
(2009) 08 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12339 of 2009

Jaspal Singh Panch and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:

Citation : (2009) 4 RCR(Civil) 777

Hon'ble Judges : Permod Kohli, J

**Advocate : Mr. P.C. Goyal, Addl.AG, Punjab., Mr. B.S. Jaswal, Advocate.,
Advocates for appearing Parties**

Judgement

Permod Kohli, J. (Oral)

1. The appointment of Arbitrator for spending the grants allocated to the Gram Panchayats, is being resorted to indiscriminately sometime without even issuing a Show Cause Notice and for reasons which are not in germane to the provisions of law. Such orders smell extraneous consideration. Keeping in view a large number of such cases coming to this Court for consideration, vide order dated 17.08.2009, the Director, Rural Development and Panchayats, Punjab, was directed to appear in person before this Court. Shri Gurdev Singh Sidhu, Director, Rural Development and Panchayats Punjab, Chandigarh, is present in person. He has been apprised of the situation and asked to take corrective measures in this regard and also to ensure that the provisions of Section 200 are resorted to strictly in accordance with the spirit of law and not for reasons other than the merit and in consonance with principle of natural justice. Mr. Sidhu has assured this Court that necessary corrective/administrative measures will be adopted in this regard. Coming to the facts of the present case, the impugned order dated 04.08.2009 (Annexure P7), has been passed by the District Development and Panchayat Officer, Amritsar, on the letter of Block Development and Panchayat Officer, Rayya, dated 03.08.2009, to the effect that the coram of the Gram Panchayat, Niranjanpura, is not complete and Sarpanch Tota Singh has written a letter that the Administrator may be appointed to perform the function of the

Panchayat and to spend various grants allocated to it. On that basis, the Block Development and Panchayat Officer, Amritsar, allegedly in exercise of powers under Section 200 of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as the Act), appointed Administrator under Section 200 of the Act. Section 200 of the Act reads as under :

"200. Default of duties by the Panchayats. (1) Where a Panchayat makes a default in the performance of any duty other than a judicial function imposed upon it by or under this Act or under any other law for the time being in force,

(i) in the case of a Gram Panchayat, District Development and Panchayat Officer; and

(ii) in the case of a Panchayat Samiti or a Zila Parishad, the Director; may by an order in writing fix the period, for the performance of the duty and if it is not performed within the period so fixed, he may appoint any other person to perform the duty and direct that the expenses arising from, and incidental to, its performance shall be paid by the Gram Panchayat.

(2) If, in the opinion of the Director a Panchayat has failed or is otherwise incompetent to administer its property, movable or immovable, in the best interests of the Panchayat the Director, after giving an opportunity to the concerned Panchayat of being heard may appoint a person to administer such property for or on behalf of the concerned Panchayat.

Provided that the Director may at any time terminate such arrangement and thereupon the administration of the property shall be resumed by the concerned Panchayat.

(3) A person appointed under subsection

(2) shall exercise all such powers of the concerned Panchayat under this Act, other than the judicial powers conferred upon it, or under any other law for the time being in force, as may be necessary for the management of the property and shall be entitled to receive such remuneration as may be fixed by the Director.

(4) The income from the management of the property referred to in sub section (2) shall be credited to the fund of the concerned Panchayat and all expenses arising from and incidental to the administration of such property, including the remuneration payable to the person appointed under sub section (2), shall be met out of the concerned Panchayat Fund.

(5) If the expenses referred to in subsection (1) are not paid

(i) In the case of a Gram Panchayat the District Development and Panchayat Officer, and

(ii) In the case of a Panchayat Samiti or a Zila Parishad, the Director; may make an order directing the person having custody of the fund of the Panchayat

concerned, to make the payment in whole or in part from such fund and if such a person does not comply with the order, recover the amount from the fund of the Panchayat as arrears of land revenue."

3. Clause (1) of Section 200 of the Act clearly provides that where a Panchayat makes a default in the performance of any duty, the District Development and Panchayat Officer, by an order in writing, fix the period for the performance of the duty and if it is not performed within the period so fixed, he may appoint any other person to perform the duty and direct that the expenses arising from and incidental to its performance shall be paid by the Gram Panchayat. Sub Clause (2) further provides that if in the opinion of the Director, a Panchayat has failed to administer its property, moveable or immovable, in the best interest of the Panchayat, the Director after giving an opportunity to the concerned Panchayat of being heard, may appoint a person to administer such property for or on behalf of the concerned panchayat. The clear mandate of the aforesaid section is that Panchayat concerned is to be provided an opportunity to perform its duty and it is only on failure of the Panchayat to do so after such opportunity is provided that resort to the provisions of this section can be made.

4. In the present case, though a reference is made to the communication of the Sarpanch, but admittedly, the Sarpanch himself does not constitute the entire Panchayat. Panchayat is an elected body comprising of various Panches and Sarpanch. The mandate of Section 200 of the Act requires an opportunity to be provided to an elected body i.e. Panchayat and not to the Sarpanch or any individual Panch. This procedure has not been adopted at all. No opportunity has been afforded to the Panchayat to perform its duty and without providing any opportunity of being heard under the law, provisions of Section 200 (1) of the Act have been invoked. Keeping in view the various orders of similar nature coming to Court, it appears that the only purpose or intention of the officer for appointment of Administrator is to spend money and to deprive the elected body from performing its functions according to law. Such orders are totally illegal and unjustified.

5. Counter affidavit has been filed by the District Development and Panchayat Officer, Amritsar. It is stated that the election of the Gram Panchayat of village Niranjunpura, Block Rayya, District Amritsar, was held on 26.05.2008, wherein seven members were elected. After election of the Panches, Tota Singh was elected as the Sarpanch of the village. It is further stated that after the elections, the Panchayat has failed to hold any meeting for conducting the development works in the village and when the matter came to the notice of the Block Development and Panchayat Officer, he issued a letter to the Panchayat for convening a meeting. When Sarpanch failed to convene a meeting of the Gram Panchayat, the Block Development and Panchayat Officer convened a meeting of the Gram Panchayat in his office. It is further stated that the said meeting was attended by four Panches only, whereas Sarpanch Tota Singh and some other Panches remained absent. It is further stated that thereafter the Block

Development and Panchayat Officer, issued further notice to the members of the Panchayat for holding meetings, but all the Panches did not attend the meeting and Sarpanch Tota Singh sent a letter dated 01.08.2009 that he is unable to perform the duty of Sarpanch on health grounds. It is further stated that on that basis, the Administrator was appointed.

6. Mr. Goyal, learned Additional Advocate General, Punjab, appearing for the respondents submits that since Sarpanch Tota Singh was unwell and no meeting of the Panchayat could be held for the development of the work of the village, the respondents were constrained to appoint the Administrator.

7. The argument raised by Mr.Goyal does not appeal to me. Such a procedure is contrary to the provisions of Section 24 of the Act, which provides that in the absence of Sarpanch, the Panches can elect a Sarpanch to preside over the occasion and deal with the business. No opportunity was provided to the Panchayat to perform its function.

8. In view of the above circumstances, the impugned order is unsustainable in law. The same is hereby quashed. Petition stands allowed. All the members of the Panchayat are directed to convene a meeting of the Panchayat within a period of two weeks from the date a certified copy of this order is made available to the concerned Panchayat and take measures for the execution of the development work for which the grants have been allocated. On the failure of the Panchayat to do so, the Block Development and Panchayat Officer, after complying with the provisions of Section 200 of the Act, may pass an appropriate order including the appointment of the Administrator. The concerned Block Development and Panchayat Officer, is also directed to ensure that the meeting of the Panchayat is held within the time stipulated above.

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