
(2000) 01 P&H CK 0111
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 81 of 1999

Mangat Ram, Sarpanch

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 19-01-2000

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 51(3), 51(4)
Punjab Gram Panchayat Act, 1952 — Section 102(3)

Citation : (2001) 3 RCR(Civil) 378

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : Mr. R.S. Sihota and Mr. C.L. Verma, for the Appellant; Mr. N.S. Bhinder, D.A.G., for the Respondent

Judgement

V.K. Jhanji, J.—At the hearing of the petition, the only challenge is to the part of order dated 23.4.1998 passed by the Deputy Commissioner, Faridabad, whereby petitioner has been debarred from taking part in the Panchayat election for a period of six years. Challenge is also to order dated 21.12.1998 passed by the Financial Commissioner and Secretary to Government of Haryana, Development and Panchayat Department, Chandigarh, whereby in appeal, order dated 23.4.1998 of the Deputy Commissioner has been maintained.

2. In brief, the facts are that in December 1994, petitioner was elected as Sarpanch of Gram Panchayat, Palwal, Block Faridabad. Certain allegations of misconduct in the discharge of his duties as Sarpanch were levelled against him. Deputy Commissioner, Faridabad, vide notice dated 6.5.1997/13.5.1997 asked the petitioner to submit reply to the allegations levelled against him. Petitioner filed reply on 28.5.1997 denying all the allegations. On the basis of preliminary enquiry, petitioner was suspended and a regular enquiry into the charges levelled against him was ordered and entrusted to Sub Divisional Officer (Civil), Faridabad. In pursuance of order dated 6.5.1997, regular enquiry was conducted by the S.D.O. (Civil), Faridabad. On the basis of evidence adduced by the parties, the

Inquiry Officer found all the charges proved against the petitioner. On receipt of the enquiry report. Deputy Commissioner, Faridabad, served show-cause notice dated 7.11.1997 upon the petitioner asking him that in view of the report of S.D.O. (Civil) whereby five charges levelled against him have been proved why he should not be removed from the post of Sarpanch u/s 51(1) of the Haryana Panchayati Raj Act, 1994 (in short the 1994 Act). Petitioner was asked to submit reply to the said notice within 10 days. Petitioner submitted the reply. After considering the reply and affording an opportunity of personal hearing to the petitioner. Deputy Commissioner vide order dated 23.4.1998 in exercise of his powers u/s 51(3) of the 1994 Act ordered removal of the petitioner from the office of Sarpanch and further debarred him from taking part in the Panchayat election for a period of six years. The order was made operative with immediate effect. Petitioner having felt aggrieved, preferred an appeal before the Financial Commissioner and Secretary to Government of Haryana. Development and Panchayat Department, Chandigarh. Vide order dated 21.12.1998. the appeal preferred by the petitioner was dismissed.

3. As noticed earlier, at the time of hearing of the petition, the only challenge is to that part of the order whereby petitioner has been debarred from taking part in the Panchayat election for a period of six years. Challenge is on the ground that after enquiry, the show-cause notice given to the petitioner was only with regard to his removal from the office of Sarpanch. There was nothing in the notice indicating to the petitioner that he was also to be disqualified for a period of six years. The contention of the counsel for the petitioner is that after the petitioner had been removed from the office of Sarpanch, the competent authority was to apply its mind to the facts of the case and come to a decision whether petitioner should be disqualified at all and if so, for what period. It is contended that no show- cause notice was served upon the petitioner regarding his disqualification from taking part in the Panchayat election nor the petitioner was given any opportunity to explain that the charges proved against him did not warrant disqualification. Learned counsel in support of his argument, has cited a Division Bench judgment of this Court in Jagdish Chand v. State of Haryana and others 1970 PLJ 725, wherein the provisions of sub-section (3) of Section 102 of the Punjab Gram Panchayat Act (4 of 1953) were under consideration and it was held the rules of natural justice require than an opportunity should be given to the delinquent and if he was to be disqualified, he should not be disqualified for the period proposed. In answer to these submissions, learned counsel appearing on behalf of respondents has contended that the judgment in Jag-dish Chand's case (supra) cited by petitioner's counsel was passed on the basis of concession given by the Advocate General and, therefore, cannot be applied to the facts of the present case.

4. It is true that the judgment in Jagdish Chand's case (supra) cited by the counsel for the petitioner was passed on the basis of concession given by the Advocate General, but the concession was given on the basis of the position in law which emerged from the reading of sub-section (3) of Section 102 of the

Punjab Gram Panchayat Act (4 of 1953). Sub-section (4) is *patri-ma-teria* to the provisions of sub-section (3) of Section 102 of the 1953 Act *ibid* and, therefore, judgment in Jagdish Chand's case (*supra*) squarely applies to the facts of this case.

5. Faced with this situation, learned counsel appearing on behalf of the respondents has contended that subsection (3) of Section 51 of 1994 Act requires a notice to be given before the person is removed from his office but sub-section (4) is silent in regard to issuance of notice and as such no opportunity is required to be given before a person is disqualified. It is true that opportunity to hear is specifically provided in sub-section (3) and is not provided in sub-section (4) but is well settled that even where there is no specific provision in statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. In this context, reference may be made to the case of *S.L. Kapur v. Jagmohan and others* AIR 1981 S.C. 1360 wherein their Lordships of the Supreme Court observed : "It is not always a necessary inference that if opportunity is specifically provided in one provision and not so provided in another, opportunity is to be considered as excluded from that other provision. It may be a weighty consideration to be taken into account but the weightier consideration is whether the administration action entails civil consequences."

6 The impugned order entails civil consequences inasmuch as it tends to disqualify the petitioner for not taking part in the Panchayat election for a period of 6 years. The order being a quasi-judicial order and entailing civil consequences, could have been passed only after affording an opportunity of hearing to the petitioner.

7. Consequently, order dated 23.4.1998 so far as it directs removal of the petitioner is upheld but that part of the order which imposes disqualification upon him for a period of six years, is hereby quashed. Respondent No. 2 however, shall be at liberty to pass orders afresh after affording an opportunity of hearing to the petitioner with regard to the disqualification and the period of disqualification. No costs.

8. Petition accepted.