
(2002) 03 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3963 of 2002

Bhagwan Singh and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 19-03-2002

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 51(5)

Citation : AIR 2003 P&H 23 : (2002) 2 RCR(Civil) 572

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : R.S. Sihota, for the Appellant;

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—Is the complainant entitled to file an appeal against an order of rejection of the complaint u/s 51(5) of the Haryana Panchayati Raj Act, 1994 ? This is the short question that arises for consideration in this writ petition. A few facts, as relevant for the decision of this case, may be briefly noticed.

2. Elections of the office of Sarpanch, Gram Panchayat Village Tihara, Tehsil Bawal, District Rewari were held in March, 2000. On July 21, 2000, the petitioners filed a complaint. Notice of the complaint was issued to the third respondent, who was holding the office of Sarpanch. She filed her reply. A regular enquiry was ordered to be held. On June 14, 2001, the Additional Deputy Commissioner, who had been appointed as the Inquiry Officer, submitted his report. The matter was considered by the Deputy Commissioner, Vide order dated June 18, 2001, a copy of which had been produced as Annexure P-9 with the writ petition, the report was accepted. Aggrieved by this order, the petitioners, who had filed the complaint, submitted an appeal to the Financial Commissioner. Finding that the petitioners had no locus standi to file the appeal, the Authority dismissed the appeal vide order dated November 7, 2001. A copy of this order as has been produced as Annexure P-10 with the writ petition. The petitioners have now approached this Court with the prayer that the orders,

copies of which are at Annexures P- 9 and P-10, be quashec.

3. The solitary contention raised by Mr. R.S. Sihota, learned counsel for the petitioners is that the Financial Commissioner has erred in taking the view that the petitioners were not "aggrieved persons" so as to be entitled to challenge the order passed by the Deputy Commissioner.

4. It would be apt to notice the provisions of Section 51 in extenso. It provides as under:-

51. Suspension and removal of a Sarpanch or Panch.- (1) The Director or the Deputy Commissioner concerned may, suspend any Sarpanch or Panch, as the case may be,

(a) where a case against him in respect of any criminal offence is under investigation, enquiry, or trial, it" in the opinion of the Director, or Deputy Commissioner concerned the case made or proceeding taken against him, is likely to embarrass him in the discharge of his duties or involves mortal turpitude or defect of character;

(b) during the course of an enquiry for any of the reasons for which he can be removed, after giving him adequate opportunity to explain.

(2) Any Sarpanch or Panch, as the case may be, suspended under Sub-section (I). shall not take part in any act or proceeding of the Gram panchayat during the period of his suspension and shall hand over the records, money or any other property of the Gram Panchayat in his possession or under his control-

(i) if he is a Sarpanch to a Panch commanding majority in the Gram Panchayat;

(ii) if he is Panch to Sarpanch:

Provided that the suspension period of a Panch or a Sarpanch, as the case may be, shall not exceed one year from the date of handing over the charge in pursuance of the suspension order except in criminal cases involving moral turpitude.

(3) The Director or the Deputy Commissioner concerned may, after such enquiry as he may deem fit and after giving an opportunity of being heard to a Sarpanch or a Panch, as the case may be, ask him to show cause against the action proposed to be taken" against him, and by order remove him from his office-

(a) if after his election he is convicted by a criminal court for an offence involving moral turpitude and punishable with imprisonment for a period exceeding six months;

(b) if he was disqualified to be a member of the Gram Panchayat at the time of his election;

(c) if he incurs any of the disqualification mentioned in section 175 after his election as member of the Gram Panchayat;

(d) If he is absent from five consecutive meetings of the Gram Panchayat without prior permission of leave of Gram Panchayat, and

(e) If he has been guilty of misconduct in the discharge of his duties and his continuance in the office is undesirable in the public interest.

(4) A person who has been removed under Sub-section (3) may be disqualified for re-election for such period as may be mentioned in the order but not exceeding the period of six years.

(5) Any person aggrieved by an order passed under Sub-sections (1), (3) and (4) may within a period of thirty days from the communication of the order, prefer an appeal to the Government.

(6) Any Sarpanch or Panchas the case may be, removed under Sub-section (3), shall hand over the records, money or any other property of the Gram Panchayat in his possession or under his control-

(i) if he is Sarpanch to a Panch commanding majority in the Gram Panchayat, and

(ii) if he is a Panch to sarpanch.

A perusal of the above provisions shows that the competent authority can order the suspension, removal and disqualification of a Panch or a Sarpanch, if it is satisfied that he is likely to be embarrassed in the discharge of his duties or that good reasons for his removal or disqualification are made out. Clause (5) provides for the filing of an appeal, it stipulates that a person aggrieved by an order passed under Sub-sections (1), (3) and (4) can file an appeal. Clause (1) contemplates an order of suspension. Clause (3) relates to an order of removal. Clause (4) provides for the disqualification for re-election. A person can be aggrieved when an order of suspension, removal or disqualification is passed. The plain language of the Statute suggests that only the person against whom an order has been passed, can file an appeal.

5. Mr. Sihota refers to the decision of the Full Bench in *Ram Phal Vs. Financial Commissioner and Secretary to Govt. Haryana Development and Panchayat Department and Others*, to contend that even the complainant would be a person aggrieved by an order, which may be passed by the Authority under Clause (1), (3) and (4), It is so?

6. The Full Bench was considering the case under the provisions of the Punjab Gram Panchayat Act, 1953, as amended by the Haryana Act 16 of 1981. Section 102(5) initially provided that a person aggrieved by an order of removal could file an appeal. This provision was amended by the Haryana Legislature. For the words "by an order of removal", the words "by an order" were substituted. In the Statement of Objects and Reasons, it was specifically observed as under:-

"At present the remedy of appeal is available to the Panch or Sarpanch against whom removal order is passed and that where the Sarpanch or Panch is exonerated, remedy of appeal is not available to the complainant party. The Bill

was introduced in the Legislature only to provide remedy of appeal to both the parties."

It was on consideration of the Statement of Objects and Reasons and the language of the Statute that the Full Bench had taken the view that "the complainant is entitled to file an appeal against the order of reinstatement". In the present case, we find that the plain language of the Statute militates against the right of the complainant to file an appeal. Had it been the intention of the Legislature to allow the complainant to file an appeal, it could have simply provided that any person aggrieved by the order shall be entitled to file an appeal.

7. It is known that a complainant does not always have the right to challenge the order passed by a Court or an Authority. To illustrate, in criminal cases aggrieved party lodges a report. It is like an informant. On acquittal, no right of appeal is given to the complainant. Similarly, under the present Statute, the complainant is in the nature of an informant. The Statute gives him no right to appeal. This has been the consistent view of this Court. In *Ram Saroop v. The Director of Panchayat, Haryana. Chandigarh and Ors.* 1983 P.L.J. 350, it was observed as under:-

"Where information is given to the appropriate authority for taking action against a public servant and action is taken in pursuance of that information, we do not think that it is necessary to give an opportunity to the informant, if the authority concerned later wants to revoke its earlier order. The informant is no more than a mere informant and cannot be considered to be a party to the lis or an aggrieved party, on that account alone so as to entitle him to be heard before an order against the public servant is revoked. He is not in a better position than a person who gives information to the police about the commission of an offence. Such a person has no right to be heard, if no action is taken against the person against whom he gives information or if action is taken initially and then dropped. We disagree with the view expressed in *Gram Panchayat, Kamalpur v. Deputy Commissioner, District Judge*. The writ petition is, therefore, dismissed."

Similar view was expressed by another Division Bench in *Mahavir Singh Sarpanch Vs. State of Haryana and Others*, . Even otherwise, a Full Bench of this Court in *Saktu Ram v. The State of Haryana and Ors.* 1988 P.L.J. 379 has also taken a similar view. The contrary view was disapproved, with the following observation:-"8. In view of the foregoing circumstances, we are of the view that *Suresh Chand's* case (supra), insofar as it related to the question of notice or opportunity of hearing to be given to the complainant before revoking the order of suspension is wrongly decided and the correct view is that in the decision in *Ram Saroop's* case (supra). We answer the reference accordingly."

8. In the present case, the language of the Statute is clear and unambiguous. Right to file an appeal is the creation of the Statute. The Legislature has chosen to give it to the person aggrieved by an order passed under Clause (1), (3) and

(4). In the very nature of things, the grievance would be of the person, against whom an order of suspension, removal of disqualification has been passed. In case the person is exonerated the complainant has no cause to feel aggrieved. The contrary view would result in unnecessary complaints and pin-pricking. It is not unknown that a candidate who loses election, tries to find fault with the elected person. Very often, there is a continuous stream of complaint so as to make the working of the elected person impossible. It appears that the Legislature has advisedly not conferred the right of appeal on the complainant. This is so despite the fact that in the year 1983, the provision in the old Act was expressly amended with the object of providing remedy to the complainant. In any event, we are inclined to give a restricted meaning to the provision so as to ensure that the working of the elected representatives of the village community is not unduly hampered.

9. In view of the above, it is held that there is no infirmity in the view taken by the Financial Commissioner when it was held that the complainants had no locus standi to file an appeal.

10. No argument was addressed to contend that the order passed by the Deputy Commissioner, by which the third respondent was exonerated is wrong. The counsel had confined the contention to the right of appeal. It appears that the petitioners' purpose is to prolong the proceedings. To make the working worrisome for the respondents. In such a situation, we do not think that jurisdiction under Art. 226 should be allowed to be involved or exercised.

No other point was raised.

In view of the above, we find no merit in this writ petition. It is, consequently, dismissed in limine.

Sd/- N.K. Sud, J.