

(2020) 08 SHI CK 0245

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2398 Of 2020

Janglo Devi And Others

APPELLANT

Vs

State Of Himachal Pradesh And Another

RESPONDENT

Date of Decision : 07-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 243, 243G
Himachal Pradesh Panchayati Raj (Finance, Budget, Accounts, Audit, Works, Taxation And Allowances) Rules, 2002 — Rule 44 (4)
Himachal Pradesh Panchayati Raj Act, 1994 — Section 145, 145(2), 145(3), 151

Citation : (2020) 08 SHI CK 0245

Hon'ble Judges : L. Narayana Swamy, CJ;Anoop Chitkara, J

Bench : Division Bench

Advocate : Bipin C. Negi, Yashwardhan Chauhan, Ashok Sharma, Adarsh K. Sharma, Ritta Goswami

Final Decision : Disposed Of

Judgement

L. Narayana Swamy, CJ

1. The contention of the petitioner is that she had contested the elections of Gram Panchayat Sharli, Tehsil Kamraoo, District Sirmour and was elected

as Pradhan in the year 2015. She is stated to have been discharging her duties as Pradhan of the Panchayat with utmost sincerity and dedication

without giving any room for any mismanagement or misutilization, however, a false complaint was made against her by one Shri Jagat Singh in the

year 2018 regarding misuse of funds. The said complaint had been gone into by the authorities and after holding a detailed inquiry, it was held that

there had been no misappropriation or misutilization of funds and the petitioner was absolved of the charges. Thereafter, the rival group, which was

defeated from the petitioner, indulged in making one more complaint against her

in the year 2020. On receipt of the said complaint, the respondents issued a Show Cause Notice dated 8th June, 2020, whereby the petitioner was directed to file the reply. On receipt of the Show Cause Notice, the petitioner has submitted her reply and pleaded therein to drop the proceedings since the petitioner had not committed any misappropriation or misutilization of funds and that the complaint made by the rival group is false, baseless and has been actuated with malice due to animosity. The respondents, without considering the reply filed by the petitioner, issued the suspension order on 8th July, 2020 (Annexure PÂ1), passed by District Collector Sirmour, District Sirmour, placing the petitioner under suspension. The said order of suspension, dated 8th July, 2020 (Annexure PÂ1) is impugned herein and has been sought to be set aside.

2. The first ground of attack on behalf of the petitioner is that the allegations made against the petitioner pertain to the year 2017 and the work carried out during that period was the subject matter of the earlier inquiry held in the year 2018, wherein the petitioner already stood absolved. Now, the respondents have initiated the inquiry on the same grounds, which is arbitrary and cannot be permitted to sustain.

3. The second ground of attack of the petitioner is that the impugned order of suspension has been passed without application of mind for the reason that the respondents have not assigned any reason and have passed the impugned order of suspension without considering the reply filed by the petitioner to the Show Cause Notice. When reply has been filed to the Show Cause Notice, it was incumbent upon the respondents to assign the reasons for not accepting the reply/submissions made by the petitioner.

4. Learned Senior Counsel for the petitioner further argued that the petitioner got elected as Pradhan of the Gram Panchayat in the year 2015 and her term as Pradhan is going to be over by the end of this year, i.e. within three months, and keeping in view this fact also, placing the petitioner under suspension is not warranted.

5. The next bone of contention of the learned Senior Counsel for the petitioner is that the prescribed Authority, while exercising the powers under Section 145 (2) of the Himachal Pradesh Panchayati Raj Act, 1994 (hereinafter referred to as 'H.P. Panchayati Raj Act'), which could be pressed into service only in case of misappropriation, misutilization or embezzlement of

Panchayat funds on the inspection or an audit report, can keep the person under suspension. In the instant case, the petitioner has not been served or supplied with any inspection or audit report with respect to misappropriation, misutilization or embezzlement of Panchayat funds, and so far as the allegations made against the petitioner in the complaint are concerned, in the year 2017, after floating the tender notification, the work was awarded to the lowest bidder amongst others, who happened to be the son of the petitioner and, therefore, the question of misappropriation, misutilization or embezzlement of Panchayat funds attributing to the petitioner does not arise. He further submits that the complaint against the work carried out by the son of the petitioner, which pertains to the year 2017, has already been gone into by the respondents by holding an inquiry, wherein the petitioner has been absolved of the charges and now, it is not open for the respondents to initiate another inquiry on the basis of another complaint, made by the defeated persons, arising out of the work which was subject matter of the earlier inquiry.

6. It is submitted that sub-Section (3) of Section 145 of H.P. Panchayati Raj Act mandates the respondents to complete the inquiry within a period of six months. In the instant case, since the term of the petitioner is going to be over after three months, the respondents may not be in a position to complete the inquiry within a period of six months and keeping the petitioner under suspension will not serve any purpose. Therefore, it is not a fit case to keep the petitioner under suspension and the respondents can proceed with the inquiry even without placing the petitioner under suspension.

7. Further that the respondents have passed the impugned order of suspension with the apprehension that the petitioner may influence the witnesses and tamper with the records. If that is the case, it is for the respondents to secure the records and also direct the petitioner not to interfere with the records.

8. It is fairly conceded by the learned Senior Counsel for the petitioner that though, in terms of the provisions contained in the H.P. Panchayati Raj Act, the appeal lies to the Divisional Commissioner, but, in the instant case, since the impugned order of suspension has been passed contrary to the established principles of law, namely, without any authority of law and non-application of mind, while placing reliance upon the judgment rendered in

Whirlpool Corporation versus Registrar of Trade Marks, Mumbai and others, (1998) 8 Supreme Court Cases 1 i,t is contended that the availability of

alternative remedy is not a constitutional bar for the High Courts to entertain a writ petition under Article 226 of the Constitution of India, when it is

found that the impugned order has been passed in a mechanical manner, without authority of law and jurisdiction resulting in violation of principle of

natural justice.

9. On these grounds, learned Senior Counsel appearing for the petitioner submits that the impugned order of suspension be set aside allowing the

instant writ petition.

10. The respondents have filed the statement of objections and submitted that on the complaint made against the petitioner, the inquiry has been

conducted by appointing a three members Committee to look into the allegations and as per the report of the preliminary inquiry (Annexure RÂ3)

conducted by the Committee, a prima facie case is made out against the petitioner that she has committed an act, which is contrary to Rule 44 (4) of

the H.P. Panchayati Raj Financial Rules, 2002 and Section 151 of the H.P. Panchayati Raj Act. The reply filed by the petitioner to the Show Cause

Notice was not found satisfactory. The respondents, while exercising powers in terms of Section 145 of the H.P. Panchayati Raj Act, after

substantive satisfaction, have found the petitioner guilty of misconduct and keeping in view of the gravity of allegations levelled against the petitioner,

have ordered regular inquiry in the matter and till the conclusion of the regular inquiry, have rightly placed the petitioner under suspension vide

impugned order of suspension, as, in case the petitioner is allowed to attend the office and perform her duties, there is every possibility of her

tampering with the records and also influencing the witnesses. Further, one of the complainants has given a statement that the Panchayat Secretary,

who is also one of the accused in the inquiry, has threatened the complainants that in case they proceed with the complaint, he would be filing a case

under Atrocities Act against them.

11. It is also the submission of the learned Additional Advocate General appearing for the respondents that when there is an alternative and

efficacious remedy available, the petitioner should avail the same instead of directly approaching this Court under Article 226 of the Constitution of

India and that this Court has consistently rejected the cases where an alternative and efficacious remedy was available with the petitioner(s), directing

the parties to avail the alternative remedy. A prayer has, therefore, been made on behalf of the respondents to dismiss the writ petition.

12. We have heard learned counsel for both the parties and have carefully gone through the material on record.

13. The case of the petitioner is to be examined on two perspectives. Firstly, whether the petition is to be dismissed on the ground of non-availing the

alternative remedy and secondly, whether it is appropriate for the respondents to keep the petitioner under suspension.

14. On the issue of availing the alternative remedy, learned Senior Counsel appearing for the petitioner has relied upon the judgment in Whirlpool

Corporation's case (supra), wherein it has been held by the Hon'ble Supreme Court that entertaining a petition under Article 226 of the

Constitution of India is not a bar, but the High Court has imposed upon itself certain restrictions, one of which is not to exercise its jurisdiction in cases

where an effective and efficacious remedy is available. It has further been held by the Hon'ble Supreme Court that availability of an alternative

remedy is not a bar in three contingencies, namely, where the writ petition has been filed for enforcement of any fundamental right or where there has

been a violation of principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. It

would be profitable to reproduce paras 14 and 15 of the judgment herein:

14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the

Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo

Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other

purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ

Petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the

High Court would not normally exercise its jurisdiction. But the alternative

remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point put to cut down this circle of forensic Whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.â??

15. Learned Senior Counsel for the petitioner has candidly submitted that the jurisdiction and vires of an Act have not been challenged and only the violation of the principle of natural justice has been pleaded.

16. In this regard, it would be appropriate to record herein that the petitioner has not been punished violating the principle of natural justice. On the basis of a complaint made against the petitioner, with the allegation that the petitioner has misappropriated and misutilized the Panchayat funds, a preliminary inquiry has been conducted by the respondents after going into the allegations made in the said complaint, by appointing a three members

Committee, which has submitted the report that a prima facie case has been made out against the petitioner. After subjective satisfaction, the

respondents have placed the petitioner under suspension, exercising the powers under Section 145 of the H.P. Panchayati Raj Act, which empowers

the prescribed Authority to suspend any office bearer from the office. The decision has been taken by the respondents to conduct a regular inquiry,

however, with an apprehension that the petitioner may tamper with the records or influence the witnesses, it has been ordered to place the petitioner

under suspension. When this is the intention of the respondents, it is not open for this Court to interfere with the decision of the respondents especially

when it is forthcoming that a prima facie case has been made out against the petitioner and when there is an apprehension that the petitioner may

cause obstruction to the inquiry, the respondents are within their rights to place the petitioner under suspension.

17. When an order has been passed by the respondents exercising powers under H.P. Panchayati Raj Act, the same is appealable. The scheme of the

Act itself provides for preferring an appeal. If the case of the petitioner is that her suspension or the initiation of the inquiry is uncalled for, it is always

open for the petitioner or any aggrieved person to prefer an appeal before the Divisional Commissioner. When an alternative, efficacious remedy is available to the petitioner, self-imposed restrictions by the High Courts to entertain a petition under Article 226 of the Constitution of India comes into picture.

18. No doubt, Hon'ble Supreme Court, in the judgment in Whirlpool Corporation's case (supra), has held that in certain exceptional circumstances, the extra ordinary jurisdiction under Article 226 of the Constitution will prevail, however, having gone through the facts and circumstances of the instant case, we are of the considered opinion that if an office bearer under Panchayati Raj Act commits any misconduct or misutilized the funds, it is always right on the part of the prescribed authority to initiate the action and the aggrieved person, the petitioner, in the instant case, has to avail the alternative remedy available under the Act.

19. Now, coming to the second perspective as to whether it is a fit case which warrants to place the petitioner under suspension or whether the petitioner has made out a ground to interfere with the suspension order.

20. The 73rd Amendment has been made to Article 243 of the Constitution of India in order to confer constitutional status to the local self-

governments, i.e. District Panchayats, Taluka Panchayats and Village Panchayats. The State Legislature, in the light of the constitutional provisions in

Part IX, cannot do away with these democratic bodies at the local level nor can their normal tenure be curtailed otherwise than in accordance with

law. It also promises duration of five years, free and fair election and no interference by other organs of the State, including judiciary, etc.

21. We deem it appropriate to reproduce relevant portion of para 24 of the judgment rendered by the Hon'ble Supreme Court in Gujarat Pradesh

Panchayat Parishad and others versus State of Gujarat and others, (2007) 7 Supreme Court Cases 718, herein:

24. The argument that the view taken by the High Court has destroyed or considerably eroded constitutional set up in Part IX of the

Constitution has not impressed us. In our opinion, it cannot be said that interpretation of various provisions of the Constitution or the Act has disturbed,

truncated or adversely affected the status of Panchayats guaranteed by the Constitution. Part IX of the Constitution confers certain powers on Local

Self Government. It promises duration of five years, free and fair election, representation of Schedule Castes and Schedule Tribes in the administration of institutions of Local Self Government, 'no interference' by other organs of the State, including judiciary, etc. In our opinion, however, the High Court was right in observing that "a District Panchayat cannot arrogate to itself the status of a body as independent or autonomous as a Province in a Federation". Part IX of the Constitution or Article 243G makes no change in the essential feature of the Panchayat organization. What was sought to be done by the Seventy-third Amendment was that constitutional status to the Local Self Government was conferred to District Panchayats, Taluka Panchayats and Village Panchayats. A State Legislature, in the light of constitutional provisions in Part IX, cannot do away with these democratic bodies at the local level nor their normal tenure be curtailed otherwise than in accordance with law nor State Government can delay elections of these bodies.â??

22. In the instant case, as submitted by the learned Senior Counsel for the petitioner that some of the rival candidates, after getting defeated by the petitioner in the elections, made a complaint in the year 2018 alleging therein that she had given some financial benefits to her son, wherein she has been exonerated. The said rival candidates nursed another complaint in the year 2020, which is subject matter of the instant writ petition. The term of the petitioner, as Pradhan of the Gram Panchayat, is also going to be completed within another three months. Keeping all these factors in mind, we are of the opinion that at the fag end of the term of the petitioner as Pradhan of the Gram Panchayat, it is not appropriate to place her under suspension.

23. The apprehension of the respondents is that the petitioner may tamper with the records or influence the witnesses, but, it appears that the record has already been secured by the respondents at the time of preliminary inquiry and the same must be in possession of the respondents.

24. It is worthwhile to record herein that during the hearing of this petition, this Court, on the previous occasion, had directed the learned Senior Counsel for the petitioner to instruct the petitioner to hand over the files to the respondents. In sequel thereto, it is reported that all the records have been handed over to the respondents. Even otherwise, if any record will be required by the respondents, at any stage, it is for the respondents to make

a demand for making the record available.

25. The further apprehension of the respondents that the petitioner may influence the witnesses does not appear to be forceful since the complainants are private parties and stated to be the rival party. They may not get influenced by the petitioner even in case the petitioner makes any such effort.

26. In these circumstances, we hold that the petitioner has made out a ground to interfere in this matter. Under the peculiar facts and circumstances of this case, we are of the opinion that the suspension of the petitioner is not appropriate. Accordingly, the suspension order of the petitioner needs to be set aside. It is open for the respondents to conclude the inquiry within the reasonable time period and on conclusion of the inquiry, if it is found that the petitioner is liable for any punishment, it is for the respondents to take appropriate steps, in accordance with law.

27. In view of the above, the instant writ petition is disposed of in following terms:

(i) In cases where the suspension order has been passed under Section 145 of the H.P. Panchayati Raj Act, the aggrieved person cannot approach

this Court directly under Article 226 of the Constitution of India and has to avail the alternative remedy by way of filing an appeal before the Divisional

Commissioner ; and

(ii) The impugned order of suspension (Annexure PÂ1) placing the petitioner under suspension is set aside with a direction to the petitioner to coÂ?

operate in the inquiry proceedings without making any application for exemption.

28. Pending miscellaneous applications, if any, are also disposed of accordingly.