
(1974) 09 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 162 of 1972

Hari Singh

APPELLANT

Vs

Director of Panchayats, Punjab and Others

RESPONDENT

Date of Decision : 13-09-1974

Acts Referred:

Punjab Gram Panchayat Act, 1952 — Section 102(2), 95(2), 95(3)

Citation : AIR 1975 P&H 36 : (1976) 1 ILR (P&H) 753

Hon'ble Judges : S.S. Sandhawalia, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : J.M. Sethi, for the Appellant; I.S. Tiwana, Dy. Advocate-General and C.P. Sapra, for Tirath Singh, for the Respondent

Final Decision : Dismissed

Judgement

Bal Raj Tuli, J.—The petitioner was the elected Sarpanch of the Gram Panchayat. Khanal Kalan. District Sangrur. A complaint was made against him by Gurbachan Sinsh and others through an application dated March 15, 1970, wherein various allegations of embezzlement of Panchayat funds were levelled against him. The Deputy Commissioner, Sangrur, forwarded that complaint to the Sub-Divisional Officer (Civil). Sunam, for holding a fact-finding enquiry. That officer submitted his report to the Deputy Commissioner on September 8, 1971, which was forwarded by the Deputy Commissioner to the Director of Panchayats, Punjab, with his letter dated November 14, 1971. In that letter, it was stated that the Sarpanch had misappropriated the Gram Panchayat Funds and had leased out the Shamilat land at a low rent according to his own will. The permission to proceed against him u/s 102(2) of the Gram Panchayat Act 1952 (hereinafter called the "Act") was sought. The Director of Panchayats replied to that letter by memorandum dated November 30, 1971. the English rendering of which reads as under:--

"Subject: Complaint against the Sarpanch, Gram Panchayat of Khanal Kalan. Your letter No, 2621/DA. dated November 14, 1971. has been considered.

2. You are hereby permitted to make enquiry u/s 102 (2) of the Punjab Gram Panchayat Act, 1952, against Shri Hari Singh Sarpanch, Gram Panchayat, Khanal, Sunam Block, District Sangrur. personally or through some officer whom you may depute for this purpose. In case you feel, during the enquiry, that proceedings u/s 102 (1) of the said Act are required to be taken against the Sarpanch. you can take the same.

3. Special attention be given to the following at the time of enquiry: --

(a) a clear and definite charge sheet shall be given to the delinquent:

(b) the delinquent shall be informed of the material on the basis of which the allegations have been levelled:

(c) every opportunity shall be given to the delinquent in order to enable him to defend the allegations levelled against him in every respect, and

(d) opportunity for cross-examination shall also be given to both the parties. Even if the enquiry officer is required to do so in order to draw conclusion by going deep into the matter, it shall be done accordingly."

2. After receipt of this letter, the Deputy Commissioner, Sangrur, issued a charge sheet to the petitioner on December 20, 1971. detailing the facts found against him by the Sub-Divisional Officer. The petitioner was told that the charges mentioned showed that he had misused his powers and had embezzled Panchayat funds. Consequently, he was suspended with immediate effect and ordered not to take part in the Panchayat work any longer. He also appointed the District Public Grievances Officer, Sangrur, as the Enquiry Officer to conduct the enquiry into the matter. The petitioner filed the present petition challenging the order of the Deputy Commissioner appointing the Enquiry Officer on the ground that he had no jurisdiction to do so. This petition came UP for hearing before my learned brother. Sandhawalia, J., who recommended to the Hon'ble the Chief Justice to constitute a Division Bench to hear this petition. Consequently, this petition has been placed for decision before us.

3. The first submission made by the learned counsel for the petitioner is that the Director of Panchayats, by his letter dated November 30, 1971, set out above, only permitted the Deputy Commissioner to make an enquiry u/s 102 (2) of the Act instead of ordering the enquiry himself to be conducted by a particular officer. His further submission is that the Director of Panchayats, himself being a delegate of the Government, could not further delegate his powers to decide about the enquiry being held to the Deputy Commissioner. We find no merit in this submission as the language of the letter clearly shows that the Director of Panchayats on the basis of the report of the Sub Divisional Officer, which was sent to him by the Deputy Commissioner along with his letter dated November 14, 1971, decided that it was a case which required an enquiry to be held. He accordingly directed the Deputy Commissioner to hold the enquiry either by himself or by appointing some other officer. The decision to hold the enquiry was

thus of the Director of Panchayats and not of the Deputy Commissioner. This submission is consequently repelled,

4. The learned counsel has then argued that the Director of Panchayats exercises the delegated power of the Government u/s 102 (2) of the Act and he cannot delegate that power further to any other officer. It is submitted that the Enquiry Officer should have been appointed by the Director of Panchayats himself and he should not have left the choice of the Enquiry Officer to the Deputy Commissioner. We again do not find any force in this submission. In paragraph 3 of the letter, the Director of Panchayats indicated the mode of enquiry that was to be followed and left it to the Deputy Commissioner either to hold the enquiry himself or to entrust it to some other officer. It is not necessary that the Director of Panchayats should himself nominate the Enquiry Officer u/s 102 (2) of the Act because the Enquiry Officer has only to hold the enquiry and to forward the result of that enquiry to the Director of Panchayats, who has thereafter to pass the necessary orders u/s 102 (2) of the Act. The Enquiry Officer has not to pass any quasi-judicial order. This submission is also repelled.

5. The matter is not *res integra* as it has already been considered in some Judgments of this Court In *Madan Lal Karamchand Vs. Director of Panchayat, Pandit J.*, held :--

"* * * Section 102 (2) clearly lays down that the "Government may after such enquiry as it may deem fit. remove any Panch" on any of the grounds mentioned in that sub-section. The nature and the manner of the enquiry had thus to be determined by the Government. * * * * *"

In that case, Madan Lal was removed from the office of Sarpanch of Gram Panchayat, Pansara. Tahsil Jagadhri. District Ambala, under the provisions of Section 102 (2) (a), (d) and (e) of the Act on the ground of his conviction by a Magistrate. A notice was issued to him after his conviction to show cause why action should not be taken against him u/s 102 (2) and (3) of the Act. Madan Lal submitted his representations which were duly considered and scrutinised before his removal was ordered. He challenged that order on various grounds, inter alia, that no enquiry was made by the Government, as contemplated by Section 102 (2) of the Act, before the impugned order was passed, and no opportunity whatsoever was given to the petitioner to explain his position before his removal was ordered. The learned Judge held that the nature and the manner of the enquiry were to be determined by the Government and in view of the judgment of the Magistrate and that of the learned Sessions Judge on appeal, there hardly appeared to be any need for a further enquiry.

6. A Division Bench of this Court in *Piyare Lal v. The Deputy Commissioner, Hoshiarpur*. ILR (1966) P&H 20, held:--

"There is nothing in the section which debars the Deputy Commissioner to have an enquiry held by another officer or authority."

In that case, it was submitted that the Deputy Commissioner could pass an order suspending the Sarpanch "during the course of the enquiry" which meant that at all stages the enquiry must be pending before the Deputy Commissioner to give him power under that sub-section to make an order of suspension and that power could not be delegated to any other officer in view of the proviso to Subsection (6) of Section 95 of the Act. The Bench held that it was not necessary that the enquiry should be pending before the Deputy Commissioner; he could have the enquiry held by another officer or authority and during the pendency of that enquiry, he could pass the order of suspension.

7. *Din Daval v. The State of Punjab*. ILR (1967) P & H 827 is a decision of another Division Bench in which the Sarpanch challenged the order of his removal on the ground that the Director, to whom the Government had delegated its authority for removal, could not delegate his power to hold an enquiry to the Sub Divisional Officer. This contention was negated by the learned Single Judge against whose decision an appeal under clause 10 of the Letters Patent was before the Division Bench. The same plea was put forth and it was repelled with the following observations : --

"The argument is that according to Section 102 (2), a Panch or a Sarpanch can only be removed by the Government after such inquiry as it deems fit. This inquiry has to be either by the Government or by the Deputy Commissioner because under Sub-section (1) of Section 95, the Government has delegated the power of removal to the Deputy Commissioner. It is maintained that the Deputy Commissioner could not further delegate that power to the Sub Divisional Officer, who held the inquiry. In view of Section 95 (6), this argument is wholly futile. The manner of inquiry has nothing to do with the power of removal excepting to this extent that the removing authority by inquiry satisfies its mind as to the grounds on which the removal would be justified in law. But there is nothing in Section 102 (2) to warrant the suggestion that the inquiry must be held by the Government or by its delegate. We see nothing wrong in the Government or its delegate getting the matter inquired from any agency that the Government or the delegate considers necessary."

8. We have not been shown any notification under which the power of removal u/s 102 (2) of the Act was delegated by the State Government to the Deputy Commissioner. The power had been delegated to the Director of Panchayats by notification No. 11508-LB-53/10558, dated May 6, 1954, published in the Punjab Government Gazette dated May 14, 1954, which reads as under:--

"In exercise of the powers conferred by Sub-section (1) of Section 95 of the Punjab Gram Panchayat Act, 1952 (Punjab Act No. IV of 1953), the Governor of Punjab is pleased to delegate to the Director of Panchayats, Punjab the powers of the State Government exercisable under Sub-sections (2) and (3) of Section 102 of the said Act."

There was thus some misapprehension about the power u/s 102 (2) of the Act

having been delegated to the Deputy Commissioner.

9. A Full Bench of this Court in Ujagar Singh Vs. State of Punjab and Others, held: --

"* * * an enquiry under Sub-section (2) of Section 102 of the Puniab Gram Panchayat Act, being a statutory requirement, must be there before a Panch or a Sarpanch can be removed, though obviously, in the terms of the sub-section, the nature and form of the enquiry, having regard to the circumstances of a particular case, has entirely been left to the discretion of the Government. The bare minimums of an enquiry 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. Even though under Sub-section (2) of Section 102 of the Act, the nature and scope of the enquiry is left entirely to the discretion of the Government, it still cannot do away with those bare minimum requirements of an enquiry." It was further held:--

"* * " Sub-sections (1) and (2) of Section 102 of the Act have to be read together, in which case the plain meaning of the same leads to only one conclusion, and no other, that when enquiry is ordered by the Government under Sub-section (2), it is during the course of that enquiry that the Deputy Commissioner may exercise his power of suspension of Panch or a Sarpanch under Sub-section (1) and that, if there is no enquiry ordered by the Government under Sub-section (2). occasion for the exercise of the power under Sub-section (1) by the Deputy Commissioner does not arise.""

10. All the minimum requirements of an enquiry enumerated in Ujagar Singh's case. ILR (1969) P&H 59 :AIR 1970 Puni 193 (FB) (supra) were stressed by the Director of Panchayats in his letter dated November 30, 1971, for observance by the Enquiry Officer. The order for the suspension of the petitioner was passed during the pendency of the enquiry which had been ordered by the Director of Panchayats u/s 102 (2) of the Act by means of his letter dated November 30, 1971. It was not necessary for the Deputy Commissioner to issue notice to the petitioner before passing the order of suspension to show cause against the proposed order. The charge sheet served on the petitioner by the Deputy Commissioner and his order appointing the District Public Grievances Officer as an Enquiry Officer to hold the enquiry into those charges cannot be said to be without jurisdiction. There is thus no merit] in this petition which is dismissed with costs in favour of respondents 1 to 5. Respondent No. 6 will bear his own costs. Counsel's fee Rs. 100/-.

S. S. Sandhawalia, J.

I agree.