
(1970) 05 P&H CK 0035
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 856 of 1970

Gurbaksh Singh

APPELLANT

Vs

The State Of Punjab and others

RESPONDENT

Date of Decision : 05-05-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1970) 05 P&H CK 0035

Hon'ble Judges : A.D. Koshal, J

Bench : Single Bench

Advocate : M.S. Panmu, for the Appellant; A.S. Bains, Deputy Advocate-General Punjab, for the Respondent

Judgement

A.D. Koshal, J.—In this petition under Articles 226 and 227 of the Constitution of India the Petitioner challenges the order dated the 19th of March, 1970 (Annexure "E" to the petition) passed by the Director of Panchayats, Punjab, Chandigarh (Respondent No. 2), which may be quoted in extenso with advantage:

Some residents of village Kuraiwala, Tehsil Muktsar, District Ferozepur, Gurmukh Singh etc. complained against S. Gurbax Singh Sarpanch, Gram Panchayat, Kuraiwala. These complaints were got investigated and Sh. Gurbax Singh was served with a show-cause notice. His reply to the show-cause notice was perused and on 12th March, 1970 he and Shri Gurmukh Singh etc. were personally heard. Panchayat records were also seen on that date.

That after enquiry, I am satisfied, the following charges stand established against S. Gurbax Singh Sarpanch Panchayat village Kuraiwala, Tehsil Muktsar, District Ferozepur.

1. The Sarpanch did not give the Panchayat records to the District and Block authorities for inspection for the last one year.
2. He kept with him the following big amounts of Panchayat funds and from Shamilat land against the provisions of Rule 23 of 1965 Gram Panchayat Rules

and not only used this amount for his personal use but also committed temporary embezzlement besides breach of trust with all the members:

Therefore his continuance in the office of the Sarpanch is not in interest of the public.

Therefore in exercise of the power conferred upon me by Section 102(2) of the Gram Panchayat Act, 1952, read with Government Punjab Notification No. 11508LB-53/10558 dated 6th May, 1954, I. P.S. Multani, Director of Panchayats, Punjab, hereby remove Sh. Gurbax Singh Sarpanch. Panchayat village Kuraiwala, Tehsil Muktsar District Ferozepur from the office of Sarpanch and further u/s 102(3) of the Act as amended disqualify him from seeking election to a Panchayat for a period of three years. This order will take effect from the date of issue.

(2) I also order that the Block Development and Panchayat Officer, Kot(sic) bhai, should assess u/s 105 of the Punjab Gram Panchayat Act, 1952 the loss to the Panchayat resulting from the unauthorised keeping of money by the Sarpanch with him and effect recovery from him.

2. The Petitioner was elected to the office of Sarpanch of the Gram Panchayat, Kuraiwala, for the second time in December, 1963. In August 1969, one Gurmukh Singh of the said village, who is stated by the Petitioner to be an active political supporter of Shri Parkash Singh Badal, the then Minister for Development and Panchayats, Punjab Government (Respondent No. 3), presented to the latter an application (annexure "A"), in which the Petitioner was charged with:

(i) retaining with himself an amount of Rs. 77,000/- received by him on behalf of the Gram Panchayat on account of rent of land for a period of six years from 1963 to 1969.,

(ii) having embezzled a lot of money from the funds meant for executing certain works undertaken by the Panchayat.

(iii) misappropriating chulha tax and Tokari tax collected by him and

(iv) misappropriating money received by him as a result of auction of land belonging to the Kuraiwala Primary School.

The Chief Minister deputed Shri Gopal, Singh Assistant Director of Panchayats, Patiala Division, to conduct an enquiry into the application, a copy of which was despatched by the latter to the Petitioner along with a covering notice requiring him to be present at the enquiry, which was to be held at 12.00/13.00 hours on the 15th of October, 1969, at Kuraiwala. The Petitioner presented himself at the appointed time and place when and where Shri Gopal Singh afore-mentioned held some sort of an enquiry the details of which are not forthcoming as no record of it was admittedly prepared. Thereafter a report was submitted in the matter by Shri Gopal Singh to Respondent No. 2, who served on the Petitioner a notice (Annexure "B") requiring him to show cause as to why he should not be

removed from the office of Sarpanch in view of two charges having been found proved by Shri Gopal Singh against him. The details of those charges as stated in the show-cause notice were the same as those of the two charges which were mentioned in annexure "E" as the cause of the Petitioner's removal from Sarpanchship. A copy of the enquiry report was made available to the Petitioner at his request and then he submitted his reply to the show-cause notice (annexure "B"). This was followed by the impugned order which is attacked on the following grounds:

(a) It is not what is now generally called a "speaking order" inasmuch as it gives no reasons for the Director coming to the conclusion that the two charges in question were proved against the Petitioner.

(b) before it was passed the Petitioner was not given any reasonable opportunity to defend himself; and

(c) it was passed mala fide at the instance of Respondent No. 3 who belongs to a party policitically opposed to that which the Petitioner actively supported.

3. This petition must succeed as I find that grounds (a) and (b) stand fully substantiated. It is not disputed before me that an order u/s 102 of the Punjab Gram Panchayat Act removing a person from the office of Sarpanch, such as the impugned order is, is a quasi-judicial order and that in view of the dictum in *The State of Punjab, v. Bhagat Ram Patanga* (1969) 71 P.L.R. 625, such an order could not be regarded as legally valid unless the authority passing it stated the reasons for the decision taken by it. So the first question for determination is as to whether the impugned order states the reasons on which it is based. According to the learned Deputy Advocate General the order gives such reasons inasmuch as it states that charges found proved against the Petitioner. This view, however is wholly opposed to the dictum of the Full Bench in *The State of Punjab v. Bhagat Ram Patanga* (Supra). It was the duty of Respondent No. 2 not merely to state the charges found proved but also the material on the basis of which and the reasons for which he held them established. As pointed out by the Full Bench, he was expected to give the "process of reasoning" which brought him to the conclusion that the Petitioner was not fit to continue to hold the office of Sarpanch. A bare perusal of the impugned order shows that it does not mention the charges which were levelled against the Petitioner in the complaint made by Gurbax Singh, the stand taken by the Petitioner, the evidence on which Shri Gopal Singh based his report, the fact that Respondent No. 3 agreed with the findings arrived at by Shri Gopal Singh and the reasons for his doing so. A mere statement of the charges found proved by Shri Gopal Singh can hardly be said to constitute the reasons for which Respondent No. 2 himself was taking the impugned action and his order, therefore, must, be quashed on that ground alone.

4. With regard to ground (b) I may say at once that the absence of a record of the proceedings held by Shri Gopal Singh itself goes a long way to indicate that

no witnesses were examined by him or, therefore, allowed to be cross-examined by the Petitioner. Further, it is admitted on all hands that no charge-sheet was served on the Petitioner. All that is claimed in this behalf is that a copy of the application made by Shri Gurbax Singh to Respondent No 3 was sent to the Petitioner by post on the 9/10th of October, 1939. It is admitted that that copy reached the Petitioner no earlier than the 15th of October, 1969, and it is his case that he got it at about 4.30 P.M. by when Shri Gopal Singh had already visited the place appointed for the enquiry and gone away without holding any. Be that as it may, details of the charges as given in the application were so vague that their communication to the Petitioner could not be said to have given him notice of the case he was called upon to meet. The amounts embezzled temporarily or otherwise from time to time were not mentioned. The properties or works involved were also referred to without reference to their specific description. In any case, the details appearing in annexure "B" of the amounts embezzled did not find a place in the application and then the first charge of which he was found guilty was not a part of that application at all, vegurly or otherwise. It is further clear that no evidence was recorded by Sh. Gopal Singh who appears to have chalked out a strange sort of procedure, on his own, for holding the enquiry. How then can it be said that a reasonable opportunity for defending himself was given to the Petitioner ? As held by a Full Bench of this Court in Ujagar Singh v. State of Punjab (2) the bare minimums of an enquiry u/ s 102, of the Punjab Gram Panchayat Act are:

- (a) that clear and definite charge or charges must be given or stated to the delinquent,
- (b) that the material forming the basis of the charge or charges must be made known to him, and
- (c) that he must be given every opportunity to meet the charges and to defend himself.

The enquiry in the present case does not fulfil any of these requirements and must, therefore, be regarded as a void proceeding.

5. In view of what I have stated above, ground (c) need not be gone into. The impugned order having been found to be defective is quashed. The Petitioner shall have his costs. Counsel's fee Rs. 200/-