
(1975) 03 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 906 of 1973

Mam Chand

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 10-03-1975

Acts Referred:

Citation : (1975) PLJ 278 : (1985) RRR 580

Hon'ble Judges : A.S.Bains, J

Advocate : Mr. J.C. Verma, Advocate., Advocates for appearing Parties

Judgement

A.S. Bains,J.

1. Brief facts of the petition are that the petitioner was elected as Sarpanch of the Gram Panchayat Ujah, of Tehsil Panipat, District Karnal in the year 1965 and remained so upto December 14, 1971. In the written statement filed by the Block Development and Panchayat Officer, Panipat, it is stated that the petitioner relinquished charge on June 28, 1971. Subsequently respondent No. 5 was elected Sarpanch of this Panchayat. His successor Sarpanch made an application to the Block Development and Panchayat Officer, Panipat that the petitioner misutilised 54000 bricks and had not accounted for the same. The Block Development and Panchayat Officer, respondent No. 3 made an enquiry and held the petitioner responsible for the loss of Rs. 2862/ (annexure A). The petitioner when came to know of it filed an appeal before the Deputy Director Panchayats Haryana against the impugned order of the Block Development and Panchayat Officer. The Deputy Director dismissed the appeal as timebarred vide his order dated March 5, 1973 (annexure "F").

2. It is against these impugned orders of Block Development and Panchayat Officer and the Deputy Director Panchayats Haryana that the present petition has been filed under Articles 226 and 227 of the Constitution of India.

3. The learned counsel for the petitioner Shri J.C. Verma has contended that no show cause notice was given to the petitioner either by the Block Development

and Panchayat Officer or the District Panchayat Officer. His second contention is that the Block Development and Panchayat Officer has not passed a speaking order and he has given no reasons as to how the petitioner was responsible for the loss and that the order is bad on account of non application of the mind also. His third contention is that the petitioner relinquished charge on June 28, 1971 and the proceedings against the petitioner started in December, 1972, that is, one and a half years of the relinquishing of the charge.

4. I find merit in what the learned counsel for the petitioner has contended. Section 105 of the Punjab Gram Panchayat Act, 1952 reads as follows :

"105(1) Every member of a Gram Panchayat shall be liable for the loss, waste, or misapplication of any money or property belonging to that body if such loss, waste or misapplication is a consequence of his neglect or misconduct while a member.

(2) The District Panchayat Officer concerned may, on the application of a Gram Panchayat or otherwise and, after giving the member concerned an opportunity to explain, assess by order in writing the amount due from his on account of such loss, waste or misapplication.

(3) Any person aggrieved by an order made under subsection (2) of this section may, within one month of the date of such order, apply to the Assistant Director of Panchayats to have it set aside and the Assistant Director of Panchayats may suspend the execution of the order upon such terms as to costs, payment into Court or otherwise he thinks fit, but subject to the result of such application, if any, the order shall be conclusive proof of the amount due.

(4) Notwithstanding anything contained in this section, no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of four years from the occurrence of the loss, waste or misapplication, or after the expiry of one year from his ceasing to be a member, whichever is earlier."

The bare reading of the section will show that the District Panchayat Officer has to give an opportunity to explain against whom the liability is to be assessed and after hearing the person aggrieved, he has to assess the loss, waste or misapplication. In this case no notice was ever issued to the petitioner and the enquiry took place behind his back. The Block Development and Panchayat Officer has relied on the report of the Overseer who conducted the enquiry in the absence of the petitioner. The impugned order also shows that the Block Development and Panchayat Officer has passed order in haste and without affording any opportunity to the petitioner. Although in the written statement it is stated that the petitioner had made a representation but in the impugned order, nothing is mentioned about the representation of the petitioner and it does not show that the petitioner was ever given any opportunity by the Block Development and Panchayat Officer. Mr. Mehtani, learned counsel for the State could not show from the record that any notice to explain was given to the

petitioner before the passing of the impugned order. The Block Development and Panchayat Officer has acted in all illegal manner and he has not exercised jurisdiction as is vested in him under the provisions of section 105 of the Act. If a matter is required to be done in a certain manner under section 105 of the Act; it must be done in that manner alone and not in any another manner.

5. The last contention of the learned counsel for the petitioner is that the petitioner had relinquished charge on June 28, 1971 and the proceedings started in December, 1972, that is, after one and a half years. This also seems to be against the provisions of subsection (4) of section (4) of section 105 of the abovesaid Act. Proceedings could be taken against a Sarpanch or a Panch only within one year of the relinquishing of the charge or within four years of the occurrence of the loss, waste or misapplication whichever is earlier and admittedly in this case the proceedings took place after one and a half years of the relinquishing of the charge. Accordingly I hold that the proceedings in the present case could not be initiated after 1 years as it has contravened subsection (4) of section 105 of the Act. The Deputy Director also did not apply his mind to the facts of the case and has committed legal error in dismissing the appeal as timebarred. Petitioner was not given any notice by the Block Development & Panchayat Officer and the order was passed behind his back. Hence, he could not file appeal within time. However, the appeal was within time from the date the petitioner came to know of the impugned order.

6. For the foregoing reasons, this writ petition is allowed and the impugned orders are quashed but there will be no order as to costs.