

(1972) 03 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 123 of 1971

Narain Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 07-03-1972

Acts Referred:

Himachal Pradesh Panchayati Raj Act, 1968 — Section 118A, 257, 54(1)

Citation : AIR 1972 HP 139 : (1972) 1 ILR HP 179

Hon'ble Judges : C.R. Thakur, J

Bench : Single Bench

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

Judgement

Chet Ram Thakur, J.—In this petition under Articles 226 and 227 of the Constitution of India, Shri Narain Singh challenges the validity of the order (Annexure D) of the Secretary, Panchayats, respondent No. 1, dated 26-8-1971, whereby the petitioner has been suspended from the office of the President. Gram Panchayat Salogra. The impugned order reads as under:--

"Whereas an inquiry into the complaints filed by Smt. Bimla Devi wife of Shri Jagdish, resident of Salogra, Tehsil Solan, District Mahasu is contemplated against Shri Narain Singh, President, Gram Panchayat, Salogra;

Now, therefore, the Government in terms of the provisions of S. 54 of the Himachal Pradesh Panchavati Rai Act, 1968, orders the suspension of the said Shri Narain Singh from the office of the President Gram Panchayat Salogra with immediate effect and further order that the Deputy Director of Panchayats, Himachal Pradesh will conduct the inquiry and furnish his report to the Government within 20 days. It is also hereby ordered that Shri Narain Singh will not take part in regard to the activities of the Panchayat and he shall hand over the charge to the Vice-President."

Sub-sections (1) and (2) of S. 54 of the Himachal Pradesh Panchayati Raj Act, 1968, read as follows:--

"(1) The State Government or the Deputy Commissioner may, during the course of an enquiry or, if the State Government or the Deputy Commissioner so thinks proper, for any reason to be recorded in writing, otherwise, suspend a Panch in the prescribed manner for any of the reasons for which he can be removed, and debar him from taking part in any act or proceedings of the said body during that period and order him to hand over the records, money or any property of the said body to the persons authorised in this behalf.

(2) The Government may, after such enquiry, as it may deem fit, remove any Panch;

(a) on any of the grounds mentioned in Sub-section (5) of Section 9;

(b) who refuses to act, or becomes incapable of acting, or is adjudged an insolvent;

(c) who, without reasonable cause, absents himself for more than two consecutive months from the meetings of the Gram Panchayat;

(d) who in the opinion of the Government has been guilty of misconduct in the discharge of his duties".

I may here set out the facts as given by the petitioner leading to his suspension. In the year 1962, elections to the Gram Panchayat, Salogra, were held under the provisions of Himachal Pradesh Panchayat Raj Act, 1952, and the petitioner was elected as a President. Political opponents of the petitioner wanted to harm him. In November, 1970, one Smt. Bimla Devi made a report (Annexure A) with the police making allegations of offences under Sections 452, 354 and 324, I. P. C. and the case was registered as F. I. R. No. 98 of 1970. On the basis of this complaint proceedings were still pending in the Court of the Sub-Divisional Magistrate, Solan. It appears that the case was not supported by the witnesses, so on 14th April, 1970, a case u/s 107. Criminal P. C. (Annexure B) was filed by Smt. Bimla Devi against Shiv Charan. Secretary Panchayat. Puran Chand Chowkidar, Smt. Vidya Devi and the petitioner himself. Those proceedings are still pending and the petitioner challenged the interim order (Annexure C) of the Sub-Divisional Magistrate. It was after these proceedings that the Secretary, Panchayats, Himachal Pradesh Government, on 28-6-1971, passed the impugned order (Annexure D), as already stated. The charge has been taken and the petitioner is not allowed to participate in the proceedings of the Panchayat as President and he contends that the order of the Secretary Panchayats is illegal and that the same be set aside for the following reasons:--

(1) Section 54 of the Act of 1968, which was enforced on 15-11-1970, was not applicable in the case of the petitioner. It authorises the State Government or the Deputy Commissioner to pass an order of suspension during the course of an enquiry or for any reasons to be recorded in writing for which a Panch can be removed.

(2) That there is no enquiry pending and the Government has no authority to

suspend the petitioner in view of the so-called contemplated enquiry.

(3) None of the reasons as stated in Sub-section (5) of Section 9 were in existence at the time of passing the order or at any time before or thereafter. The petitioner did not incur any disqualification and, therefore, the order was contrary to the provisions of S. 54 (1) (&) (2).

(4) The petitioner was elected under the provisions of Himachal Pradesh Panchayat Raj Act, 1952, which was repealed by the Act of 1968, enforced on 15-11-1970. u/s 257 (d) of the Himachal Pradesh Panchayati Raj Act. 1968, the members elected or appointed to any Gram Panchayat, Nyava Panchayat, Panchayat Samiti under any of the repealed Act shall continue to hold the office till the expiry of their present term of office. Consequently no order could be passed u/s 54 of the Act.

(5) Section 118-A of 1952 Act authorises the State Government to suspend a President, for any of the reasons for which he can be removed. So according to him, the Act had been repealed on 15-11-1970. Section 54, of Act No. 19 of 1970 therefore, had no applicability as the petitioner was not a Panch elected under the provisions of this Act.

(6) That the jurisdictional facts Which authorise the Government to pass an order u/s 54 (1) of the Act were missing. He is neither suspended during the course of enquiry nor termed as a Panch within the meaning of Act of 1968, and, therefore, the order is illegal.

(7) Section 257 (d) saves the term of office under the old Act till the expiry of the term of office. No action can be taken before the expiry of office. The complaint of Smt. Bimla Devi is still pending. Till the matter is decided by the Court, the Government is not justified in passing the impugned order.

(8) That the order issued was mala fide. There was no basis for exercise of powers u/s 54 (1) of the Act and the power also cannot be exercised u/s 118-A of the repealed Act and as such the action was without foundation.

(9) There is no legal or valid justification to suspend him. The petitioner made several representations to the Ministers but no action was taken thereon.

2. The Secretary, Panchayats, filed his affidavit by way of written statement. They admitted the facts as given by the petitioner and also admitted the passing of the impugned order. It was contended by the respondent that there were serious charges of misconduct levelled by Smt. Bimla Devi and, therefore, he was justified to put the petitioner under suspension and it was averred that Section 54 of Act No. 19 of 1970 Act was applicable. It was further averred that it is not alone during the course of an enquiry that a Panch/Sarpanch can be placed under suspension. Instead a Panch/Sarpanch can be placed under suspension if the State Government or the Deputy Commissioner so thinks proper for any reason to be recorded in writing and that there was ample material recorded on the files of the department that there was a prima facie

case of misconduct as regards his behaviour towards Smt. Bimla Devi which warranted his suspension. He has been charged for a heinous offence at a judicial trial by the learned Sub-Divisional Magistrate. The offence alleged and prima facie made out involves depravity of character. The intention behind Section 257 (d) is to define the term of office of those members of the Panchayats who were elected in accordance with the provisions of the repealed Act. The provisions of Section 257 (b) are explicit. They say that anything done or any action taken under any repealed Act shall, so far as may be, be deemed, unless the State Government directs otherwise to have been respectively, done or taken under the corresponding provisions of the Himachal Pradesh Panchayati Raj Act, 1968 (Act No. 19 of 1970).

3. The impugned order (Annexure D) says that an enquiry into the complaint filed by Smt. Bimla Devi is contemplated and, therefore, in terms of the provisions of Section 54 of the Himachal Pradesh Panchayati Raj Act, 1968 the Government ordered the suspension of said Shri Narain Singh, President of Gram Panchayat, Salogra with immediate effect. Sub-section (1) of S. 54 states that the State Government or the Deputy Commissioner may during the course of enquiry or if the State Government or the Deputy Commissioner so thinks proper for any reasons to be recorded in writing, otherwise, suspend a Panch in the prescribed manner, for which he can be removed. Hence the submission made by the learned counsel for the petitioner is that the enquiry is only contemplated and has not yet been initiated and that the Government cannot suspend a Panch unless the enquiry is actually started.

4. The scope of Section 54 (1) of Act No. 19 of 1970 is very wide. A Sarpanch or a member of a Panchayat cannot only be suspended during the course of an enquiry but he can also be suspended by the State Government or the Deputy Commissioner if he thinks proper for any other reasons to be recorded in writing. In the instant case, the learned counsel for the petitioner has submitted that there is no inquiry initiated. The impugned order states that the inquiry is contemplated and in view of this, the petitioner could not be placed under suspension. I have gone through the record placed before the Court by the respondent. Undoubtedly, criminal cases are pending before the Magistrate at Solan against the petitioner, which are being inquired into by the Magistrate and the petitioner could be suspended under the provisions of S. 54 of the Himachal Pradesh Panchayati Raj Act of 1968 (Act No. 19 of 1970) on the ground that an inquiry was pending. From the office record, at one place I find that on 21st May, 1971, the Transport Minister, who is also holding the portfolio of Local Self Government had passed orders of suspension of Narain Singh in view of the fact that Narain Singh had been charge-sheeted by the S. D. M. for offences under Sections 452, 354 and 324. I. P. C. on 11-1-1971, and that he had misbehaved with Smt. Bimla Devi and that it would be "feasible" if Narain Singh was suspended immediately. But it appears that this order was not implemented. There is one copy of a complaint, dated 6-6-1971, made by Smt. Bimla Devi to the Deputy Commissioner requesting him to place Narain Singh, Sarpanch, under

suspension, and there is the order on this application of the Minister concerned in his own hand to the following effect:--

"I have already issued Instruction that the Sarpanch should be immediately suspended. Why these orders have been delayed ?"

It is after this order that the impugned order has been passed on 28-6-1971. The impugned order reveals that the suspension is not made because of the pendency of the inquiry before the Criminal Courts, but the suspension has been ordered to be made because of an inquiry into the complaints filed by Smt. Bimla Devi and which inquiry was contemplated by the department against Shri Narain Singh, President. Gram Sabha. Till 26th June, 1971, it appears that no inquiry into the complaints, which had been received in the office of the Minister had been ordered to be made. There is no mention in the impugned order about any criminal inquiry pending before the Magistrate which necessitated the suspension of the petitioner, rather the suspension was ordered because of the complaints received by the Minister other than those pending in the court and in which complaints an inquiry was ordered to be gone into and it was, therefore, rightly argued that in view of the contemplated inquiry against Narain Singh into the complaints, filed by Smt. Bimla Devi, he was placed under suspension. Hence, the submission made by the learned counsel for the petitioner appears to be quite correct that no inquiry had so far been made so as to order the suspension. The suspension could be ordered only if the inquiry had already started, as is clear from the expression "during the course of the inquiry". The submission made by the learned counsel for the respondents that the wording of the suspension order is quite loose and that the inquiry had already started does not appear to be correct and there is no material on the record wherefrom this submission can be supported to be correct. It was a different matter if the suspension had been ordered because of the pendency of the inquiry before the Magistrate in the criminal cases against the petitioner. But that is not the case. It speaks about the complaints which, I can gather, were received in the office of the Minister from Smt. Bimla Devi against the conduct of the petitioner and which complaints were ordered to be inquired into independently of the criminal cases pending in the court. Hence. I have got no reason to disagree with the submission made by the learned counsel for the petitioner that this order of suspension is not sustainable because there is no inquiry pending; it is only contemplated by the department through the Deputy Director of Panchavats who was required to submit his report to the Government within 20 days.

5. The petitioner undoubtedly could be placed under suspension for any other reasons to be recorded in writing, but there are no other reasons disclosed in the order. No doubt, on the file, the Minister had ordered on 21st May, 1971 to put Narain Singh under suspension in view of his having been charge-sheeted for offences under Sections 452, 354 and 324 committed by him on 11-1-1971. But this order was not implemented necessitating a fresh order on 11-6-1971 on a fresh complaint received from Smt. Bimla Devi through the Deputy

Commissioner in this behalf and the Hon"ble Minister passed the order already stated above. The impugned order was a sequel to this order of the Minister and this order does not state anything if the suspension was because of the pendency of criminal cases, rather the suspension had taken place in view of the complaints received by the Minister and which complaints were ordered to be inquired into departmentally, as would be apparent from the phraseology and the working of the impugned order it-, self. No matter that the Minister had earlier passed orders to suspend him, in view of criminal cases instituted against him, but the order which was communicated to the petitioner does not speak anything about an inquiry into those criminal complaints. The order which is under attack speaks about the inquiry which is yet to be entered upon by the Deputy Director of Panchayats and he was to submit his report within 20 days. The inquiry, therefore, had not in fact started and it was contemplated, as rightly argued by the learned counsel for the petitioner.

6. It is also true that a Sarpanch or a Panch can be placed under suspension by the State Government or the Deputy Commissioner for any reasons for which he could be removed, as would be evident from Sub-section (2) of Section 54 of the Act No. 19 of 1970 and also for the grounds as enumerated in Sub-section (5) of Section 9 of the aforesaid Act. But there do not appear any grounds as enumerated in the aforesaid sections, in the impugned order so as to justify the placing of the petitioner under suspension. Therefore, this order is wrong and invalid and as such is not sustainable.

7. The second submission made by the learned counsel for the petitioner is that Section 54 of Act No. 19 of 1970 had no application to his case, as he had been elected under the Panchayati Raj Act of 1952 and it was Section 118-A which provided for suspension and removal of a President. Vice President and Members of the Panchayat. But according to him this section also will not apply to his case. The reasoning advanced by the learned counsel is that he is not a Panch elected under the Act of 1970, rather he had been elected under the Act of 1952 which Act stood repealed except to the extent as provided for u/s 257 of the Act of 1970. According to him, under Clause (d) of Section 257 it was his term of office for which he had been elected under the Act of 1952, which was saved by this Act of 1970 and in so far as other matters were concerned, the Act of 1952 did not have any application nor the new Act had any application. So, according to him, no action could be taken against him either under the old Act which stood repealed or under the new Act because he had not been elected under the provisions of the new Act.

8. Section 118-A (i) reads as follows:--

"The State Government may, during the course of an inquiry, suspend the President, Vice President or a Member of the Gram Panchayat Tehsil Panchayat for any of the reasons for which he could be removed and debar from taking part in any act or proceeding of the said body during that period and order him to hand over the record, money or any property of the said body to the person

authorised in this behalf".

9. Section 118-A (i) is not so wide as Section 54 (a) is. Under the former section, suspension can be ordered only if there is an inquiry pending or going on. Under this section, the State Government has not been given the power to place a President, Vice President or a Member of the Gram Panchayat under suspension for any other reasons except during the course of an inquiry for which reasons he could be removed. Section 54 gives wide powers to the State Government and the Deputy Commissioner to place a Panch or a Sarpanch under suspension not only during the course of an inquiry but otherwise also if they think so proper for reasons to be recorded in writing, and which words are missing in Section 118-A.

10. As has already been noticed, there is no inquiry mentioned in the impugned order which is pending and the inquiry is only contemplated and has not as yet started. The criminal case which is pending inquiry in the case does not find any mention in the order of suspension communicated to the petitioner. Therefore, this section is not at all attracted to the case of the petitioner. Similarly, as already stated, Section 54 of the new Act also has got no application inasmuch as there is no inquiry pending as would be apparent from the impugned order. There is no mention of the criminal inquiry for which an order had earlier been passed by the Hon"ble Minister, but which orders had been implemented. The impugned order was passed after a complaint was received afresh from Smt. Bimla Devi through the Deputy Commissioner and the Secretary to the Panchayats issued the impugned order. The order which was originally passed on the file by the Minister was not at all communicated to the petitioner; therefore, this order clearly refers to contemplated inquiry into the complaints received in the office of the Minister and which was ordered to be probed into. Therefore, this inquiry cannot be said to be pending and there were no other reasons given on the file which. I have perused nor any reasons can be spelt out from the order communicated to the petitioner placing him under suspension so as to justify the issue of the order. Hence Section 54 of the Act also has got no application in the case of the petitioner. If reasons had been given in the order or the order otherwise could be supported by other material on the record, then of course it could be said that Section 54 had its application to the case of the petitioner.

11. The further argument advanced by the learned counsel for the petitioner is that this section did not apply to him otherwise also as he was not a Panch elected under the Act No. 19 of 1970.

This argument does not appear to be tenable because, in my opinion, for the purposes of membership for the remainhag duration he must be held to be a member to have been elected under this Act. Section 257 of Act No. 19 of 1970 provides for saving of existing Gram Sabhas, etc. Clause (a) of this section provides that the Gram Sabhas. Gram Panchayats, etc., constituted and functioning immediately before the commencement of this Act, shall be deemed to be Gram Sabha. Gram Panchayats, etc., constituted and functioning under the provisions of this Act. Clause (b) saves the actions done or taken including the

Gram Sabhas, Gram Panchayats, etc., constituted, limits defined, appointments, rules, regulations, bye-laws, etc. issued, taxes, tolls, contracts entered into and suits instituted under any Act repealed u/s 2, or any ejection thereby repealed, so far as may be, be deemed, unless the State Government directs otherwise, to have been respectively done or taken, with corresponding provisions of this Act. Clause (c) provides for any reference in any law for the time being in force, to any Act repealed under Section 2, to be construed as reference to this Act, i. e. the Act of 1970, and Cl. (d) says that the members elected or appointed to any Gram Panchayat etc., under any of the repealed Acts, shall continue to hold office till the expiry of their present term of office. The cumulative effect of the sub-clauses of this section is that all acts taken, bye-laws made and any reference made in any law for the time being in force and the constitution of the Panchayat and the term of the members so elected are saved. Hence, in my view, it is Section 54 (1) which would definitely apply in the case of suspension of a member elected under the provisions of the old Act, i. e. the Act of 1952 and it is wrong to say that this section will have no applicability in the case of a Panch elected under the Act of 1952. If an interpretation, as sought by the learned counsel for the petitioner is placed, then it would lead to anomalous results. It could not be said that a member who is elected and whose term is saved under Clause (d) of Section 257 of Act No. 19 of 1970, would be immune from any action being taken against him under any of the provisions of the Act, for his acts of commission or omission and abuse of powers as a member of the Gram Panchayat. Therefore, in my opinion, the argument advanced that neither Section 54 nor S. 118-A, is applicable is not at all tenable. In fact, it is Section 54 which does apply to a member elected under the provisions of Act of 1952 and whose term has been saved by the provisions of Section 257 (d) of Act No. 19 of 1970.

12. Since there is no reason disclosed other than the ground that an inquiry is contemplated against him, therefore, this impugned order cannot be sustained and the order, must be quashed.

13. In the light of the above. I am of the view that this order of the respondents, being invalid and illegal, is hereby quashed, and the petitioner shall be deemed to have continued as a President of the Gram Panchayat. No orders as to costs.