

Phoola Bai Vs. the State

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Court : Madhya Pradesh

Decided On : Jan-06-2009

Reported in : 2009(2)MPHT75

Judge : Sanjay Yadav, J.

Appellant : Phoola Bai

Respondent : The State

Disposition : Petition dismissed

Judgement :

ORDER

Sanjay Yadav, J.

1. Heard on admission.
2. The petitioner, an officiating Sarpanch, Gram Panchayat, Guda, Block Palera, District Tikamgarh calls in question the notification dated 21-11-2008, Annexiire P-5, whereby the election programme for election of Sarpanch has been notified.
3. The challenge is on the ground that one Smt. Bhoori Devi was elected as Sarpanch of Gram Panchayat, Guda, Tehsil Palera, District Tikamgarh. A no-cbhfidence motion was moved against her under Section 21 (1) of theM.Pi Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 culminating into passing of

no-confidence against her. The said motion was questioned in Revision before Additional Collector who set aside the same by order dated 16-10-2006. This order was affirmed in W.P. No. 15417/2006; however, in Writ Appeal No. 498/2007 the said order was set aside and the no-confidence was restored vide order dated 26-4-2007. Against the said order the petitioner contends that an SLP in Supreme Court is pending.

4. The claim of the petitioner is that after the passing of no-confidence against said Bhoori Devi, the petitioner was nominated as officiating Sarpanch in accordance with the provisions contained under Section 38 of the Act of 1993 and till she continues to officiate as Sarpanch, the post cannot be construed to have fallen vacant as would call for holding an election.

Section 38 of the Act of the 1993 stipulates:

38. Filling up of vacancies. - (1) (a) In the event of death, resignation, no-confidence motion, or removal of an office bearer of a Panchayat or on his becoming a member of State Legislative Assembly or a member of either House of Parliament before the expiry of his term, a casual vacancy shall be deemed to have occurred in his office and such vacancy shall be filled as soon as may be by election in accordance with the provisions of the Act and the Rules made thereunder;

(b) In the event of occurrence of a casual vacancy in the office of the Sarpanch of a Gram Panchayat the Secretary of the Gram Panchayat, as the case may be, shall cause to be called a special meeting of the Panchayat immediately, but not later than fifteen days from the date of receipt of information from the Prescribed Authority regarding the vacancy and the members shall elect from amongst themselves a person to hold the office temporarily till a new Sarpanch, as the case may be, is elected in accordance with the provisions of this Act and the Rules made thereunder and such officiating Sarpanch, as the case may be, shall perform all the duties and exercise all the powers of Sarpanch, during the pendency of election:

Provided that if the office of the Sarpanch is reserved for the member of Scheduled Caste or Scheduled Tribes or Other Backward Classes or for a woman, the officiating Sarpanch shall be elected from amongst the members belonging to the same category;

Provided further that where the office of Sarpanch is reserved for a woman belonging to Scheduled Castes or Scheduled Tribes or Other Backward Glasses, and there is no other woman belonging to that category who can be elected to officiate as Sarpanch, any other woman belonging to the other reserved categories may be elected to officiate as Sarpanch during the casual vacancy.

(c) If the out-going office bearer fails to hand over any record, article, money or property of the Panchayat forthwith to his successor the Prescribed Authority may by order in writing direct him to do so and on his failure to comply with such direction the Prescribed Authority may proceed against him in accordance with Section 92 and take necessary steps to prosecute him under Section 98.

5. Thus, the vacancy does accrue in the event of no-confidence motion though it may be casual in nature. The contention of the learned Counsel for the petitioner that once a Sarpanch is nominated to officiate in such casual vacancy the same cannot be construed as a vacancy as would call for fresh election, is misconceived. Clause (ai) of Sub-section (1) of Section 38 of the Act of 1993 provides for filling up of such casual vacancy as soon as may be vacant in accordance with the provisions of the Act of 1993 and the Rules made thereunder. The temporary filling up of the post of a Sarpanch under Clause (b) of Sub-section (1) of Section 38 does not create a right in favour of such officiating Sarpanch to claim that no election can be held under Clause (a) of Sub-section (1) of Section 38 till the entire term expires.

6. Having thus considered, this Court does not find any substance in the claim put-forth by the petitioner and the petition being devoid of substance is dismissed in limine.