attends the meeting;

(b) full daily allowance for the days of halt in case the halt is for any of the purposes specified in rule 5 above;

(c) half daily allowance for the day of departure and half daily allowance for the day of arrival in connection with a journey performed for any of the purposes specified in Rule 5:

Provided that-

(i) in the case of a Chairman, Vice-Chairman or Member who is treated as a State guest while attending the meeting or while on duty within or outside the district, his daily allowance for such days shall be limited to one-fourth if he is provided with free board and lodging and to one-half, if he is charged either for board or for lodging;

(ii) not more than one daily allowance shall be admissible for a day in any case;

(iii) a Chairman, Vice-Chairman or Member may, at his option draw one daily allowance in lieu of mileage allowance plus half daily allowance for the day of journey proceeding and following the day(s) of half."

It was alleged that the office of Chairman of a Panchayat Samiti was an office under the State Government of Punjab and that the allowances paid under these Rules made that office an office of profit. Two questions, therefore, arose for decision. The first was whether the payment of the allowances under Rules 3 to 7 made the office of Chairman of Panchayat Samiti an office of profit, and the second was whether the office of Chairman of Panchayat Samiti was an office under the State Government.

3. The learned Judge trying the election petition recorded evidence in the trial of the petition up to 31st July, 1967, and adjourned the case for arguments to 21st August, 1967. On 19th August, 1967, however, the Governor of Punjab issued Ordinance No. 10 of 1967 to amend the State Legislature (Prevention of Disqualification) Act, 1952, so as to add Section 2 (b) in that Act as follows:

"It is hereby further declared that the office of Chairman of a Panchayat Samiti or Zila Parishad shall be deemed never to have disqualified and shall not disqualify the holder thereof for being chosen as, or for being, a Member of the Punjab State Legislature."

In view of the issue of this Ordinance, the appellant was allowed to challenge the validity of the Ordinance without amendment of the election petition, and the learned Judge trying the petition, being of the view that the various questions involved were of considerable importance and should be settled by a larger Bench, referred the petition to a Full Bench. The Full Bench held on the first two questions against the appellant, so that the petition had to be dismissed on that ground. Consequently, the Full Bench refrained from expressing any opinion on the third question relating to the validity of the Ordinance and passed an order dismissing the petition with costs.

4. In this appeal also, the same three questions have been again raised by the appellant. We consider that this appeal can be disposed of on the basis of the answer to the first question alone, because, in our opinion, the High Court came to a correct conclusion in holding that the allowances paid under Rules 3 to 7 of the Rules did not convert the office of Chairman of a Panchayat Samiti into an office of profit.

5. The payment to a Chairman, Panchayat Samiti, under Rule 3 is described in the rule as a monthly consolidated allowance in lieu of all other allowances for performing all official duties and journeys concerning the Panchayat Samiti within the district, including attending of meetings, supervision of plans, projects, schemes and other works and also for the discharge of all lawful obligations and implementation of Government directives. This provision in very clear language shows that the allowance paid is not salary, remuneration or honorarium. It is clearly an allowance paid for the purpose of ensuring that the Chairman of a Panchayat Samiti does not have to spend money out of his own pocket for the discharge of his duties. It envisages that in performing the duties, the Chairman must undertake journeys within the district and must be incurring expenditure when attending meetings, supervising plans, projects, schemes and other works and also in connection with the discharge of other lawful obligations and implementation of Government directives. No evidence has been left on behalf of the appellant to show that a Chairman of a Panchayat Samiti does not have to perform such journeys in the course of his official duties and to incur expenditure in that connection. The State Government, which was the competent authority, fixed the allowance for a Chairman of a Panchayat Samiti at Rs. 100 per month obviously because it was of the opinion that this sum will be required on an average every month to meet the expenses which the Chairman will have to incur in this connection. In these circumstances, the burden lay on the appellant to give evidence on the basis of which a definite finding could have been arrived at that the amount of Rs. 100 per month was excessive and was not required to compensate the Chairman for the expenses to be incurred by him in the discharge of his official duties as envisaged in the rule. That burden clearly has not been even attempted to be discharged by the appellant.

6. In this connection, the High Court rightly compared Rule 3 of the Rules the earlier provision on the same subject contained in the Punjab Panchayat Samitis and Zila Parsihads Non-Official Members (Payment of Allowances) Rules, 1961. Under those earlier Rules of 1961 the Chairman was entitled to draw travelling allowance and daily allowance even when travelling within the district. There were, however, certain limitations such as that no travelling allowance was to be

drawn by a Member, if the journey was performed for attending a meeting held within a radius of five miles from his place of residence or he performed the journey in a transport provided at the expense of the Zila Parishads/Panchayat Samitis or any other local authority or Government. There were also limitations on the right to draw daily allowance, e. g., the amount of daily allowance was to be limited to 1/4th of the rate provided, if the Chairman was provided free board and lodging officially and at 1/2 rate if he was charged either for board or for lodging. It appears that, in the year 1965, it was considered desirable that the Chairman of a Panchayat Samiti should not draw travelling allowance and daily allowance while performing duties within the district and should only be entitled to these allowances when required to travel outside the district. Consequently, under Rule 3 of the Rules, provision was made for this monthly allowance of Rs. 100 as a consolidated amount in lieu of the travelling allowance, daily allowance, or any other allowances to which he might have been entitled in order to compensate him for expenses incurred in connection with the discharge of his official duties. In these circumstances, the High Court was perfectly correct in arriving at the conclusion that this allowance of Rs. 100 per month did not amount to receipt of any profit or gain by the Chairman and only represented the amount which he was expected to spend on an average every month for the purpose of properly discharging his official duties.

7. So far as rules 4 to 7 are concerned they only provide for payment of travelling allowance and daily allowance when a Chairman performs a journey in connection with his official duties outside the district. Clearly, these allowances are also meant to ensure that he does not have to incur expenditure from his own pocket for the purpose of discharging his official duties. There is again no evidence from which an inference may be drawn that the amount received by a Chairman for travelling allowance or daily allowance is in excess of the amount of expenditure which he would have to incur for the purpose of performing the journeys in order to discharge his official duties.

8. Our attention was drawn by learned counsel to the fact that in Rule 7 the persons entitled to daily allowance are divided into two categories and a Chairman of a Panchayat Samiti belonging to Category I is entitled to Rs. 6 per diem when a Member of the Samiti belonging to Category II is only entitled to Rs.4 per diem. The argument was that there was no explanation for payment at a higher rate to the Chairman and, consequently, it must be held that the Chairman must be making a gain out of the payment to him of daily allowance. We are unable to accept this submission. The daily allowance is invariably fixed after estimating what extra expenditure in a day the person concerned would have to incur. A Chairman, it appears, was expected to incur more expenditure per day than a Member, and that seems to be the reason why a higher rate of daily allowance was prescribed for him. In any case, such a payment is clearly meant only to cover additional expenditure and out-of-pocket expenses of the Chairman and, while no evidence has been advanced to show that out of the amount received as daily allowance the Chairman will in fact invariably make a saving, it cannot be held that this payment would result in gain so as to make the office an office of profit.

9. In the course of his submissions, learned counsel tried to urge that the payment of travelling allowance and daily allowance under Rules 3 to 7 was in addition to the payment of the consolidated monthly allowance under R.3 and payment of two sets of allowances must necessarily

result in profit to the payee. The argument proceeds on a complete misunderstanding of the Rules. Rule 3 only covers payment to compensate a Chairman for journeys performed by him for his official duties within the district in which the Panchayat is situated, while rules 4 to 7 govern cases where the journey is performed outside the district. Rule 3 and Rules 4 to 7 are, therefore, complementary and exclusive of each other. In fact, Rule 5 makes it clear that the mileage allowance is admissible only for journeys undertaken outside the district, while, in respect of daily allowance, the fact that the right to receive it accrues only when the journey is outside the district is made manifest by laying down that the receipt of this daily allowance is to be subject to the provisions of Rule 3. The submission that the payment under Rules 4 to 7 is in addition to the payment under R. 3 is, thus, clearly misconceived.

10. In this connection, learned counsel drew our attention to a decision of this Court in Ravan Subanna v. G. S. Kaggeerappa, AIR 1954 SC 653 at p. 656 where, dealing with the provision relating to this disqualification, the Court held:-

"The plain meaning of the expression seems to be that an office must be held under Government to which any pay, salary, emoluments or allowance is attached. The word "profit" connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit."

This principle, on the finding arrived at by the High Court and affirmed by us above, is of no assistance to the appellant. It is clear that the appellant has failed to establish that the allowances payable under Rules 3 in 7 of the Rules result in any pecuniary gain to a Chairman of a Panchayat Samiti and, consequently, there is no question of any disqualification arising.

11. The appeal fails and is dismissed with costs.

Appeal dismissed.