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**(1984) 08 RAJ CK 0023**

**In the Rajasthan High Court**

**Case No : Civil Writ Petition No. 784 of 1984**

Radhey Shyam Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision : 31-08-1984**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Rajasthan Panchayat Act, 1953 — Section 17(4A)  
Rajasthan Panchayat and Nyaya Panchayat (General) Rules, 1961 — Rule 20, 21, 21(2), 26(2)

**Citation : AIR 1985 Raj 65 : (1985) 2 WLN 210**

**Hon'ble Judges : S.C. Agrawal, J**

**Bench : Single Bench**

**Advocate : Jagdeep Dhankar, for the Appellant; G.G. Sharma, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

S.C. Agrawal, J.—Radhey Shyam Sharma, the petitioner in this writ petition, is Sarpanch of Gram Panchayat Mangiabas. Certain complaints were received against the petitioner and a preliminary enquiry was conducted into the said complaints by the Sub-Divisional Officer, District Jaipur. The said report was submitted by the Collector, Jaipur along with his recommendations to the State Government. After considering the aforesaid report of preliminary enquiry, the State Government passed an order in the exercise of its powers under Sub-section (4A) of Section 17 of the Rajasthan Panchayat Act, 1953 (hereinafter referred to as "the Act") on 16th July, 1984 whereby the petitioner was suspended from the office of Sarpanch, Gram Panchayat Mangiabas, with immediate effect. A change-sheet was also served on the petitioner and the petitioner was required to submit his explanation to the same. Feeling aggrieved by the aforesaid order of suspension passed by the State Government, the petitioner has filed this writ petition.

2. A notice was issued to the State Government, non-petitioner No. 1, requiring

them to show cause as to why the writ petition should not be admitted.

3. Caveat has been filed on behalf of respondent No. 6 who has also filed a reply to the writ petition.

4. I have heard Shri Jagdeep Dhankar, the learned counsel for the petitioner and Shri G. G. Sharma, the learned counsel for non-petitioner No. 6.

5. Before dealing with the contentions urged by Shri Dhankar, it would be appropriate to set out the relevant provisions of the Act and the Rajasthan Panchayat & Nyaya Panchayat (General) Rules, 1961 (hereinafter referred to as "the Rules"). The relevant provisions of the Act are contained in Sub-sections (4) and (4A) of Section 17 of the Act, which read as under :--

"17(4). The State Government may, by order in writing and after giving him an opportunity of being heard and making such inquiry as may be deemed necessary, remove any Panch, Sarpanch or Upsarpanch who--

(a) refuses to act or becomes incapable of acting as such, or

(b) in the opinion of the State Government, has been guilty of misconduct or neglect in the discharge of his duties or of any disgraceful conduct;

Provided that any such inquiry as is referred to in this Sub-section may be initiated even after the expiry of the term of a Panchayat or if already initiated before such expiry, may be continued thereafter and in any (such) cases, the State Government shall, by order in writing record its finding on the charges levelled against a Panch, Sarpanch or Upsarpanch of the Panchayat during its term of office".

"(4A). The State Government may suspend any Panch, Sarpanch, or Upsarpanch against whom an enquiry has been started under Sub-section (4) of the proviso thereto, or against whom any criminal proceedings in regard to an offence involving moral turpitude is pending trial in a Court of law, and debar him from taking part in any act or proceedings of the Panchayat while under suspension".

Rules 20 and 21 of the Rules which have a bearing on the question of removal of Panchas and Sarpanchas under Sub-section (4) of Section 17 of the Act provided that:

"20. Preliminary inquiry for removal. --The Collector may, on his own motion or upon the requisition of the State Government initiate a preliminary inquiry under Sub-section (4) of Section 17 against any Panch, Sarpanch or Upsarpanch of a Panchayat or against any member or Chairman of a Nyaya Panchayat.

(2) For the purpose of Sub-rule (1) any officer subordinate to him may be deputed by the Collector to hold such preliminary inquiry and to make a report to him.

(3) any Preliminary inquiry against the Chairman or a member of a Nyaya Panchayat may also be initiated as aforesaid by the Munsif, or, where there is no

Munsif by the Civil Judge, or the Magistrate of the First Class, having jurisdiction over the Nyaya Circle.

(4) If, as a result of such preliminary inquiry, the Collector or the Munsiff or the Civil Judge or the Magistrate of the First Class initiating the inquiry is satisfied that any charges of the nature specified in Sub-section (4) of Section 17 are prima facie made out against such Panch, Sarpanch or Upsarpanch or against such Chairman or Member as the case may be, a report thereof along with the recommendations of such officer the matter shall be made accordingly to the State Government or to any Officer or authority to whom the powers of the State Government under Sub-section (4) of Section 14 may be delegated by a notification u/s 70.

(5) The provisions of the Rajasthan Disciplinary Proceedings (Summoning of Witnesses and Production of Documents) Act, 1959 (Rajasthan Act No. 28/1959) and the rules made thereunder, shall also apply mutatis mutandis, to the enquiries against Panch, Sarpanch or Upsarpanch of the Panchayat or against any member or Chairman of Nyaya Panchayat as the case may be, being conducted under the provisions of the Act and the rules made thereunder.

21. Final inquiry.-- (1) The State Government or the Officer or Authority referred to in Sub-rule (4) of R. 20 shall consider the report of the preliminary inquiry and may either drop the proceedings or get drawn up a statement of charges prima facie made out against the person against whom the preliminary inquiry has been made, specifying such details as may be deemed sufficient for him to understand the nature thereof.

(2) A copy of such statement shall be sent to the person charged, along with a notice calling upon him and to show cause in writing why they should not be inquired into.

(3) Upon reading the representation, if any, of the person charged, in response, to the notice under Sub-rule (2) the State Government or the Officer or Authority referred to in Sub-rule (4) or Rule 20 may either drop the proceedings or may appoint an Officer or Authority to inquire into the charges hereinafter referred as to the Inquiring Officer, to whom the record of the preliminary inquiry, the statement of charges, the explanation of the person charged and all other relevant papers shall be forwarded.

(4) The inquiry officer shall--

(a) issue a notice to the person charged to appeal before him on a date and at the time and place specified in the notice.

(b) read out the person charged, when he so appears, the charge or charges levelled against him,

(c) hear the explanation, if any.

(d) take and consider such evidence, oral or documentary, as may be produced

in support or in rebuttal of the charge or charges, and

(e) record his finding on such charge or charges, and.

(f) record his findings on each of them.

(5) The record of the inquiry, together with his findings shall be forwarded by the Inquiring Officer to the State Government or the Officer or Authority referred to in Sub-rule (4) of Rule 20".

6. The first contention urged by Shri Dhankar was that an order of suspension under Sub-section (4A) of Section 17 of the Act can only be passed after an enquiry as contemplated by Sub-section (4) of Section 17 has been started against the Panch, Sarpanch or Upsarpanch sought to be suspended and that an enquiry under Sub-section (4) of Section 17 of the Act can be said to have been started against Ranch, Sarpanch or Upsarpanch after a preliminary enquiry has been conducted under Rule 20 and the report of the preliminary enquiry has been considered by the State Government and the State Government, on consideration of the said report, decides to issue a charge-sheet to the Ranch, Sarpanch or Upsarpanch concerned and a show-cause notice has been issued to the Ranch concerned and the explanation submitted by him in reply to the charge-sheet has been considered by the State Government and the State Government has appointed an Enquiry Officer to inquire into the charges under Sub-rule (3) of Rule 21. In other words the submission of Shri Dhankar was that an order of suspension under Sub-section (4A) of Section 17 of the Act can only be passed after the State Government has appointed the Enquiry Officer to inquire into the charges under Sub-rule (3) of Rule 21 of the Rules and till then the power of suspension conferred on the State Govt. under Sub-section (4A) of Section 17 of the Act cannot be invoked. Shri Dhankar has urged that in the present case the impugned order of suspension was passed after holding a preliminary enquiry but before initiating a formal enquiry under Sub-rule (3) of Rule 21 of the Rules.

7. In my opinion the aforesaid contention of Shri Dhankar cannot be accepted in view of the decision of the Division Bench of this Court in *State of Rajasthan v. Pukhraj* 1970 RLW 125. In *Pukhraj's* case (supra), the order of suspension passed under Sub-section (4A) of Section 17 of the Act had been set aside by the learned single Judge on the ground that such an order could be passed only after the State Government had decided to hold an inquiry into the charges under Sub-rule. (3) of Rule 21. The aforesaid judgment of the learned single Judge was assailed by the State before the Division Bench and it was submitted on behalf of the , State that for the purpose of Sub-section (4A) of Section 17 of the Act the enquiry must be deemed to have started as soon as proceedings are taken under Rule 20 of the Rules and, therefore, the power to suspend the Panch. Sarpanch or Upsarpanch could be exercised even at the stage of preliminary inquiry under Rule 20 of the Rules. The learned Judges of the Division Bench of this Court held that the interpretation t hat was placed by the learned single Judge on the word

"inquiry" occurring in Sub-sees. (4) and (4AI of Section 17 was too narrow and observed : --

"Section 17(4) no doubt says that it is the State Government which is to hold an inquiry but it is not correct to say that such inquiry is not initiated even after the State Government has sent a show cause notice to the person charged giving details of the charges against him. It is of course true that the office of a Panch or Sarpanch is an elective office and action against such a man for suspension should not be taken without some foundation. But in this case material had come before the State Government on the basis of which certain charges were prima facie made out and it was on the basis of that material that the State Government considered it necessary to issue a notice to the respondent to show cause in writing why charges should not be inquired into. At that stage at least it must be taken that the inquiry as contemplated u/s 17(4-A) had started".

In the said case it was further observed that : --

"While we are zealous to see that a Panch or Sarpanch should not be lightly suspended or removed, we cannot as a matter of law interpret Sub-section" (4-A) of Section 17 of the Act in the manner that the State Government has no power to suspend a Sarpanch even after it is satisfied after holding a preliminary inquiry that a prima facie case against him has been made out. This will be restricting the supervisory power of the State Government in a manner not warranted by the language of the Statute".

The aforesaid decision of the Division Bench of this Court in *State of Rajasthan v. Pukhraj* (supra) thus shows that an order of suspension under Sub-section (4-A) of Section 17 of the Act can be passed by the State Government after a preliminary inquiry has been conducted and after taking into consideration the report of the preliminary enquiry, the State Government has decided to issue a charge-sheet and a show cause notice has been issued to the person charged giving details of the charges against him. The decision in *State of Rajasthan v. Pukhraj* (supra) shows that it is not necessary that the State Government should wait for the explanation of the Panch, Sarpanch or Upsarpanch in response to the aforesaid show cause notice before passing an order of suspension under Sub-section (4-A) of Section 17 of the Act.

8. Shri Dhankar has, however, submitted that in *Bajrang Lal Vs. The State of Rajasthan and Others*, another Division Bench of this Court has taken a different view and has laid down that order of suspension under Sub-section (4-A) of Section 17 of the Act can only be passed after the explanation submitted by the Panch, Sarpanch or Upsarpanch to show cause notice issued under Sub-rule (2) of Rule 21 has been received and has been considered by the State Government. I have carefully considered the aforesaid judgment of the Division Bench of this Court in *Bajranglal v. State of Rajasthan* (supra) and in my view the aforesaid judgment cannot be construed as making a departure from the law laid down in the earlier decision of the Division Bench of this Court in *State of Rajasthan v.*

Pukhraj 1970 RLW 125 (supra). In *Bajranglal v. State of Rajasthan* (supra), the learned Judges, after considering the provisions of the Act and the Rules referred to above, have observed as under : --

"The suspension of a Sarpanch under particular circumstances of a case may be considered necessary or desirable to save the Panchayat or its funds from being ruined or mis-appropriated. The elaborate procedure noted above is safeguard against the whimsical, capricious or irrelevant exercise of powers of suspension by the State. After a preliminary report has been submitted and a prima facie case has been made out against the delinquent elected officer, the State Government after considering the merits of the case, is required to decide whether a charge-sheet is to be served on the holder of the elective officer or not and if it finds that a prima facie case has been established and further considers that his continuance in office could not be in the public interest or in the interest of the Panchayat fund or the working of the Panchayat, the Government should be left free to exercise its control and if the case warrants a temporary removal of such an incumbent, then, after careful scrutiny of the preliminary report submitted before it, to suspend him". (Para 10)

After the aforesaid observations, the learned Judges have made a reference to the decision in *State of Rajasthan v. Pukhraj* (supra). The aforesaid observations would thus indicate that in *Bajrang Lal v. State of Rajasthan* (supra), the learned Judges have not departed from the law laid down in the *State of Rajasthan v. Pukhraj* (supra) and have on the other hand, reaffirmed the said law.

9. Shri Dhankar next contended that an order of suspension of a Panch, Sarpanch or Upsarpanch can be passed only after he has been afforded an opportunity of being heard and that the impugned order for suspension of the petitioner was passed in violation of the principles of natural justice. In support of his aforesaid submission that principles of natural justice are attracted to an order of suspension passed u/s 17(4-A) of the Act, Shri Dhankar has placed reliance on the decision of this Court in *Bajranglal v. State of Rajasthan* (supra) and the decision of the Full Bench of far as I know, has ever questioned such a suspension on the-ground that it could not be done unless he is given notice of the charge and an opportunity of defending himself, and so forth. The suspension in such a case is merely done by way of good administration. A situation has arisen in which something must be done at once. The work of the department or the office is being affected by rumour and suspicions. The others will not trust the man. In order to get back to proper work, the man is suspended. At that stage the rules of natural justice do not apply. See *Furnell v. Whangarei High Schools Board*, 1973 AC 660."

These observations have been quoted with approval in the recent decision of the Supreme Court in *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*,

10. It may be mentioned that the aforesaid distinction has also been highlighted

in the Full Bench decision of the High Court of Punjab and Haryana in *Kashmiri Lal Vs. The Dy. Commissioner, Sonapat and Others*, in the context of the provisions contained in Sub-sections (1) and (1-A) of Section 102 of the Punjab Gram Panchayat Act, 1952, as amended by the Haryana State Legislature. In *Kashmiri Lal's* case (supra) it was held that suspension during an enquiry under Sub-section (1A) of Section 102 did not require giving of notice to the Panch before passing the order of suspension. In *Bajrang Lal Vs. The State of Rajasthan and Others*, the learned Judges, while dealing with *Kashmiri Lal's* case (supra) have pointedly referred to this distinction and have observed : --

"In the case on hand we are only concerned with the order of suspension, which is similar to one passed under Sub-section (1-A) of Section 102 of the Punjab Gram Panchayat Act. 1952, regarding which the Court held that an order passed under Sub-section (1-A) of Section 102 of the aforesaid Act would be an executive order and also held that the petitioner could not claim that he should have been given an opportunity to show cause before an order suspending him from the office of Sarpanch could have been passed".

11. This would show that the decision of this Court in *Bajrang Lal Vs. The State of Rajasthan and Others*, and the decision of the High Court of Punjab and Haryana in *Kashmiri Lal Vs. The Dy. Commissioner, Sonapat and Others*, do not lend support to the contention of Shri Dhankar that order of suspension u/s 17(4-A) of the Act can be passed only after affording an opportunity to the High Court of Punjab and Haryana in *Kashmiri Lal Vs. The Dy. Commissioner, Sonapat and Others*, and the decision of the Division Bench of the Bombay High Court in *Namdeo Ragho Arote Vs. State of Maharashtra and Others*, This contention of Shri Dhankar, in substance, is only a repetition of the first contention in a different garb because under the first contention it was submitted by Shri Dhankar that an order for suspension could only be passed after the State Government has considered the reply submitted by the Panch, Sarpanch and Upsarpanch to the show cause notice issued to him under Sub-rule (2) of Rule 21. As pointed out earlier, the said contention of Shri Dhankar was not tenable in view of the decision of this Court in *State of Rajasthan v. Pukhraj* 1970 RLW 125 (supra) and for the same this second contention of Shri Dhankar cannot be accepted. Leaving aside the decision of this Court in *Pukhraj's* case (supra) even on general principles the contention of Shri Dhankar is devoid of merit. An order of suspension resulting in temporary removal a person holding a particular post or office may be passed by way of punishment for misconduct or by way of an interim measure pending an inquiry into the charges levelled against him. Both these types of orders of suspension do not stand on the same footing for the purpose of applying the principles of natural justice. The principles of natural justice will be attracted to an order of suspension passed by way of punishment and it will be necessary to afford an opportunity to the person sought to be suspended before passing the order of suspension. But if the order of suspension is by way of an interim measure pending an inquiry into the charges it is not necessary to afford an opportunity to the person sought to be suspended before

passing the order of suspension. This distinction has been pointed out in the following observations of Lord Denning M. R. in *Lewis v. Heffer* (1978) 3 All ER 354 :

"These words apply, no doubt, to suspensions which are inflicted by way of punishment, as for instance, when a member of the Bar is suspended from practice for six months, or when a solicitor is suspended from practice. But they do not apply to suspensions which are made, as a holding operation, pending enquiries. Very often irregularities are disclosed in a government department or in a business house; and a man may be suspended on full pay pending enquiries. Suspicion may rest on him; and so he is suspended until he is cleared of it. No one, so show cause to the Ranch, Sarpanch or Upsarpanch sought to be suspended.

12. At this stage, it may be mentioned that in *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, the Supreme Court has dealt with the question of applicability of principles of natural justice to cases where an interim order is passed pending a final adjudication. In the said case it has been observed :

"Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. It may be that the opportunity to be heard may not be pre-decisional; it may necessarily have to be post-decisional where the danger to be averted or the act to be prevented is imminent or where the action to be taken can brook no delay".

"Ad interim orders may always be made ex parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party has, nevertheless, always the rights to make an appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at his request".

"We, however, take care to say that we do not mean to suggest that natural justice is not attracted when orders of suspension or like orders of an interim nature are made. Some orders of that nature, intended to prevent further mischief of one kind, may themselves be productive of greater mischief of another kind. An interim order of stay or suspension which has the effect of preventing a person, however, temporarily, say, from pursuing his profession or line of business, may have substantial, serious and even disastrous consequences to him and may expose him to grave risk and hazard. Therefore, we say that there must be observed some modicum of residual, core natural justice, sufficient to enable the affected person to make an adequate representation. (These considerations may not, however, apply to cases of liquor licensing which involve the grant of a privilege and are not a matter of right:

(See *Chingleput Bottlers v. Majestic Bottling Company*, Civil Appeals Nos. 1970-71 of 1983). That may be and in some cases, it can only be after an initial

ex parte interim order is made".

13. An order of suspension passed u/s 17(4-A) is in the nature of an interim order pending final adjudication and since the continuance of a Panch, Sarpanch or Upsarpanch during the pendency of the enquiry proceedings may cause irreparable damage, pre-decisional opportunity to be heard cannot be afforded to him and he can only be afforded post-decisional opportunity to be heard. Although the Act and the rules do not expressly provide for such a post-decisional opportunity after passing the order of suspension, the Panch, Sarpanch or Upsarpanch who has been suspended, has a right to make an appropriate representation seeking a review of the order of suspension and asking the State Government to rescind the said order after he has submitted his reply to the show cause notice issued to him under Sub-rule (2) of Rule 26. Even in the absence of such a representation it is incumbent upon the State Government to consider the question as to whether the order of suspension should be continued or rescinded after the reply of the Panch, Sarpanch or Upsarpanch to the show-cause notice issued under Sub-rule (2) of Rule 21 is received and if from the said reply it appears that there is no substance in the charges that have been levelled or that the misconduct is of not such a serious magnitude as to warrant the suspension of the Panch, Sarpanch or Upsarpanch, from the office to which he has been duly elected, the State Government should immediately review the order of suspension. The need for such a reconsideration at this stage is all the more necessary because under the Act and the Rules no period has been prescribed for completion of the enquiry into the charges and the State Government is duty bound to ensure that the holder of the elected office of Panch, Sarpanch or Upsarpanch is prevented from discharging the functions of his office only for good cause.

14. The last contention urged by Shri Dhanker was that the impugned order of suspension was passed mala fide at the instance of respondent No. 5 who is a member of the State Legislative Assembly belonging to the Bhartiya Janta Party and who is against the petitioner because he belongs to the Congress(I) party and had canvassed against the respondent No. 5, in the last general election. In support of his aforesaid submission, Shri Dhankar has also invited my attention to the charges that have been framed against the petitioner and has submitted that the said charges are without substance. As to whether there is any substance in the charges that have been levelled against the petitioner, is a matter to be considered by the State Government in the light of the petitioner's reply to the show cause notice and by the Enquiry Officer during the course of the inquiry and it cannot be gone into by this Court. The mere fact that the inquiry was initiated against the petitioner at the instance of respondent No. 5 who belongs to the party in opposition would not mean that the impugned order for suspension of the petitioner was passed mala fide especially when the petitioner happens to belong to the party in power in the State. In my opinion, therefore, there is no substance in the contention of Shri Dhankar that the impugned order of suspension was passed mala fide.

15. Thus none of contentions urged by Shri Dhankar can be accepted and the writ petition must fail.

16. It may, however, be observed that the rejection of the contentions of Shri Dhankar does not. absolve the State Government of its obligation to consider - the question as to whether the impugned order of suspension should be continued or revoked after the receipt of the explanation of the petitioner to the charge-sheet served upon him and if the said explanation shows that there is no substance in the charges or that the misconduct is not of such a serious magnitude as to warrant the suspension of the petitioner from the elected office of Sarpanch, the State Government should immediately revoke the order of suspension.

17. The writ petition is, therefore, dismissed but without any order as to costs.