
(1967) 11 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 44 of 1967

Mange Ram

APPELLANT

Vs

The State of Haryana and others

RESPONDENT

Date of Decision : 10-11-1967

Acts Referred:

Punjab Panchayat Samitis and Zila Parishads Act, 1961 — Section 13(1)

Citation : (1967) 11 P&H CK 0012

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Advocate : P.S. Jain, Bhal Singh Malik and N.C. Jain, for the Appellant; C.D. Dewan Deputy Advocate-General and Mr. Rajinder Sacher, for the Respondent

Judgement

Tek Chand, J.—The petitioner, Shri Mange Ram, is a member of Panchayat Samiti Ganaur Block, Tehsil Sonapat, District Rohtak. He has sought the issuance of an appropriate writ under Articles 226 and 227 of the Constitution seeking quashing of order dated 8th of December, 1966, revoking the order of suspension passed against respondent No. 3, Shri Rajinder Singh.

2. The facts giving rise to this petition are that respondent No. 3, Shri Rajinder Singh, was the Chairman of the Panchayat Samiti, Ganaur Block. It is alleged that he had committed serious irregularities and had caused heavy loss to the Panchayat Samiti during his term as its Chairman. On the complaint of a majority of members of the Panchayat, he was suspended in accordance with the provisions of section 13(1) of the Punjab Panchayat Samitis & Zila Parishads Act, 1961, by Governor of Punjab, by order dated 4th of June, 1966 (Annexure A). This order stated that whereas respondent No 3 had been found guilty after enquiry of misconduct in the discharge of his duties in respect of several matters specified therein, the Governor of Punjab, in exercise of the powers conferred by section 103(1) of the Act was pleased to suspend Shri Rajinder Singh from the membership of the Panchayat Samiti and to debar him from taking part in any act or proceedings of Panchayat Samiti during the period of suspension.

3. A writ petition was filed by respondent No. 3 (C.W. No. 1412 of 1966) challenging the order of his suspension and obtained an interim stay against order of suspension. The stand taken by the State Government was that the order of suspension was correct and respondent No. 3 was justly suspended. On 9th of November, 1966, after the reorganisation of the State of Punjab, respondent No. 3 withdrew his writ petition which was accordingly dismissed by Narula J., vide Annexure B. The result, therefore, was that the order of the Governor of Punjab, suspending Shri Rajinder Singh from the membership of Panchayat Samiti and debarring him from taking part in any act or proceedings of the Panchayat Samiti during the period of his suspension, became operative.

4. It was said that as a result of the new set up consequent upon the formation of Haryana State, the then Chief Minister, Shri Bhagwat Dayal, who was the President of the Haryana Pradesh Congress Committee and his supporter Shri Chand Ram, respondent No. 2, sought the help of respondent No. 3 who was a member for the Pradesh Congress Committee. With that purpose in view, a promise was given by Shri Chand Ram that in consideration of the support to Shri Bhagwat Dayal, he would set aside the order of suspension of respondent No. 3. It was in consequence of this promise that respondent No. 3 got his writ petition dismissed.

5. That despite the dismissal of the writ petition on 9th of November, 1966, respondent No. 3 was allowed by respondents No. 1 and 2 to continue to work as Chairman as if no order of suspension had been passed against him. This act of respondent No. 2, Shri Chand Ram, was alleged to be mala fide and contrary to law.

6. On 8th of December, 1966, in pursuance of the above mentioned understanding and without assigning any reason Shri Chand Ram, respondent No. 2, passed an order revoking the order of suspension passed by the Government on 4th of June, 1966. vide Annexure C. The relevant portion of this order is reproduced below :

Development and Panchayat Department Order. Dated Chandigarh the 4th June, 1966 No. 2710-PREO-A3-66/ In super session of the orders issued vide No. 2/10-PREO-EL-3/ 66/122 dated 4th June, 1966 and telegram No. PREO-66/1062 dated 14th June, 1966, the orders of suspension of Shri Rajinder Singh, Chairman, Panchayat Samiti, Ganaur, are hereby withdrawn.

Sd/- Deputy Secretary Development (II) Development & Panchayat Department.

End. No. 2710-PERO-A3-68/506-509, dated Chandigarh, the 8th December, 1966.

It is maintained by the petitioner that the order of respondent No. 1. State of Haryana, withdrawing the order of suspension, dated 8th of December, 1966, is illegal, without jurisdiction and mala fide on several grounds mentioned in the petition. It was, therefore, prayed that a writ of certiorari be issued quashing the impugned order (Annexure O) and further a writ of mandamus be issued

directing respondents 1 and 2 to restrain respondent No. 3 from working as the Chairman of the Samiti.

7. On behalf of the respondent No. 1, State of Haryana, no return has been filed. An affidavit has been filed by respondent No. 2, Shri Chand Ram, Revenue Minister and also by respondent No. 3. In his affidavit, Shri Chand Ram, denied having extended a promise to respondent No. 3 in consideration of the latter's agreeing to support Shri Bhagwat Dayal. Regarding the order revoking suspension, Shri Chand Ram stated that on 18th of November, 1966, he received a representation from respondent No. 3 saying that he had been unjustly treated on extraneous grounds. He was impressed by what was stated by respondent No. 3 and he consequently passed the following order :

Shri Rajinder Singh, Chairman, Panchayat Samiti, Ganaur, has seen me and submitted the enclosed application along with the affidavit that he has withdrawn the writ petition filed by him in the High Court. I have gone through the orders passed by the Ex-C. M. as well as Ex-H.D.M, Punjab, I find that there is no justification for his suspension without giving him full opportunity. The suspension orders are, therefore, hereby withdrawn. An enquiry should, however, be held by deputing D.D.P.O., Rohtak and an early report submitted to me.

8. In his affidavit, Shri Rajinder Singh, respondent No. 3, has raised a preliminary objection that no legal rights of the petitioner had been infringed by passing of the impugned order (Annexure C) and the petitioner was not competent to maintain the petition as he had no legal right in the suspension or non-suspension of the answering respondent. It was also alleged that the writ petition had been moved out of enmity and in order to wreck his personal vengeance against the respondent.

9. On merits, respondent denied having agreed to support Shri Bhagwat Dayal for the Presidentship of the Pradesh Congress Committee on the promise given by Shri Chand Ram of setting aside his suspension. The withdrawal of his former writ petition (C.W. 1412 of 1966) was not in pursuance of any earlier agreement with Shri Chand Ram. The allegations of mala fides were denied and it was stated that the Minister in passing the impugned order was influenced by the justice of the respondent's cause.

10. The first question that calls for decision is whether the petitioner has a locus standi to present the writ petition. It was urged on behalf of the respondent that the petitioner was a more busy body and had no interest whatsoever in the order of suspension being revoked or sustained. Reliance was placed on observations made in *Calcutta Gas The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, . It was held that the relief asked for under Article 226 must be one to enforce a legal right, the existence of which is the foundation of the exercise of jurisdiction by the High Court under Article 226. The legal right must ordinarily be that of the petitioner himself who complains of infringement of such right and ordinarily the right shall be the personal or individual right of the

petitioner himself though in the case of some of the writs like habeas corpus and qua warrant, this rule may have to be relaxed or modified. The former decisions of the Supreme Court in *The State of Orissa Vs. Madan Gopal Rungta*, and *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, were followed.

11. On behalf of the petitioner, it was said that the petitioner was interested in so far as it was on his complaint as member of the Samiti that the enquiry had been ordered and the order of suspension was passed by the Governor. The petitioner was an interested person being a member of the Samiti and the respondent No. 3 as its Chairman had committed a number of illegalities. Reliance was placed on behalf of the petitioner on a number of decisions. A Bench of Mysore High Court in *Dr. P.S. Venkataswamy v. University of Mysore* AIR 1961 Mys 159 observed:

The only general proposition therefore which can be stated on the question of locus standi of petitioners in writ petitions or petitions under Article 226 of the Constitution is that ordinarily a petitioner will have to make out some personal interest which the law recognises as sufficient, unless having regard to the nature of the relief and particular facts and circumstances of the case the petitioner is merely in the position of an informer or a relater and the situation is such that it becomes the duty of the Court to act in public interest or to uphold the Constitution... (page 10). We can therefore take it as well established proposition that if the writ asked for is strictly a writ of quo warrant in respect of a public office, the petitioner need have no personal interest. If, however, the position or the office held by the respondents cannot be described as a public office in the sense explained above, the case will not be one for quo warrant in the strict sense but will be one only for some other type of appropriate writ order or direction under Article 226 of the Constitution, before getting which the petitioner will have to establish that he has some personal interest in the matter which the law recognises as sufficient. (para 13).

In *P.K.N. Abdul Mazid Vs. The State of Madras and Others*, 1 it was said that in deciding whether an applicant for a writ of certiorari was an "aggrieved" person entitled to challenge the validity of the order which he sought to avoid, the real test was to see whether the applicant had an interest distinct from the general inconvenience which might be suffered by the law being wrongly administered.

12. In *Domoar Goswami v. Narayan Goswami* AIR 1955 Ass 163, a Division Bench expressed the view that a writ of certiorari would be granted, ex debito justifies to quash proceedings which the court had power to quash where it was shown that the court below had acted without jurisdiction or in excess of jurisdiction. This might be done on the application of an aggrieved party or even at the instance of a member of the public provided the conduct of the party aggrieved did not disentitle him to the relief.

13. In view of the fact that the petitioner as member of the Samiti had complained against the misconduct of respondent No. 3, its Chairman, and in consequence of which he was rendered to be suspended, the petitioner in

presenting a writ petition praying that the order suspending respondent No. 3 had been erroneously withdrawn, cannot be said to have no legal light or that he is without locus standi. The preliminary objection raised on behalf of respondent No. 3 is, therefore, rejected.

14. On the merits, the main point is whether the order dated 8th December, 1966 (Annexure C) was without jurisdiction. Section 103 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, provides for suspension and removal of members of Samiti or Zila Parishad. In sub-section 1, Government has been given the power during the course of an enquiry to suspend a member for any of the reasons for which he could be removed and further to debar him from taking part in any act or proceedings of the said body during the enquiry. After such an enquiry, the Government may remove any member who was found to be guilty of misconduct and further disqualify him for re election for a period not exceeding five years. The power to suspend and remove a member is conferred on the Government by a statute. There is no provision for an appeal, revision or review against such an order passed by the Government. It was in exercise of this power that the Governor of Punjab was pleased to suspend respondent No. 3 from membership of the Samiti and to debar him from taking part in any act or proceedings of that body. The Act contains no provision for revoking or modifying the order of suspension pending the result of enquiry.

15. The impugned order of 8th December, 1966 (Annexure C) withdrawing the order of suspension of Shri Rajinder Singh does not refer to any section of the Act and it is not indicated under which provision such a power has been exercised. It may further be mentioned that the impugned order has not been passed in the name of the Governor which in view of the provisions of Article 154(1) of the Constitution is mandatory. The impugned order which is signed by Deputy Secretary Development (II), Development and Panchayat Department proceeds :

The orders of suspension of Shri Rajinder Singh, Chairman, Panchayat Samiti, Ganaur, are hereby withdrawn.

The authority withdrawing the order is the Deputy Secretary because there is no indication that the order was being made at the instance of the Governor in exercise of specific powers. The use of the word "hereby" is significant and in this context it means "by this act." The word "hereby" does not refer to any time in the past. In this context, it indicates "by means of this."

16. Under Article 154(1) of the Constitution, the executive power of the State is vested in the Governor and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 166 provides :

(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the mere convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

There is no room left for doubt that the executive action of the Government cannot be expressed in any way other than in the name of the Governor.

17. In exercise of the powers conferred by Article 166(2) & (3) of the Constitution, the Governor of Punjab had made "Rules of Business". Rule 8 Provides :

All orders or instruments made or executed by or on behalf of the Government of the State, shall be expressed to be made or executed in the name of the Governor.

Under rule 9(i):

Every order or instrument of the Government of the State shall be signed either by a Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary, an under Secretary or an Assistant Secretary or such other officer as may be specially empowered by the Governor in that behalf and such signature shall be deemed to be the proper authentication of such order or instrument.

Neither the Constitution nor the Rules of Business have been complied with in this case, if the impugned order is to be deemed as the order of the Governor which on its face it is not. There is no merit in the contention that Shri Chand Ram had, as stated by him in his affidavit passed the order of 18th November, 1966, withdrawing the order of suspension. It was not within his power to withdraw an order of the Government passed in accordance with the provisions of Article 166(1) and the rules made there under. Reference may be made at the stage to the decision of the Supreme Court in *Bachhittar Singh Vs. The State of Punjab*, their Lordships observed :

The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of Pepsu provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking the Minister is no mere than an adviser and that the head of the State, the Governor or Rajpramukh, is to act with the aid and advice of his Council of Ministers. Therefore, until such

advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the "order" of the State Government? Therefore, to make the opinion amount to a decision of the Government, it must be communicated to the person concerned. In this connection, we may quote the following from the judgment of this Court in the State of Punjab v. Sodhi Sukhdev Singh AIR 1961 S.C. 439 at p. 512, For, until the order is communicated to the person affected by it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.

Reliance has also been placed on a Full Bench decision of this Court in Deep Chand and others v. Addl. Director, Consolidation of Holdings Punjab AIR 1964 P&H. 249 to the effect that the judicial and quasi judicial tribunals have no inherent power to review their earlier erroneous or unjust order unless specifically provided.

18. Mr. Chetan Das Dewan has tried to draw upon the provisions of section 19 of the Punjab General Clauses Act which is as under :

Where by any Punjab Act, a power to issue notifications or make orders, rules or bye laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued or made.

The language of this section cannot be successfully invoked as the power to amend, vary or rescind is exercisable by the authority having the power to make orders, rules, etc. It does not lend itself to the interpretation that an order passed in the name of the Governor can be withdrawn, revoked or amended at the instance of the Deputy Secretary or the Minister. The Learned Counsel for the respondents has relied upon Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others, Bejoy Lakshmi Cotton Mills Ltd. Vs. State of West Bengal and Others, . Keerabhbai M. Mehta v. State of Gujarat AIR 1967 Guj. 229 and AIR 1945 156 (Privy Council) None of these authorities support the proposition canvassed on behalf of the respondents. Each of these decisions was based upon its peculiar facts which are not analogous to the facts and circumstances of this case. I do not think that the provisions of section 19 of the Punjab General Clauses Act can be successfully invoked by the State especially in view of the language of the section stating where a power is conferred, then that power includes "a power exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any notifications, orders, etc." The only correct interpretation of section 19 is that the power to amend,

vary or rescind orders is exercisable not only in the like manner but subject to the like sanction. In this case, that power vests in the Governor and has to be exercised and sanctioned in Governor's name. The provisions of section 19, in my view, do not support the case put on behalf of the State. The sub-sequent order withdrawing the suspension as ordered formerly in the name of the Governor, suffers from an infirmity which cannot be get over.

19. The next contention of the respondents is that impugned order was administrative and such would not justify the issuance of a writ of certiorari. Reliance was placed upon the observations of the minority in *S. Pratap Singh Vs. The State of Punjab*, to the effect that the order suspending the Government Servant pending enquiry is partly an administrative order. Even assuming that the order of suspension or of revocation of suspension was administrative, it could be successfully assailed if it was without jurisdiction. The Supreme Court by a majority decision ordered the issuance of a writ of certiorari quashing the order of the State Government suspending the petitioner. The distinguishing feature of the Supreme Court's case was that under the relevant rules there, the Government was not empowered to suspend a Government servant pending an enquiry. In the instant case the Government is invested with the power of suspension by section 103 of the Act. The order passed u/s 103 partakes of the character of a quasi judicial order. It is needless to go into the question whether in the instant case, the order was purely administrative. The order having been passed during the course of an enquiry for misconduct against a Sarpanch involving the imposition of a penalty and in which he had the right of being heard and to avail himself of the opportunity of meeting the charges levelled against him partook of a quasi judicial nature rather than of an exclusively administrative character. The tests of whether an order is administrative or otherwise are given in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur* and *Another*, . It was held that before a writ of certiorari could be issued, the following conditions had to be complied with :

- (1) The body of persons must have legal authority;
- (2) There must be authority to determine questions affecting the rights of subjects;
- (3) The body of persons should have a duty to act judicially. A writ of certiorari could be issued to quash a quasi judicial order of an administrative or quasi judicial authority. In an enquiry on allegations of misconduct which may result in imposition of a penalty, the proceedings cannot be said to be exclusively administrative. The question of guilt is a matter of an objective assessment and is a quasi judicial act. Whatever doubt may be felt regarding the applicability of a writ of certiorari, this is a case in which a writ of quo warranto can be issued where the impugned order is based without authority.

20. I have no thought it proper to go into the question of mala fides or the part of respondent No. 2, the Minister. The facts and circumstances of this case are

not sufficient to take the petitioner's case beyond raising suspicions of partiality and favour. Suspicions howsoever strong cannot be substituted for proof. I cannot hold in this case that that proof was forthcoming to the requisite degree.

21. In my view, the petitioner has successfully made out a case for the issuance of an appropriate writ of certiorari as also of quo warranto against respondents 1 and 2. The impugned order dated 8th December, 1966 (Annexure C), being without jurisdiction and not in the name of the Governor, deserved to be quashed and I order accordingly. There will be no order as to costs.