
(1999) 12 P&H CK 0124
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5707 of 1999

Hawa Singh, Sarpanch

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 06-12-1999

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 51(3)(5)

Citation : (2000) 124 PLR 643 : (2000) 1 RCR(Civil) 287

Hon'ble Judges : Mehtab S. Gill, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Rajender Paul Chookar, for the Appellant; Jaswant Singh, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—The petitioner has prayed for quashing of the orders dated 29.10.1998 and 12/19.4.1999 passed by the Deputy Commissioner, Panipat (respondent No. 3) and the Financial Commissioner and Secretary to Government of Haryana, Development and Panchayat Department (respondent No. 2) respectively under Sections 51(3) and 51(5) of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as "the Act").

2. The petitioner was elected as Sarpanch of Gram Panchayat, Behrampur, Tehsil Bapoli, District Panipat in 1994. On receipt of the complaint made by respondent No. 4 and some other Panches. respondent No. 3 asked the Assistant Collector, Ist Grade, Panipat to make a preliminary enquiry into the allegations levelled against the petitioner. After considering the report of preliminary enquiry, respondent No. 3 issued notice dated 20.4.1998 to the petitioner requiring him to show cause against the initiation of regular enquiry and in view of the adverse findings recorded in the regular enquiry, he passed order dated 29.10.1998 u/s 5(3) removing the petitioner from the post of Sarpanch. The appeal preferred by him u/s 51(5) of the Act has been rejected by respondent No. 2.

3. The petitioner has challenged the legality and correctness of the impugned orders on various grounds including the one of violation of the principles of natural justice. He has specifically averred that the appellate order is a non-speaking order and as such, it is liable to be quashed.

4. In the written statement filed on behalf of respondents No. 1 to 3, an attempt has been made to justify the removal of the petitioner on the ground that in the regular enquiry held under the order of respondent No. 3 he has been found guilty on various counts.

5. We have heard learned counsel for the parties. In our opinion, the order passed by respondent No. 2 dismissing the petitioner's appeal deserves to be quashed on the ground of violation of the rules of natural justice. It cannot be disputed that while deciding the appeal filed by the petitioner against the order of removal, respondent No. 2 was discharging a quasi-judicial function and, therefore, he was bound to comply with the basic rules of natural justice which required given of opportunity of hearing to the petitioner and the representatives of the department, consideration of the submissions made on behalf of the parties along with the record of enquiry and also to give cogent reasons for acceptance or rejection of the point raised by the petitioner. In other words, respondent No. 2 was under an obligation to comply with not only the rule of Audi alteram partem pattern but also the requirement of passing a speaking order. The necessity of recording of reasons by the appellate and the revisional authorities has been emphasised by the Supreme Court in various decisions.

6. In *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, , Constitution Bench of the Supreme Court, while dealing with an order passed by the Central Government in exercise of its appellate powers u/s 111(3) of the Companies Act, 1956 in the matter of refusal by a company to register the transfer of shares, has held that there was no proper trial of the appeals before the Central Government since no reasons had been given in support of the order passed by the Deputy Secretary who heard the appeals. In that case it has been observed.

"If the Central Government acts as a tribunal exercising judicial powers and the exercise of that power is subject to the jurisdiction of this Court under Article 136 of the Constitution we fail to see how the power of this Court can be effectively, exercised if reasons are not given by the Central Government in support of its order."

7. In *Travancore Rayon Ltd. Vs. Union of India (UOI)*, , the requirement of recording of reasons and communication thereof has been highlighted in the following words:-

"The Court insists upon disclosure of reasons in support of the order on two grounds : one, that the party aggrieved in a proceedings before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the order, that the

obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

8. In Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, , an order passed by the District Magistrate cancelling the licence granted under the U.P. Sugar Dealers Licensing Order. 1962 without giving reasons and the appellate order passed by the State Government were set aside by the Supreme Court with the following observations:-

"recording of reasons in support of a decision on a disputed claim by a quasi - judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just."

9. In Woolcombers of India Ltd. Vs. Woolcombers Workers Union and Another, , the Apex Court quashed the award passed by the Tribunal on the ground of absence of reasons and observed :-

"The giving of reasons in support of their conclusions by judicial and quasi - judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious, unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well-known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decision of judicial and quasi-judicial authorities to this Court by special leave granted under Article 136. A judgment which does not disclose the reasons will be of little assistance to the Court."

10. In The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, , the Supreme Court was dealing with an appeal against the order of the Central Government on a revision application under the Sea Customs Act, 1878. The Apex Court has laid down :

"It is now settled law that where an authority makes an order in exercise of a quasi-judicial order must be supported by reason."

"If courts of law are to be replaced by administrative authorities and tribunals, as

indeed, in some kinds of cases, with the proliferation of Administrative Law they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals, exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

11. We shall now consider whether the order passed by respondent No. 2 satisfies the requirement of a speaking order. An analysis of that order shows that in the first paragraph of the order, respondent No. 2 has taken note of the factum of filing of appeal by the petitioner. In paragraphs 2 and 3, he has noticed the arguments urged on behalf of the parties and in paragraph 4, he has recorded the dismissal of the appeal by using stock phrases. This is clearly borne out from the following extracts of the order passed by respondent No. 2:-

"Opening his arguments the learned counsel for the appellant argued that for purchasing these lights, quotations were demanded from various electrical goods supplying shops. He further argued that the report submitted by the Sub Divisional Officer (N) does not speak out or prove the guilt of the appellant. He continued to argue that the Panchayat passed a resolution for sinking a tube-well and to purchase tube-well quotations were taken: that the other accessories for fitting the tube-wells were purchased on 30.5.96 for Rs. 3169.10, that all the items were purchased in advance as per the resolution : that Sub Division Officer has given the assessment work for the bricks used to a technical person and the person, Junior Engineer found every thing intact : that the complainant himself stated before the authority that six tractors worked for total 81 hours at the rate of 70 per hours. Concluding his arguments he prayed for acceptance of this appeal.

In reply the learned counsel for the respondent No. 1 argued that the charges relate to bungling amounting to embezzlement and thus in view of the regular enquiry report the impugned order is perfectly legal. Concluding his reply he prayed for dismissal of this appeal with costs.

xx xx xx xx xx I have heard both the learned counsel at length and gone through the record. The impugned order has been passed pursuant to regular enquiry report based upon perusal of the entire relevant record, therefore, the argument regarding quotation is not enough to rebut the regular enquiry report based upon perusal of the entire relevant record. In view of the above mentioned discussion. I find no infirmity in the impugned order."

12. In our opinion, the appellate order does not contain anything except a bald conclusion that the order passed by respondent No. 3 does not suffer from any infirmity. The appellate authority has neither examined the record of enquiry for satisfying itself about the fairness of enquiry held against the petitioner nor the justification of his removal from the post of Sarpanch. It has also failed to consider any of the points urged by his Advocate during the course of hearing. The petitioner's assertion that complaint filed by respondent No. 4 was tainted with male fides because he was declared unauthorised occupant at the instance of the gram panchayat headed by him has also been ignored by respondent No. 2. All this is sufficient to draw an inference that the appellate authority did not apply its mind to the relevant considerations and dismissed the appeal without assigned cogent reasons for not dealing with the contentions urged on behalf of the petitioner. As a logical corollary, it must be held that the appellate order is not a speaking order and it is liable to be nullified on that ground.

13. For the reasons mentioned above, the writ petition is allowed. Order Annexure-P.6 dated 12/19.4.1999 passed by respondent No. 2 is declared illegal and quashed, Respondent No. 2 shall decide the appeal afresh after giving opportunity of hearing to the petitioner and representatives of the department.