
(1972) 10 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 41 of 1972

Kanshi Ram Pradhan

APPELLANT

Vs

The State Of H.P. and Another

RESPONDENT

Date of Decision : 08-10-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Himachal Pradesh Gram Panchayat Rules, 1971 — Rule 77
Himachal Pradesh Panchayati Raj Act, 1968 — Section 54
Penal Code, 1860 (IPC) — Section 379

Citation : (1972) 1 ILR HP 375

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : S. Malhotra, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—The Petitioner is Pradhan of the Gram Panchayat, Sandhu (Theog) to which office he was elected in September, 1962. It appears that on August 17, 1970, a case was registered against him for the commission of an offence u/s 379 of the Indian Penal Code. That case is pending. On September 16, 1971, the second Respondent issued a notice under Rule 77 of the Himachal Pradesh Gram Panchayat Rules, 1971 requiring the Petitioner to show-cause why he should not be placed under suspension u/s 54 of the Himachal Pradesh Panchayati Raj Act, 1968. The Petitioner submitted a reply dated September 30, 1971 purporting to show that he was not liable to be suspended. It seems that subsequently the second Respondent issued a fresh notice dated December 16, 1971, and thereafter on February 11, 1972 the second Respondent made an order placing the Petitioner under suspension u/s 54 of the Act. Aggrieved by the order of suspension, the Petitioner now prays for relief under Article 226 of the Constitution.

2. The Petitioner urges that no notice dated December 16, 1971 was ever served

on him and consequently he had no opportunity to show-cause pursuant to that notice. There is a clear averment to that effect in paragraph 8 of the writ petition. In reply, the Respondents do not say that the notice dated December 16, 1971 was actually served on the Petitioner. All that is said in paragraph 8 of the return is that the notice was sent by registered post to the Petitioner and it has not yet been returned by the postal authorities. On the clear averment made by the Petitioner, and in the absence of any material to controvert it, it must be taken that the notice dated December 16, 1971 was not served on the Petitioner.

3. It is urged by the learned Advocate-General, who appears for the Respondents, that the Petitioner in fact made a representation in reply to that show-cause notice and also wrote to the Chief Minister protesting against the proceedings for suspension. The representation is dated September 30, 1971, and specifically refers to the show-cause notice dated September 16, 1971. The letter addressed to the Chief Minister, although dated March 19, 1972, also refers to that show-cause notice. Neither document discloses that the Petitioner had received the show-cause notice dated December 16, 1971. Now, the impugned order dated February 11, 1972 proceeds on the basis that the notice dated December 16, 1971 was served on the Petitioner and that he had failed to reply to that notice. Clearly, therefore, the impugned order cannot be sustained when no such notice was received by the Petitioner.

4. It is pointed out that in a recent case I took the view that the Government was not bound to issue notice to a Pradhan to show-cause why he should not be placed under suspension u/s 54 of the Act and, therefore, it is submitted, the circumstance that the notice dated December 16, 1971 was not served on the Petitioner should make no difference to the validity of the impugned order. In the present case as appears from the impugned order of suspension, one of the circumstances which entered into the decision-making process was the failure of the Petitioner to reply to the "show-cause" notice dated December 16, 1971. Inasmuch as there is no evidence that the notice was ever served on the Petitioner, his omission to reply to it was not a circumstance which could be taken into account in making the order. Whether or not the second Respondent would have placed the Petitioner under suspension even without considering such circumstance is not a matter which this Court can go into in this writ petition. An order placing a Pradhan under suspension u/s 54 of the Act depends upon so many circumstances, and the decision ultimately rests in the discretion of the State Government. It is not possible to enter into the mind of the State Government and to hold that upon a different set of circumstances. it would still have made the order placing the Pradhan under suspension.

5. Accordingly, the impugned order of suspension must be quashed.

6. The petition is allowed and the order dated February 11, 1972 is quashed. The Petitioner is entitled to his costs.