

ALLAHABAD HIGH COURT

Baleshwar Singh

Vs.

District Magistrate

Civil Misc. Writ No. 2390 of 1956

(J.K. Tandon, J.)

08.05.1958

ORDER

J.K. Tandon, J.

1. The Nyaya Panchayat Bathawar, Pergana Berhal, District kenaras, consists of seven Gaon Sabhas out of which Bathawar is one. The total membership of the Nyaya Panchayat is fifteen. Two panches have to be appointed each from the Gaon Sabha Bathawar, Daiyapur, Khehara, Keshopur, Khuchama and Rewasa and three panches from the Gaon Sabha Sarai. Section 43 of the U.P. Panchayat Raj Act requires that the Nyaya Panches of the Nyaya Panchayat shall be appointed out of the persons elected in accordance with Sub-Section (6) of Section 12 and Section 12-A of the Act. After the last general election held in connection with the constitution of Gaon Panchayat, under the aforesaid provision of the Act, the appointment of Nyaya Panches had to be made. It is alleged that out of the total number of members of the Gaon Panchayat for Gaon. Sabha Bathawar two seats belonging to scheduled caste still remained to be filled up. Similarly some seats in the Gaon Panchayat of Daryapur had to be filled up by the prescribed authority through nomination. The petitioner claims that the law required the District Magistrate to make appointments as Nyaya Panches only after the Gaon Panchayats have been duly constituted, that is, all the members required to be elected under Section 12(6) and Section 12-A of the Act have been elected. In view, therefore, of the allegation that some of these seats were still unfilled, the right of the District Magistrate to appoint Nyaya Panches is challenged. Two of the respondents, who are Baijnath Singh and Achhaibar Singh Nos. 3 and 4 have, however, been appointed as Nyaya Panches by the District Magistrate to represent the Gaon Sabha Bathawar. Accordingly, their appointment is challenged as being premature.

2. The petitioner has also pointed out that Nyaya Panches are required under rule 85 of the Panchayat Raj Rules to be of 30 years or more of age at the time of their appointment. They should also be able to read and write Hindi in Devanugari script correctly, In the case of

Achhaibar Singh respondent No. 4, it is said that he does not know how to read and write Hindi correctly, accordingly, he is not qualified to be appointed as a Nyaya Panch. Two of the Nyaya Panches appointed to represent Gaon Sabha Sarai are likewise said to be deficient in age qualification. Similar allegations in respect of Nyaya Panches of Gaon Sabha Dariyapur and Gaon Sabha Khuchama have been made. It is however, significant that none of these persons whose appointments as Nyaya Panches is challenged on the above ground has been made a party to this petition. As it is, two persons only out of the Nyaya Panches, namely, Baijnath Singh and Achhaibar Singh are respondents being respondents Nos. 3 and 4, consequently allegations against the appointments of other Nyaya Panches are therefore of not much significance in this case. They do not otherwise also appear to possess any bearing on the questions necessary for disposing of this petition.

3. Section 5-A(b) of the U.P. Panchayat Raj Act has made provision for disqualification for being chosen or appointed as a Nyaya Panch if the person has been convicted of any offence involving Moral turpitude. It is said that Baijnath Singh respondent No. 3 was so convicted for an offence under Section 182 I.P.G. and also under Section 107 Cr. P.C. he is, therefore, disqualified for appointment its Nyaya Panch.

4. Apart from this particular objection, the general objection also is urged that the District Magistrate has not made the appointment himself but a selection committee appointed by the State Government under a D.O. dated 7-4-1956 has done it which, however, was not authorised under Section 43 of the Panchayat Raj Act.

5. The relief claimed by the petitioner accordingly is a writ quashing the appointment of respondents Nos. 3 and 4 as Nyaya Panch and further a writ restraining the respondents Nos. 1 and 2 from holding election for Sarpanch and Sahayak Sarpanch of Nyaya Panchayat Badiawar.

6. The petition has been contested. The District Magistrate does not admit that the appointment of Nyaya Panches was made by the committee as suggested by the petitioner; on the other hand, he claims that the appointments were made by him personally though he took into consideration the views of the committee also.

7. As regards the allegations that certain seats at the Gaon Panchayat of Gaon Sabha Bathawar and Gaon Sabha Daryapur were unfilled at the time of the appointment of the Nyaya Panches representing these Gaon Sabhas it is pointed out that two seats in the former and certain seats in the latter, no doubt remained to be filled at the general election and the bye-election also held in that connection, but it is claimed that these vacancies did not stand in the way of the prescribed authority from making the appointments of Nyaya Panches.

8. As to the objection against Achhaibar Singh, namely, that he is illiterate, it is said that he is able to read and write Hindi in Devanagari script fluently, which is the qualification required under rule 85 of the U.P. Panchayat Raj Rules. In the case of Baijnath Singh, while the counter-

affidavit filed does not controvert the fact about his conviction under Section 182 I.P.C. and Section 107 Cr. P.C. all the same it is urged that it did not amount to disqualification.

9. It may here be mentioned that Section 5-A of the U.P. Panchayat Raj Act has since been amended. Formerly the provision was that a person who had been convicted of an offence involving moral turpitude will be disqualified for being nominated as Nyaya Panch, and there was no time limit during which this disqualification lasted. Recently, however, by an amendment of the Act this qualification has been limited to period of four years only. But this change in the law is not material for the decision of the present petition because the appointment of Baijnath took place prior to the said amendment and his eligibility will need to be determined on the basis of the law as it was in force on the date of his appointment. His qualification, if any will depend on the fact, irrespective of the time of the conviction, whether his conviction under these Sections was for an offence involving moral turpitude.

10. The affidavit filed on behalf of the District Magistrate and the District Panchayat Officer, respondent No. 2, has claimed that though the State Government had constituted a committee by the D.O. of 7-4-1936, in connection with the appointment of Nyaya Panches, the appointments in the present case were made by the District Magistrate himself. It is denied that the selection was made by the committee. In view of the above clear assertion, I see no reason why the above fact should not be accepted. It must therefore be held for the purposes of this petition that the District Magistrate himself made the appointments.

11. On behalf of the petitioner reference was made to the case of *Jaibir bingh v. District Magistrate, Bulaiidshahr*¹, in which, the D.O. of 7-4-1906 was examined by a learned Judge of this Court, and it was held that the appointment of a Nyaya Panch was invalid. It, however, appeared upon a perusal of this decision that the fact of appointment made by the committee and not by the District Magistrate was conceded in it and it was in that back-ground and the said concession that the learned Judge held the appointment to be invalid.

12. Under Section 43 of the Panchayat Raj Act, the appointing authority is no doubt the District Magistrate and the appointment in order to be a valid appointment has to be made by him. In the present case, the District Magistrate has claimed that the appointment was made by him and this fact has been upheld also. Jaibir Singh's case cannot help the petitioner here. There is nothing, in Section 43 requiring a District Magistrate to abstain from taking into consideration the view of any committee or of any other authority before making his selection. The mere fact that a committee was appointed or made any recommendation did not invalidate the appointments so long as the District Magistrate has claimed that he himself made them.

13. I do not under the circumstances think that these appointments were invalid on that ground.

14. Coming to the next objection by the petitioner, Section 12-A makes provision for election of

members of Gaon Panchayat and of persons out of whom Nyaya Panches will be appointed by the District Magistrate under Section 43 of the Act. These persons have to be elected in accordance with Section 12(6) of the Act. Sub-Section 8 of Section 12 provides that where a Gaon Sabha has failed to elect the full number of members prescribed under Sub-Section (2), it shall be called upon to elect the remaining number of members, but if it again fails to elect the full number of remaining members it shall be lawful for the State Govt. or such authority as may be

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prescribed to fill in the seats, so remaining vacant, by nomination from amongst the members of the Gaon Sabha and any member so nominated shall be deemed to have been duly elected. As it appears from the affidavit filed on behalf of the District Magistrate, two seats in the case of Gaon Sabha Bathawar, and some seats in the case of Gaon Sabha Daryapur, remained unfilled in spite of a bye election. The petitioner has contended that so long as those seats were unfilled the District Magistrate could not make the appointments of Nyaya Panch under Section 43 of the Act. I am unable to find any tiling either in Section 12A or in Section 43 itself to require the District Magistrate to wait until every seat in the Gaon Panchayat has been filled up. Section 43 requires that the Nyaya Panch shall be appointed out of the persons elected in accordance with Sub-Section 6 of Section 12 and Section 12A. Admittedly both Baijnath and Achhaibar Singh are persons who were so elected. They were persons who were elected along with others under Section 12(6) read with Section 12A of the Act; consequently they fulfilled the conditions laid down in Section 43. It is immaterial that some of the seats had remained unfilled for the further reason also that under Sub-Section 8 of Section 12 these seats would ordinarily be filled by nomination and Section 43 contemplated the appointments of Nyaya Panchayat out of the persons who are elected in accordance with Sub-Section 6 of Section 12 read Section 12A of the Act.

15. Therefore both for the reason that Section 43 does not contemplate the postponement of appointment of Nyaya Panches until all the seats on the Gaon Panchayat have been, filled up and that Nyaya Panches have to be appointed out of the persons elected in accordance with Section 12(6) read with Section 12A, the appointment made by the District Magistrate in the present case could not be said to have been made without authority or at a time when the power to appointment had not arisen. This objection also, therefore, fails.

16. There is no substance in the objection either that Achhaibar was disqualified on account of his illiteracy. In the first place, the petitioner's own allegation in this connection does not claim more than this, namely, that "he cannot even read and write vernacular correctly as required by rule 85 of the Panchayat Raj Rules." The petitioner does not say that Achhaibar is illiterate or cannot read or write Hindi in Devanagri script. His allegation simply is that he cannot do so correctly. Besides, there is clear assertion in the affidavit of Mukti Nath Prasad that Achhaibar can read and write Hindi in Devanagri script. In the circumstances, I am unable to hold that he does not possess the qualification of literacy required by rule 85.

17. Baijnath is supposed to have to his credit two convictions one under Section 107 Cr. P.C. and the other under Section 182 I.P.C. So far as proceedings under Section 107 Cr. P.C. were concerned, the learned counsel for the petitioner has not pressed the point; but quite apart from it, I do not think any disqualification arises from it.

18. The case of the conviction under Section 182 I.P.C. however rests on a different footing. This section makes punishable a person who gives to any public servant any information which he knows or believes to be false intending thereby to cause or knowing it to be likely that he would thereby cause such public servant -

- (a) to do or omit anything which such public servant ought not to do or omit, if the true state of facts respecting which information is given were known to him; or
- (b) to use lawful power of such public servant to the injury or annoyance of any person.

19. The offence under this section will be complete under either circumstances mentioned in (a) or (b) above. The ingredients of the offence are :

- (i) the giving of false information
- (ii) to a public servant
- (iii) which the informant knew or believed to be false and
- (iv) which he gave to influence the public servant to act otherwise than he would have acted.

20. The offence can take two shapes, one falling under (a), in which case it is unnecessary that the intention is that the public servant should act on the false information to the injury or annoyance of any person, and the other falling under (b) where the intention is that he should so act. This distinction is of some importance in regard to the question of moral turpitude. A case falling under clause (b) that is, where the false information is given with the intention that the public servant may use his power to the injury or annoyance of any person, will doubtless involve moral turpitude as was held by a learned Single Judge also in *Sita Ram v. Dist. Magistrate, Pilibhit*². The learned judge observed that –

"the making of a false charge knowing it to be false with the object that the accused should be prosecuted and punished is certainly an act which involves a serious type of moral turpitude. The gist of the offence is that the person who brings the charge knows it to be false and still in order to injure some other person for some improper motive of his moves the prosecution authority in order to injure that person. The gist being a false statement to the knowledge of the person such an act clearly involves moral turpitude. Moral turpitude is clearly an ingredient of the offence when the offence consists of an act of giving false information knowing it to be false in order to injure somebody else".

21. The facts connected with the prosecution under Section 182 in Sita Rani's case do not appear from the report but it nevertheless seems that the intention of the informant in that case was to cause the public servant to use his lawful power to the injury or annoyance of some person. This last sentence bears out the fact. It was therefore a case belonging to that category where false information is given in order to injure or annoy any person.

22. But there may be cases under Section 182 where although the false information is given with the intention to cause a public servant to do or omit to do anything, there is no intention that the public servant should use his power to the injury or annoyance of any person. Can it be said that it still involved moral turpitude. Such cases will fall

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under clause (a) above where it is unnecessary that the act or omission should effect or cause injury to some third person. To illustrate the point further, if a person knowingly makes a false statement to a Magistrate that a violent fire is raging in the city and the Magistrate believes that statement and deposes the necessary force for extinguishing fire etc., it would amount to an offence under Section 182 I.P.C. though a perfect hoax was practised on the Magistrate. The question arises whether the offence involved moral turpitude.

23. The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man.

24. Judging the position in the back ground of the foregoing discussion, Section 182(a) in declaring that giving of false information to a public servant with the intention that the public servant may do or omit to do anything which he ought not to do or omit, if the true state of facts respecting such information were given to him or known to him, has enjoined a duty on persons to abstain from giving such information etc. to a public servant. A duty has been cast on individuals not to act in a certain manner and detract public servants from their normal course. This is a duty which every individual who is governed by the above law owes to the society whose servant every public servant obviously is. An individual's conduct in giving false information to a public servant in the circumstances stated in Section 182(a) too is therefore contrary to justice, honesty and good morals and shows depravity of character and wickedness.

25. Therefore an offence under Section 182 I.P.C. whether falling under clause (a) or clause (b) is an offence involving moral turpitude. Baijnath, who admittedly had been convicted for an

offence under this section was therefore disqualified to be appointed as Nyaya Panch under Section 5(a) of the Act. His appointment accordingly is invalid.

26. The only other point remaining is whether the election of Sarpanch and Sahayak Sarpanch cannot take place until all the Nyaya Panches have been appointed. Section 44 of the Act requires these offices to be filled by election in the manner and within the period prescribed therefor. Rule 83A fixes the period to be one month from the date on which the appointment of Panches of the Nyaya Panchayats under Section 43 is completed. Such appointments were no doubt made in this case. Consequently there is no bar to the election of the Sarpanch and the Sahayak Sarpanch. The petitioner cannot object to the election of the Sarpanch and the Sahayak Sarpanch.

27. In view of the above discussion this petition fails except as regards Baijnath respondent No. 3 whose appointment as Nyaya Panch has been found to be invalid. Baijnath is accordingly directed not to function as Nyaya Panch. A vacancy is also declared in the office held by him. In other respects the petition is dismissed. No order is made as to costs.
Order accordingly.