
(1996) 05 P&H CK 0097
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition 16232 of 1995

Pritam Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 28-05-1996

Acts Referred:

Citation : (1996) 3 RCR(Civil) 480

Hon'ble Judges : G.S.Singhvi, J and S.C.Malte, J

Advocate : Mrs. Charu Tuli, DAG, Punjab., Sh. H.S. Sidhu, Advocate., Advocates for appearing Parties

Judgement

G.S. Singhvi, J.—In these two petitions prayer has been made to direct the respondent Government to transfer powers, responsibility and finances to the Panchayat Samitis and Zila Parishads to enable them to implement schemes for economic development and social justice in accordance with the Constitution (73rd) Amendment Act, 1992, and the Punjab Panchayati Raj Act, 1994.

2. Petitioners in Civil Writ Petition No. 16232 of 1995 are Chairman, Block Samiti Budhlada, District Mansa, and members of the Zila Parishad, Mansa. They were elected to their respective offices in the year 1994. Petitioners have alleged that despite insertion of Article 243G by virtue of 73rd Constitutional Amendment and incorporation of similar provisions in the Punjab Panchayati Raj Act, 1994, the respondent State Government has not taken steps to transfer the various functions to the Zila Parishads and Panchayat Samitis resulting in deprivation of benefits to the rural masses and being representatives of the people, they have sought intervention of the Court. In its reply, the respondent State has stated that the Punjab Panchayati Raj Act, 1994 is aimed at to give more administrative, supervisory and monetary powers to the Panchayati Raj Institutions. In order to give effect to these provisions, a decision was taken in the meeting of the State level Officers held in August, 1995, to send four teams of experienced departmental officers to the States of Maharashtra, Karnataka, Madhya Pradesh and Rajasthan to study the Panchayati Raj system in those

States and to adopt and incorporate the best out of the systems of the Panchayati Raj in these States. These teams studied the Panchayati Raj system in the respective States and submitted report to the Government. Thereafter, the Government constituted a Cabinet Subcommittee to study the matter and arrive at the modalities for transfer of 27 subjects of different departments to the Panchayati Raj Institutions and a Committee headed by Shri R.R. Bhardwaj, the then Financial Commissioner, Department of Rural Development and Panchayats was constituted. The Government also constituted a State Finance Commission for making recommendations about delegation of financial powers and resources to these Institutions. The Chairman, Finance Commission, held a number of meetings with the Chairpersons and Vice Chairpersons and members of Panchayat Samitis and Zila Parishads to find out ways and means to increase resources of the Panchayati Raj Institutions and for giving taxation powers to these Institutions so as to make them selfreliant. It has also been stated that the Government also called experienced and retired experts of the Department and thereafter the Finance Commission submitted its recommendations to the Government on 20.10.1995 which were placed on the floor of the House and comments on the same are being sent from the Government to the concerned Department. Reference has been made to the Punjab Panchayat Election Rules, 1994 and the Punjab Reservation for the Offices of Sarpanches of Gram Panchayats and Chairmen and Vice Chairmen of the Panchayat Samitis and Zila Parishads Rules, 1995. It is stated that several other Rules have also been framed and the matter is under active consideration of the Government and the process of devolution of powers is going on and the Government is taking every step to discharge its obligations to devolve powers to the, Panchayati Raj Institutions at the earliest.

3. In the Civil Writ Petition No. 17614 of 1994 similar prayer has been made by the petitioner and the reply filed by the respondents is also almost on similar lines. It is, therefore, not necessary to give detailed reference to the facts of that petition.

4. Article 38 of the Constitution makes it obligatory for the State to strive to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political shall inform all the institutions of national life. State is also required to take steps to minimise inequalities in status, facilities and opportunities among individuals and groups of individuals residing in different areas or engaged in different vocations. Article 39(a) requires the State to direct its policy towards securing right to adequate means of livelihood. Clauses (b) and (c) thereof require the State to direct its policy in such a manner that material resources of the community are distributed to subserve the common good and operation of the economic system does not result in concentration of wealth and means of production to the common detriment. Article 40 imposes a duty on the State to take steps to organise village Panchayats and to endow them with such powers and authority as may be necessary to enable them to function as units of selfGovernment. Article 45

requires the State to provide free and compulsory education to all children upto the age of 14 years. Article 46 mandates the State to promote education and the economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections and to take steps to protect them from social injustice and exploitation. Article 47 imposes a duty on the State to raise the level of nutrition and the standard of living of the people and to improve public health. Article 48 requires the State to organise agriculture and animal husbandry on modern and scientific lines. All these Articles find place in Part IV of the Constitution and although as per Article 37 the provisions contained in various Articles of Part IV are not enforceable by any Court but the principles contained therein are fundamental in the governance of the country, and the State is under a duty to apply these principles while enacting laws.

5. In the first two decades after the coming into force of the Constitution, the Courts had shown complete disinclination to enforce the Directive Principles of State Policy and the Fundamental Rights enumerated in Part III were treated as sacrosanct and were given place of dominance visavis the Directive Principles, Subsequently, the Courts gave new dimensions to the Directive Principles of State Policy and they were placed at par with the Fundamental Rights. In various decisions the Apex Court attempted to bring about a synthesis between Part III and Part IV of the Constitution by reading the Directive Principles as integral part of right to equality and right to life and liberty.

6. Notwithstanding the change in the approach of the Courts and their inclination to give effect to the Directive Principles of State Policy by treating them part of Fundamental Rights, a majority of the population living in the villages continued to suffer inequalities because a majority share of the public funds continued to be utilised to cater to the ever increasing needs of urban population. The development activities meant to benefit the rural population could not be undertaken and/or implemented resulting in widening of gap between urban and rural population, due to lack of the development of rural areas, village youth continued to be attracted towards cities and in the last two decades growth of cities has acquired unmanageable proportions. More and more public funds are required for providing basic living conditions to the everincreasing urban population and this has led to cutting down of development funds meant for a more needy segment of the society, i.e. rural population. It has also been witnessed that benefits of the various social welfare legislations and schemes have not percolated to the grass root and common village folk continued to suffer. This made the representatives of the people to realise that unless powers are transferred to the village population itself through their elected representatives, it will be difficult to maintain uniformity between the urban and the rural population and it will be impossible to achieve the constitutional goals of equality and justice for all the people. This realisation led to enactment of the Constitution (SeventyThird) Amendment Act, 1992, whereby Part IX containing Article 243 to 243 have been inserted. Article 243 contains definition of various terms used in Article 243 to 243 Q. The term `` Panchayat''' has been defined in

Article 243(d) as an institution of selfgovernment constituted under Article 243B for the rural areas. By virtue of Article 243A, the Gram Sabha can be empowered to exercise such powers and perform such functions at the village level as the Legislature of a State may provide by enacting an appropriate legislation. Article 243B imposes a mandatory obligation upon the State to constitute the Panchayat at the village, intermediate and District levels.

7. Article 243G contains provisions for devolution of powers, authority and responsibilities to Panchayats. Article 243H provides that Legislature of a State may, by law, confer powers upon a Panchayat to levy, collect and appropriate such taxes, duties, tolls and cess in accordance with such procedure as may be specified in the law. This Article also provides for constitution of funds. For the purpose of this decision, it would be profitable to quote Articles 243G and 243H of the Constitution:

``243G. Powers, authority and responsibilities of Panchayats :

Subject to the provisions of the Constitution, the Legislature of a State may, bylaw, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level.

Subject to such conditions as may be specified therein, with respect to:

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

243H. Powers to impose taxes by, and Funds of, the Panchayats:

The Legislature of a State may, by law,

- (a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- (b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- (c) provide for making such grantsinaid to the Panchayats from the Consolidated Fund of the State; and
- (d) provide for Constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.""

8. In order to translate the Constitutional mandate into reality the Legislature of the State of Punjab enacted the Punjab Panchayati Raj Act, 1994, which has

been made effective w.e.f. 24.4.1994. Chapter II of the 1994 Act relates to establishment of Gram Sabha area, constitution of Gram Sabha, election to the offices of the Sarpanch and Panches and various other ancillary matters including meeting etc. Chapter III deals with functions, powers and duties of the Gram Panchayats. Chapter IV relates to judicial functions of Gram Panchayats. Chapter V contains provisions relating to property, funds, finance and accounts of Gram Panchayats. Chapter VI deals with Panchayat Samitis whereas Chapter VII deals with Zila Parishads. Sections 118, 119 and 120 of the 1994 Act relate to executive powers, functions and duties of the Panchayat Samitis. Similarly, Sections 180 and 181 relate to functions, duties and powers of Zila Parishads. Section 188 deals with Zila Parishad Fund. Section 189 empowers the Zila Parishad to impose taxes etc. Section 119 imposes a duty on the Panchayat Samiti to provide for and to make arrangements for carrying out the requirements of the area in respect of agriculture, land improvement and soil conservation, minor irrigation, water management and watershed development, poverty alleviation programme, animal husbandry, dairying and poultry, fisheries, khadi village and cottage industries, rural housing, drinking water, social and farm forestry, minor forest produce, fuel and fodder, roads, buildings, bridges, ferries, waterways and other means of communication, nonconventional energy sources, education including primary and secondary schools, technical training and vocational education, adult and nonformal education, cultural activities, markets and fairs, health and family welfare, women and child development, social welfare including welfare of the handicapped and mentally retarded, welfare of the weaker sections and in particular of the Scheduled Castes and Backward Classes, maintenance of community assets, public distribution systems, rural electrification, cooperation, libraries. Clause (27) of this Section provides that Panchayat Samiti shall carry out such other functions as may be entrusted by the State Government. Similar functions are required to be discharged by the Zila Parishads in respect of the area falling in their jurisdiction. Panchayat Samitis also exercise supervisory functions over Panchayats and Zila Parishads also exercise supervisory jurisdiction over Panchayat Samitis.

9. All these provisions have been made keeping in view the provisions contained in Eleventh Schedule to the Constitution which has been inserted vide SeventyThird Constitution Amendment. It is not necessary for us to debate in greater detail on various functions which are required to be carried out by the Gram Panchayats, Panchayat Samitis and Zila Parishads, but at the same time it is necessary to point out that all these provisions have been made with the object of giving effect to the Directive Principles of State Policy, contained in Articles 38, 39, 40, 45, 46 and 47 of the Constitution. In a way, the Parliament and the State Legislature have made an attempt to achieve the goals of equality and social justice by providing for devolution of powers on the people who are elected by the rural population to act as their representatives in Gram Panchayats, Panchayat Samitis and the Zila Parishads. SeventyThird Amendment

of the Constitution and the various provisions contained in the Act of 1994 are nothing but sort of a stark realisation by the Parliament and the State Legislature that benefits of welfare projects and schemes cannot be given to the people of rural areas unless local representatives are entrusted with the task of translating the development schemes into reality and thereby enabling the people to achieve the goals set out in the Preamble of the Constitution.

10. However, failure of the respondentState to implement the Constitutional mandate as well as the provisions of the 1994 Act has compelled the petitioners to seek intervention of the Court and the slowpaced progress made by the respondentState Government to implement the provisions of the Constitution and the Act of 1994 to some extent strengthens the apprehension of the petitioners that the Government is lukewarm in delegation of powers to the representatives of the rural masses. It is not possible to accept on the face of it that those sitting in the corridors of power in the capital of the State are designedly preventing the devolution of powers to the people but there also does not appeal to be any justification for failure of the Government to implement these provisions for a long period of more than two years. Even after issue of notice in Civil Writ Petition No. 16232 of 1995, we had given more than one opportunity to the respondent to intimate the maximum period within which the Government would devolve powers and responsibilities to Panchayat Samitis and Zila Parishads and provide financial assistance to them for implementation of various welfare programmes, but till this date, no straightforward statement has been made on behalf of the respondent of State.

11. We may add that even if there was absence of constitutional mandate in the form of Article 243G, it would have been possible for the Court to issue a writ of mandamus to the respondentState to take steps for devolution of powers to Panchayati Raj Institutions because after having enacted law in furtherance of the Directive Principles of State Policy, the Government cannot sit tight and refuse to implement the provisions, which are enacted for the welfare and overall upliftment of the rural masses. In this connection, it would be profitable to refer to a recent decision of the Supreme Court in *State of Maharashtra v. Manubhai Pragati Vashi and others*, 1995(4) S.C.T. 547 : JT 1995(6) SC 119. A similar objection raised to the maintainability of the writ petition was negatived by the Bombay High Court and while upholding the decision of the Bombay High Court, their Lordships of the Supreme Court observed :

``A plea was taken in the High Court that the petitioner has no right to seek a writ of mandamus under Article 226 of the Constitution basing his relief on a directive principle, contained in the Constitution. The High Court, rightly in our opinion. repelled this plea relying on the decision of this Court in *State of Himachal Pradesh v. Umed Ram Sharma*, (AIR 1986 SC 847). The High Court referred to the dictum laid down in the aforesaid decision to the effect (a) the Court can in a fit case direct the executive to carry out the directive principles of the Constitution, and (b) when there is inaction or slow action by the executive,

the judiciary must intervene. We have no doubt that the above conclusion of the court below is also justified.'"

Reference also deserves to be made to a recent decision of this Court dated 12.4.1996 given in C.W.P. No. 16570 of 1995 < Waryam Singh v. State of Punjab and others, 1995(2) RRR 394 (FCP) and connected matters. After making reference to the various decisions of the Supreme Court, a Division Bench of this Court which was called upon to consider the claim of the Government employees for medical reimbursement held:

``It is clear that the Courts have unhesitatingly read the provisions of Part IV of the Constitution as integral part of various Fundamental Rights enumerated in Part III of the Constitution. Therefore, it must be held that Article 47 of the Constitution which declares that raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties as well as Article 41 which obliges the State to make effective provisions for securing among other things public assistance in cases of sickness and disablement within the limit of its economic capacity and development forms part of Article 21 of the Constitution. It is the duty of the State to provide adequate assistance to the people in cases of sickness. Various finer aspects of life would be rendered meaningless, if one cannot get adequate medical attention

``After having given effect to the provisions contained in Part IV, the State cannot backtrack and deny the benefit of the State legislative measures or executive orders passed by it for giving effect to the content of the Directive Principles of State Policy, which as already held above, form part of the right to life enshrined in Article 21 of the Constitution.'"

12. In view of the above legal position and in the absence of any cogent explanation by the respondent State for its failure to give effect to Articles 243G and 243H read with the various provisions contained in the 1994 Act, we are of the opinion that a writ of mandamus deserves to be issued in favour of the petitioners who have a legitimate grievance against the aforesaid inaction of the Government.

13. We, therefore, allow the writ petitions and direct the State Government to issue necessary orders/frame rules for giving effect to Articles 243G and 243H read with Eleventh Schedule to the Constitution and Sections 119, 120, 180, 181 and 189 of the 1994 Act within a period of four months from today.