

(1974) 11 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 171 of 1974

Gokal Chand

APPELLANT

Vs

State of Himachal Pradesh etc.

RESPONDENT

Date of Decision : 12-11-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226, 227
Himachal Pradesh Panchayat Samities (Elections) Rules, 1973 — Rule 4, 8
Himachal Pradesh Panchayati Raj Act, 1968 — Section 153, 3, 54, 54(1), 63

Citation : (1975) 4 ILR HP 57

Hon'ble Judges : C.R. Thakur, J

Bench : Single Bench

Advocate : S. Malhotra, for the Appellant; B. Sita Ram, General, for the Respondent

Judgement

Chet Ram Thakur, J.—Shri Gokal Chand has by this petition under Articles 226 and 227 of the Constitution of India challenged the order of Respondent No. 2, dated the 5th July, 1974, (Annexure J), order dated 2nd July, 1974, enclosed to Annexure F, order dated 4th July, 1974, (Annexure H) as also the order dated 6th July, 1974, regarding rejection of nomination paper of the Petitioner forming part of Annexure K.

2. The facts are that the Petitioner is a resident of Syri in Tehsil Kandaghat, which before the 1 st of November, 1966, was a part of the erstwhile State of Punjab. Gram Panchayat Syri as also the Panchayat Samiti Kandaghat had been established under the Punjab Gram Panchayat Act, 1952 and the Punjab Samitis Act. Before the re-organisation of the Punjab State elections were held for Gram Panchayat Syri and Panchayat Samiti Kandaghat in the year 1964. The Petitioner was elected as a Sarpanch and was also elected as Chairman of the Panchayat Samiti Kandaghat. This Panchayat and the Samiti continued to function till October or November, 1972, and the Petitioner, therefore, also continued to be the Sarpanch of Gram Panchayat Syri as also the Chairman of the Panchayat

Samiti Kandaghat.

3. The Government of Himachal Pradesh passed the Himachal Pradesh Panchayati Raj Act (Act No. 19 of 1970) and elections held under the Punjab Act were treated to be the elections or acts under the Himachal Pradesh Panchayati Raj Act. It is submitted that on 25th May, 1971 an order came to be passed in exercise of the powers under Sections 54 and 153 of the Himachal Pradesh Panchayati Raj Act, 1968 (Act No. 19 of 1970) (shortly called the Act of 1968) suspending the Petitioner and ordering an enquiry against him for not exhibiting good conduct in the discharge of his duties. He challenged this order by a C.W.P. 87 of 1971, which was dismissed on 3rd August, 1972, and a L.P.A. is now pending before this Court.

4. In October/November, 1972, fresh elections were held for Panches of Gram Panchayat Syri. The Petitioner was duly elected. In December, 1972, the Petitioner was elected as a Pradhan. On 26th December, 1973, the Deputy Commissioner, Solan, again passed an order (Annexure B) suspending the Petitioner in exercise of the powers u/s 54 of the Act. The order was precisely on the same allegations as the order, Annexure A. This order was also challenged by the Petitioner by a C.W.P. 1/1974, which is still pending before this Court.

5. The Respondents decided to hold elections of primary members of Panchayat Samitis in May, 1974, but later the same were postponed. The Petitioner also wanted to contest as a primary member of the Panchayat Samiti and thereafter as a Chairman of the Panchayat Samiti in accordance with the provisions of the Act, but he was prevented from exercising his legal right by the Respondents. On 25th June, 1974, a programme for the elections to the Panchayat Samitis was published, as is indicated by Annexure C, which is a translated copy of the vernacular version. By this programme the candidates were required to file their nomination papers by the 5th July, 1974. A voters list was prepared in the month of February, 1974, and it contained the name of the Petitioner as a voter, but the voters list which was displayed on 25th June, 1974, contained a deletion with red ink signed by the Naib-Tehsildar (Elections). A voters list was supplied by the Deputy Commissioner, Solan to the polling station as required under Rule 8 of the Himachal Pradesh Panchayat Samities (Elections) Rules, 1973 (hereinafter called the rules of 1973). Along with this was forwarded the numbers of votes assigned to each such polling station in the constituency of Panchayat Samiti for inspection. The said list showed that in respect of Syri constituency there are 13 voters. This figure could only be given in respect of Syri constituency if the Petitioner was treated as a voter because in all there are 13 voters in the Syri constituency as per Annexure D to the petition. The voters list which accompanied the election programme although contained his name but the same was deleted under the signatures of the Naib-Tehsildar (Election). On enquiries made by the Petitioner for the deletion of his name he found that the Respondents took the view that a suspended Panch cannot participate in the Panchayat Samitis election, which is wholly erroneous, inasmuch as suspension

under Section 54 of the Act does not entail or result in any disqualification, as mentioned in Sub-section (5) of Section 9 and Section 64 of the Act. On 28th June, 1974, the Petitioner represented to the then District Election Officer/Deputy Commissioner, Solan (Respondent No. 8) vide Annexure E. Respondent No. 8 accepted the representation and ordered that his name will have to be notified as an elector. Thereafter on the same day, i.e. 29th June, 1974, at about 7-30 P.M. Respondent No. 8 made an order directing that the Petitioner may be treated as an elector for the purposes of elections as notified in the election programme. On 2nd July, 1974, the Respondent No. 4 sent the voters list containing the name of the Petitioner to the Sub-Divisional Magistrate, Kandaghat, and the Block Development Officer, Kandaghat, through a special messenger. Respondent No. 8 was under orders of transfer and on the forenoon of 1st July, 1974, Shri Surrender Kishore took over as Deputy Commissioner. Shri Surrender Kishore on 2nd July, 1974, passed another order on the representation of the Petitioner to the effect that the name of the Petitioner may be deleted from all the copies of rolls mentioning therein that the former was exercising the powers under Rule 4 of the Rules of 1973. The order is Annexure F. This order was passed behind the back of the Petitioner without any notice to him. The Petitioner submits that Shri Surrender Kishore could not pass any order in the purported exercise of powers under Rule 4, and the order was illegal, inasmuch as the decision of Shri M. K. Kaw could not be reviewed in any manner. Against this he made a representation to Respondent No. 3 but the same was rejected vide Annexure H. He again made a representation to the Director of Elections on 5th July, 1974, who also dismissed the same.

6. Thereafter the Petitioner filed his nomination paper seeking election as a primary member from Syri constituency but the same was rejected by the Assistant Returning Officer on 6th July, 1974. He has given the grounds on which he has challenged the various orders and eventually he has prayed for the quashing of these orders, dated 2nd, 4th, 5th and 6th July, 1974, passed by the Deputy Commissioner, Solan, and the Director of Elections. Further he has prayed that the Respondents be directed by a writ of mandamus to include the name of the Petitioner in the electoral roll of Syri constituency for Panchayat Samiti election. It was admitted that the Petitioner had been suspended vide order, 26th December, 1973, by the Deputy Commissioner, Solan. According to the Respondents Shri Gokal Chand, Pradhan Gram Panchayat, Syri, was suspended u/s 54 of the Act. He was, therefore, no more, a Panch and as such he had no status to file the writ petition. It was further averred that the name of the Petitioner was deleted from the voters list under valid order passed by the competent authority under Rule 4 of the Samitis Rules, 1973. The voters list which was prepared in the month of February, 1974, contained the name of the Petitioner as a voter but the Petitioner was suspended u/s 54 of the Act by the Deputy Commissioner, Solan, and as such the list was corrected and the name of the Petitioner was deleted which was included inadvertently in the voters list. The earlier orders passed on the file were not in accordance with the provisions of

law and hence they were subsequently modified to bring them in accordance with law. From the pleadings of the parties the following three points arise for consideration:

1. If a Pradhan is suspended, whether he entails any disqualification for election to the Panchayat Samiti?
2. When once Mr. M. K. Kaw passed an order directing the inclusion of the name of the Petitioner in the electoral roll to the election of the Panchayat Samiti, whether the same can be reviewed under the Act and rules ?
3. Can Shri Surrender Kishore, the successor of Mr. M. K. Kaw, review the order without any notice being given to the Petitioner?

Point No. 1:

7. There is no dispute in so far as the facts are concerned. It is a common case that the Petitioner was suspended under Sections 54 and 153 of the Act by an order (Annexure A), dated 29th May, 1971,,from the office of Sarpanch, Gram Panchayat Syri-cum-Chair-man Panchayat Samiti, Kandaghat, and he was directed to hand over the complete charge of both the offices to the Vice-President and the Vice-Chairman. This order admittedly was a subject-matter of a civil writ petition No. 87 of 1971, which has since been decided but is pending in a letters patent appeal before this Court. Again the Petitioner contested the fresh elections to Gram Panchayat Syri in the month of October/November, 1972, and he was elected as a Panch and thereafter he was elected as a Pradhan. These facts are not at all denied, which means that the petitioner who had been suspended vide order Annexure A, in the year 1971 was not disqualified from contesting the fresh elections. The Petitioner was again . suspended by the Deputy Commissioner, Solan, by his order, dated 26th December, 1973 (Annexure B) under the provisions of Section 54 of the Act. The order suspending the Petitioner is precisely on the same allegations as were mentioned in Annexure A. This order was also challenged by the Petitioner by a civil writ petition No. 1 of 1974 which is still pending. Thereafter the Respondents decided to hold the election of the primary members to the Panchayat Samiti in the month of May, 1974. The Petitioner was also one of the candidates for election to the primary membership of the Panchayat Samiti and he also wanted to contest for the office of the Chairman of. the Panchayat Samiti and the programme (Annexure C) was issued by the Respondents and the notice (Annexure D) as required under Rule 8 of the Himachal Pradesh Panchayat Samiti (Election) Rules, 1973, indicating the polling stations for the constituencies of Panchayat Samiti, Kandaghat, was issued and this notification undoubtedly showed the number of the eligible electors in the polling station Syri at 13. These 13 electors admittedly included the name of the Petitioner also. It also finds support from Annexure "L" which purports to be a copy of the electoral roll. The name of Shri Gokal Chand figures at S. No. 1. So admittedly the Petitioner's name was included as a voter for the primary membership of the Panchayat Samiti. But the

submission of the Respondents is that his name had wrongly been included as he was suspended u/s 54 of the Act and could not participate in the Panchayat Samiti elections.

8. After this the name of the Petitioner was found missing in the electoral roll and, therefore, he made a representation (Annexure E) and Mr. M. K. Kaw, the then Deputy Commissioner by his order, dated 29th June, 1974, (Annexure X) passed the following order on the representation:

File No. 7.

Subject of File: Direction and Instruction of Panchayat Elections.

Suspension as Pradhan does not apply automatic suspension as Panch. We may include the name of Shri G. C. Mehta.

Sd/- M.K. KAW, D.C. Solan. Dated 29th June, 1974.

It was in accordance with this order, it appears, that fresh order (Annexure L) was issued indicating the date 1st July, 1974, at the top. This means that the list previously prepared in which the name of the Petitioner was not deleted was re-issued so as to show that his name was there. But Shri Surrender Kishore who succeeded Shri M. K. Kaw thereafter passed the order which is an enclosure to the Annexure F. By this order he held that Shri Gokal Chand was not eligible to be registered as voter in the electoral roll of Panchayat Samiti and he directed that his name should not appear in the electoral rolls so prepared for the purpose. He further authorised the Block Development Officer, Kandaghat, to delete the name of Shri Gokal Chand from all the copies of the rolls so prepared and to authenticate all the copies with immediate effect. Section 63(a) of the Act reads as:

63. The Panchayat Samiti shall consist of the following members:

(a) primary members to be elected by secret ballot in the manner prescribed by the persons as provided hereunder:

Twenty members from the Block, by the Panches, Up-Pradhans and Pradhans of Gram Panchayats in the block from amongst themselves.

The Petitioner wanted to contest for the primary membership of the Panchayat Samiti. He alleged himself to be a Panch. u/s 64 of the Act are given the disqualifications of candidates for election as primary members. A bare perusal of the section would show that the Petitioner does not suffer from any disqualification as mentioned u/s 64 of the Act. The Petitioner admittedly had been suspended vide order, dated 26th December, 1973, from the office of the Pradhan of the Gram Panchayat as also from the office of the Chairman of the Block Samiti. The suspension as contemplated u/s 54 of the Act does not amount to any disqualification for election as a primary member of the Panchayat Samiti and it is also manifest that although he had been suspended under the provisions of Sections 54(1) of the Act from the office of the Pradhan of the earlier Gram

Panchayat vide order (Annexure A), dated the 29th of May, 1971, yet notwithstanding this order he was permitted to contest for the membership of the subsequent Gram Panchayat for which elections were held in October/November, 1972. So this also demonstrates that this suspension was not a disqualification for election to the office of the membership of the Gram Panchayat and much less to the election for primary membership of the Panchayat Samiti.

9. Order, dated 26th December, 1973, (Annexure B) indicates that the Petitioner had been suspended from working as a Pradhan but it no where states that he shall stand suspended as a Panch also. If he has ceased to be a Pradhan that will not automatically amount to this that he had ceased to be a Panch also. u/s 9(1) of the Act every Sabha shall, in the prescribed manner, elect from amongst its members an executive committee and according to Section 9(2) the members of the executive committee of each Gram Sabha shall elect from amongst themselves the Chairman and Vice-Chairman of the executive committee by majority vote in the prescribed manner and such Chairman and Vice-Chairman shall also be called the Pradhan and Up-Pradhan respectively of the executive committee which shall be styled as the Gram Panchayat, the members thereof to be called Panches. Therefore, from this what follows is that first the Gram Sabha elects an executive committee from amongst its members and those members of the executive committee shall be called the Panches and those Panches shall elect from amongst themselves the Chairman and the Vice-Chairman of the executive committee by majority vote and such Chairman and Vice-Chairman shall also be called the Pradhan and Up-Pradhan respectively. Hence the Petitioner who was first elected as a Panch and thereafter elected as a Pradhan did not cease to be a Panch after he had been suspended or removed from the Office of the Pradhan. It is just like the office of a Speaker, who on his resignation or removal from the office of " Speakership will still continue to be the member of the Legislature. It can also be equated to the office of the Minister or the Chief Minister. They are first elected as Members of the Legislature. The leader is to be elected by the majority party and he would thereafter select Ministers out of his party elected to the Legislature. Therefore, these two offices of Pradhan and Panch are quite distinct. The Pradhan has got some special functions to perform. Therefore, if he is suspended from the office of the Pradhan he will only cease to function as a Pra-, dhan and not that he will also cease to be a Panch. The learned Counsel for the Respondents has drawn my attention to the definition of Panch as given u/s 3(s) of the Act. It means a member of Gram Panchayat elected or appointed under the Act and includes a Pradhan or Up-Pradhan. There is no doubt that a Pradhan is primarily a Panch and it is only then that he can seek election to the office of the Pradhan. But it does not follow that on the suspension of the Pradhan he ceases to be a Panch also. Therefore, in my opinion, the order of suspension of the Petitioner as a Pradhan does not amount to any disqualification as envisaged u/s 64 of the Act for elections to the primary membership of the Panchayat Samiti. He is a Panch

quite all right and, therefore, he has got the right to contest the elections and, therefore, I decide this point in favour of the Petitioner.

Point M. 2:

10. The Petitioner's name was deleted from the voters list for election to the primary membership of the Panchayat Samiti and the Petitioner admittedly made a representation to Mr. M.K. Kaw, the then Deputy Commissioner, Solan, who vide Annexure X, allowed his representation and ordered the inclusion of his name in the electoral roll. It was thereafter that Annexure L which indicates the date as 1st July, 1974, was circulated indicating the name of the Petitioner at S. No. 1. Shri Surrender Kishore who succeeded Mr. M. K. Kaw on the 2nd July, 1974, passed a fresh order enclosure to Annexure F ordering the deletion of the name of the Petitioner as he stood suspended which in other words amounted to review of the order of his predecessor. Rule 4 of the Samitis Rules provides for the preparation of the electoral rolls and it says that the same shall be prepared in the Form-I under the directions of the Deputy Commissioner and the electoral roll so prepared shall be authenticated by the Deputy Commissioner or any other officer appointed by him in writing in this behalf. Rule 4 and Form-I do not contemplate any review of the electoral roll once prepared and authenticated. There is no provision either in the Act or in the rules authorising the successor to review any order passed by his predecessor about the preparation of the electoral rolls. The learned Counsel for the Petitioner submitted that the earlier electoral roll was not prepared in accordance with law nor the same was authenticated and Shri Surrender Kishore got the same prepared in accordance with law and authenticated the same. I do not find anything wrong in the earlier electoral roll. It is not shown how the same was incorrect and contrary to law. The same had been circulated after it had been prepared and authenticated by Mr. M.K. Kaw to the Election Tehsildars and the Naib-Tehsildars, and, I am of the view that Shri Surrender Kishore had no authority under the rules or under the Act to review the order passed by his predecessor. In this behalf I may quote a Full Bench decision of five Judges of the Punjab High Court, Deep Chand and Ors. v. Addl. Director, Consolidation of Holdings, Punjab and Anr. AIR 1964 P&H 249 wherein it has been held:

The broad and unqualified proposition that Courts are empowered to recall or review their earlier erroneous and unjust orders whenever it is discovered that the error was due to their own mistaken view on the merits of the controversy cannot be accepted as correct. So also judicial and quasi-judicial tribunals do not possess in this respect, any wider or more extensive inherent power than the Courts.

Section 151, CPC undoubtedly reserves to the Court the inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court but this power, though undefined, and rightly so, cannot be utilised for permitting a judicial or a quasi-judicial tribunal to vary and alter any order passed by it on the ground that it is later considered to be erroneous

on the merits.

Therefore, this order (Annexure X) even if it had wrongly been passed by Mr. M. K. Kaw, who was the Deputy Commissioner, could not be reviewed by this successor. Hence this submission of the Petitioner that the previous electoral roll was not in accordance with law and Shri Surrender Kishore got it prepared so as to bring it in accordance with law cannot be accepted as correct. Hence the point is decided in favour of the Petitioner.

Point No. 3:

11. Annexure X was admittedly in favour of the Petitioner and accordingly his name was indicated in the subsequent electoral roll circulated on 1st July, 1974, (Annexure L). Shri Surrender Kishore got the name of the Petitioner deleted. The Petitioner was not afforded an opportunity and this action was ordered by Shri Surrender Kishore behind the back of the Petitioner and without any notice to him. The Petitioner has made specific averment about this and there is no denial about this that no notice was given to the Petitioner before passing the order, enclosure to Annexure F, dated 2nd July, 1974, and in his representation (Annexure H) also he has taken up this ground that no opportunity was given to him and, therefore, it follows that it is admitted that no opportunity was afforded to him and this order, therefore, is bad and the order of review is without authority and without notice.

12. The learned Advocate-General repeated the same argument that since the electoral roll prepared earlier was not in accordance with law nor was it authenticated, so it was not a genuine electoral roll and Shri Surrender Kishore got the correct electoral roll prepared and authenticated. According to him there was no question of any opportunity to be afforded to the Petitioner nor was there any question of review of the order of his predecessor. But this submission is barren of substance. The principle of natural justice requires that nobody should be condemned unheard. The Annexure X was in favour of the Petitioner, therefore, the same could not be nullified by ordering the deletion of name of the Petitioner from the electoral roll without any opportunity being afforded to him. Hence this point also succeeds.

13. The net result is that the petition succeeds and the order, dated 5th July, 1974, passed by the Director of Elections upholding the order of the Respondent No. 3 and the orders, dated 2nd July, 1974, 4th July, 1974 and 6th July, 1974 passed by the Respondent No. 3 ordering the deletion of the name of the Petitioner are hereby struck down as illegal and it is directed that the name of the Petitioner shall be included in the electoral roll of Syri Constituency for the Panchayat Samiti Elections. No orders as to costs.