
(1982) 09 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6019 of 1974

Birdi Chand

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 08-09-1982

Acts Referred:

Citation : (1983) ILR (P&H) 164 : (1983) PLJ 107 : (1985) RRR 398

Hon'ble Judges : A.S.Bains, J

Advocate : Jaswant Jain, Advocate., Advocates for appearing Parties

Judgement

A.S. Bains, J.(Oral)

1. The petitioner was a Panch of the Gram Panchayat, Thanvas, Tehsil Narnaul, District Mohindergarh. From 1964 to 1971, he was Sarpanch of the same Gram Panchayat. During this tenure, he made the construction of Pucca drains etc., in the village and an amount of Rs. 10,620/ was incurred on the same. The said amount was spent after obtaining the sanction from the members of the Gram Panchayat.

2. Respondent No. 2 issued a notice to the petitioner on 17.12.1973 under section 105(2) of the Punjab Gram Panchayat Act, 1952 (hereinafter called the Act) in which it was stated that an enquiry was conducted against the petitioner by the S.D.O. (Civil) Narnaul on the basis of a complaint against the petitioner and that after the said enquiry it was found that the petitioner had shown an excess expenditure of Rs. 5420/ on the construction of Pucca drains in the village and the petitioner was accordingly asked in the said notice to deposit the amount of Rs. 5420/ in the Panchayat Funds within seven days. The petitioner submitted his reply to the notice on 19.12.1973 and explained his position. On 13.6.1974, the petitioner again received a notice (Annexure P/3) from respondent No. 2 calling upon the former to deposit the sum of Rs. 5420/ referred to in the said notice within 10 days from the receipt of the notice. The petitioner thereupon filed a writ petition No. 2311 of 1974 against the notice dated 11.6.1974 (Annexure P/3), which was dismissed by a Division Bench on 3.9.1974 and the

following order was passed:

"The petitioner has not resorted to the statutory remedy under section 105(3) of the Punjab Gram Panchayat Act, petition is, therefore, dismissed."

In pursuance of the aforesaid order, the petitioner filed an appeal the same day before the Deputy Director, Panchayats which was dismissed on 16.10.1974 and the petitioner was intimated by the Deputy Director vide his letter dated 21.10.1974 about the dismissal of the appeal.

3. The petitioner has challenged the notice and the order of dismissal of appeal by way of this writ petition. Mr. Jaswant Jain, learned counsel for the petitioner, urged that the appeal could not be dismissed behind the back of the appellant (petitioner).

4. I find merit in this contention. The only ground for the dismissal of the appeal given by the Deputy Director, Panchayat, is that the appeal was time barred. Be that as it may, the petitioner was entitled to hearing and if he was heard, he could have explained the delay and the circumstances in filing the appeal after the period of limitation. But he was not afforded any opportunity. This fact is admitted in the return filed by respondents Nos. 1 and 2 in which the stand taken by the authorities is that he was not entitled to be heard. This stand is not justified. In my view, the petitioner was entitled to be heard in the appeal and then an appropriate order should have been passed by the authorities, after giving him notice. Accordingly, this petition is allowed and the order dated 16.10.1974 conveyed on 21.10.1974 (Annexure P/5) dismissing the appeal of the petitioner behind his back, is set aside and it is directed that the Deputy Director Panchayat, Haryana, Chandigarh shall redecide the appeal after affording an opportunity of hearing to the petitioner. Till the decision of the appeal, the recovery of the impugned amount is stayed. In the result, the petition is allowed with costs.