

(1989) 03 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 84 of 1989

Prakash Chand

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 28-03-1989

Acts Referred:

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

Citation : AIR 1990 HP 88 : (1989) 1 ILR HP 161

Hon'ble Judges : V.K. Mehrotra, Acting C.J.; Bhawani Singh, J

Bench : Division Bench

Advocate : M.L. Sharma, for the Appellant; Indar Singh, for the Respondent

Judgement

V.K. Mehrotra, Actg. C.J.

1. When the case was taken up today, Shri Indar Singh, Advocate General, stated that by an order dated March 15, 1989, the Director, Panchayati Raj Department, has appointed the Sub Divisional Officer (Civil), Hamirpur, as enquiry officer. Also, that the enquiry officer is on leave till March 31, 1989. The order by which the petitioner was placed under suspension by the Deputy Commissioner, Hamirpur and enquiry directed into the allegations mentioned by him, is dated January 19, 1989. So far, admittedly, no progress has been made in the enquiry.

2. The various irregularities alleged to have been found in the functioning of the petitioner as a Pradhan, were mentioned by the Deputy Commissioner in his office order dated September 16, 1988 (Annexure PA to the writ petition). The infirmities, mentioned in it, are 14 in number. A reply (Annexure PB) was given by the petitioner by way of explanation. The Deputy Commissioner then passed the impugned office order dated January 19, 1989. In paragraph 15 of this office order, he has mentioned that the reply of the petitioner to the show cause notice had been received and that "from the perusal of the reply, it appears that the President has attempted to exonerate himself from the allegations by concealing

the facts and reality and the reply was found unsatisfactory".

3. The first fourteen paragraphs of the office order of January 19, 1989 are just a reproduction of the corresponding paragraphs of the show cause notice. By way of consideration of the explanation, we find the sentence, extracted above, in the impugned office order dated January 19, 1989, in paragraph 15 thereof. It is quite clear that the order dated January 19, 1989 does not disclose any application of mind on the part of the Deputy Commissioner when he purports to have considered the explanation of the petitioner. The order of suspension, to our mind, was passed mechanically without any consideration of the explanation offered by the petitioner. Such an order cannot be upheld.

4. Section 54(1) of the Himachal Pradesh Panchayati Raj Act, undoubtedly, permits the State Government or the Deputy Commissioner to place a Pradhan under suspension during the course of an enquiry. This, however, is to be done "for any reason to be recorded in writing". An order placing a Panch (which would include a Pradhan u/s 3(s) of the Act) should, therefore, contain "reasons" as known to law and, to borrow the words of the Supreme Court in *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, ;

"Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable."

5. Section 54(1) contains a mandate for recording reasons before a Panch can be placed under suspension. Failure to record reasons, as known to law, would make it difficult for a Court to find out whether the discretionary power given u/s 54(1) has been exercised properly or not. As observed by D. Smith in *Judicial Review of Administrative Action* (4th Edition at page 149):

".....In the absence of reasons, however, it will often be difficult to establish a prima facie case that a wide discretionary power has been improperly exercised."

6. One cannot forget that a Panch (which includes a Pradhan) is an elected representative of the people and that law frowns upon interference with the functioning of elected representatives by an arbitrary exercise of power. The Act, therefore, contains the salutary safeguard of recording of reasons by the authorities concerned before a Pradhan can be placed under suspension in exercise of powers u/s 54(1) of the Act.

7. We are not inclined to uphold the order dated January 19, 1989 (Annexure PD), in so far as it places the petitioner under suspension. For the reasons mentioned earlier, we quash it to that extent, though we leave it open to the appropriate authority to proceed against the petitioner in accordance with law.

8. The petition shall stand disposed of finally in terms of the above order. Costs

on parties.