
(1972) 09 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No's. 2123 and 2124 of 1972

Raghbir Singh and Others

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 28-09-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 162, 19(1), 226
Punjab Gram Panchayat Act, 1952 — Section 105, 67(1), 99(2)
Punjab Village Common Lands (Regulation) Act, 1953 — Section 2

Citation : AIR 1973 P&H 376

Hon'ble Judges : C.G. Suri, J

Bench : Single Bench

Judgement

1. Civil Writ Petition Nos. 2123 and 2124 of 1972, which have been filed under Articles 226 and 227 of the Constitution of India, are being disposed of by this judgment. The questions of law and fact raised in these two petitions are almost the same and can be conveniently dealt with together.

2. The petitioners in each case were, at the relevant time, the members of the Gram Panchayat of village Pehowa, tahsil Guhla in Karnal district; Ragbir Singh petitioner No. 1 being the Sarpanch. The land mentioned in paragraph 1 of the petition in each case had vested in the Gram Panchayat under the Punjab Village Common Lands (Regulation) Act of 1953 (Punjab Act No. 1 of 1954) which was repealed by and then at the same time re-enacted as an Act of the same name in 1961 (Punjab Act No. 18 of 1961). These lands had been leased out in 1950-51 by the Collector under the East Punjab Utilisation of Lands Act, 1949, for a period of twenty years. The land described in Civil Writ No. 2124 of 1972 had been leased out to the Karnal Co-operative Farmers Society Limited while the lessees of the land in the other case were some private persons. These lessees filed separate civil suits in June, 1971, against the Gram Sabha, Pehowa for a declaration that they had become owners of the land and that the Gram Sabha should be restrained from interfering with their possession. The Gram Panchayat and the Sarpanch were shown as the executive body entitled to defend the suits

on behalf of the Gram Sabha. Annexure "A" to the Civil Writ Petition in each case is a copy of the plaint filed in the respective civil suits.

3. Both these suits were decreed on the admission of the petitioners and they claim that they had been authorised by a resolution (Annexure "B" dated 28-6-1971) of the Gram Panchayat to suffer decrees being passed in both these cases. It may, however, appear that the petitioners were the only members present in the meeting in which these resolutions were said to have been passed by the Gram Panchayat and three or four other Panchas were not present. The petitioners were also members of the Co-operative society in whose favour the lease of the land which is the subject-matter of the dispute in Civil Writ No. 2124 of 1972 had been granted. The petitioners were, therefore, admitting a claim of the Society of which they themselves were members and they were suffering a decree to be passed in their own favour. The question that had been raised by the lessees in both suits was whether the land in dispute had rightly vested in the Gram Panchayat and this would have depended on an interpretation and application to the facts of the case of the complicated definition of the expression, "shamilat deh" as given in Section 2(g) of the Punjab Village Common Lands (Regulation) Act of 1961. The expression had not been defined in the earlier Act of the same name passed in 1953/1954. A mutation order about such vesting of the shamilat land in the Gram Panchayat had been attested in 1957 and this mutation order was being challenged by the lessees after a period of about fourteen years. Section 3(1) of Punjab Act No. 18 of 1961 revesting in the owners of the lands not coming within the definition of "Shamilat deh" had also come into force about ten years earlier. If the Gram Panchayat was actually conceding that there was no proper vesting of the land in their favour then they were making themselves functus officio to admit as panchas any claim to land not vesting in them. There is, therefore, a good deal to be said in support of the respondents plea that the resolution passed by the petitioners as members of Gram Panchayat and the decree that they suffered in their own favour were collusive in nature. This decree would have ensured for the benefit of the petitioners in the suit filed by the Co-operative Society of which petitioners were members along with some others. Apart from the merits of the plaintiffs' case in the two civil suits, the petitioners, had acted in utter disregard of the provisions of Section 67(1) of the Punjab Gram Panchayat Act, 1952 (Punjab Act No. IV of 1953) which debar any member of a Panchayat from taking part in any judicial proceeding in which he or his employer or employee or partner or relative is a party or in which any such Panch is personally interested. By authorising one of themselves to admit judgment in these case, the petitioners had gained a personal advantage at the expense of the public whose interests they were supposed to protect in their position of trust and responsibility as members of the Panchayat.

4. In view of these acts of malfeasance or misfeasance, the State of Haryana respondent No. 1 proceeded to appoint an Administrator for the Gram Sabha area u/s 99(2) of the Punjab Gram Panchayat Act, 1952 by its order, dated

21-11-1971 (Annexure "C"). The petitioners had filed civil Writ Petition No. 195 of 1972 against that order. The Government had given as an undertaking that the order would be withdrawn and that a fresh order under the same section would be passed after hearing the petitioners. The writ petition had accordingly been dismissed as withdrawn. The petitioners had shown cause against the second notice (Annexure "D") dated, 20-4-1972 u/s 99(2) ibid and the question whether the petitioners had failed in their duty to safeguard the interests of the Gram Panchayat was said to be under the consideration of the State Government, respondent No. 1 in those proceedings. It is one of the grievances of the petitioners that the Block Development and Panchayat Officer (respondent No. 2) a junior officer had simultaneously with those proceedings, taken action against the petitioners u/s 105 of the Punjab Gram Panchayat Act, 1952, to enforce the petitioners' civil liability for the loss alleged to have been caused to the Panchayat by the petitioners' neglect and misconduct. The show-cause notice, dated 4-4-1972 (Annexure "E") was received by the petitioners from respondent No. 2 in this connection. It was mentioned, inter alia, in this notice, that by admitting judgment in the two civil suits the petitioners had caused the Panchayats a loss which has been assessed in paragraphs Nos. 5 and 6 of the notice at a sum of Rs. 37, 45,000/- but it has not been indicated how the tentative rate of Rs. 8000/- per acre had been worked out. A note under this document, offers to allow the petitioners an inspection of records on any working day for the purpose of preparing their reply, which was to be sent by them positively within fifteen days of the receipt of the notice. There is no indication in this note that the petitioners would have an opportunity of being heard or of producing any evidence in their defence of a claim running into several lakhs of rupees.

5. The petitioners sent a reply (Annexure "F") dated 21-4-1972 through their counsel. It would not be wrong to say that this reply breathes defiance and calls in question the authority of respondent No. 2 to take any action u/s 105 of the Gram Panchayat Act, 1952. Respondent No. 2 may, therefore, appear to have been piqued into passing the impugned orders (Annexures "G", "H", "J" and "K"), dated 27-5-1972, without any further ceremony or formality, though it is mentioned in the last paragraph of this order that the petitioners had been given an opportunity to inspect the records and to produce their evidence and that they had failed to avail of the opportunity. By these orders, each of the petitioners has been held individually liable to pay amounts varying between rupees seven to ten lacs as the loss occasioned to the Panchayat by admitting judgment in the two suits. Petitioners were called upon to deposit these amount within one month, failing which recovery was threatened to be effected as if the amounts were arrears of land revenue.

6. Shri Anand Swaroop, the learned counsel for the petitioners, challenges these orders on the following grounds:--

(i) Section 105 of the Punjab Gram Panchayat Act is ultra vires and violative of

Article 14 of the Constitution of India as it vests a very junior officer with drastic and arbitrary powers without providing any sufficient procedural safeguards;

(ii) Respondent No. 2 had no jurisdiction to take action against the petitioners under this section and there has been no proper delegation of powers in his favour u/s 95 of the Act;

(iii) Proceedings could not have been taken against the petitioners simultaneously u/s 105 when proceedings were already pending against them u/s 99(2) of the Act;

(iv) The State Government, respondent No. 3, cannot call in question the bona fides of the resolution passed by the Panchayat authorising the petitioners to admit judgment in the civil suits;

(v) The assessment of the loss by respondent No. 2 is arbitrary and whimsical and does not proceed on any rational basis;

(vi) The impugned orders are bad in law as they do not give the grounds on which they proceed and that an appeal against these non-speaking orders would be an illusory remedy.

7. Before proceeding to consider the vires or constitutionality of any statutory provision or the action taken thereunder one has to keep in mind the scheme and purpose of enacting the piece of legislation in which the provision occurs. In *Kangshari Halder and Another Vs. The State of West Bengal*, their Lordships were pleased to observe as follows:--

"In considering the validity of the impugned statute on the ground that it violates Article 14 it would first be necessary to ascertain the policy underlying the statute and the object intended to be achieved by it. In this process the preamble to the Act and its material provisions can and must be considered. Having thus ascertained the policy and the object of the Act the Court should apply the dual test in examining its validity; Is the classification rational and based on intelligible differentia; and, has the basis of differentiation any rational nexus with its avowed policy and object? If both these tests are satisfied, the statute must be held to be valid; and in such a case the consideration as to whether the same result could not have been better achieved by adopting a different classification would be foreign to the scope of the judicial enquiry. If either of the two tests is not satisfied, the statute must be struck down as violative of Article 14.

In applying the said principles to the different sets of facts presented by different cases emphasis may shift and the approach may not always be identical, but it is inevitable that the final decision about the vires of any impugned provision must depend upon the decision which the Court reaches having regard to the facts and circumstances of each case, the general scheme of the impugned Act, and the nature and effect of the provisions the vires of which are under examination.

If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed."

8. The statement of objects and reasons, for enacting Punjab Act No. IV of 1953, as published in Punjab Gazette Extra-ordinary, dated 28-7-1952, was as follows:--

"In view of the emphasis placed on the development and encouragement of Panchayats in our new Constitution where a specific directive is given for this purpose in Article 40 thereof, the Punjab Gram Panchayat Bill, 1952, is presented to the Assembly.

Under the Bill it would be the responsibility of this Government to establish a Gram Sabha and a Panchayat in each village or, in some cases, in a group of villages where the individual villages are too small. This replaces the past practice of establishing a Panchayat in selected villages only. In consequence of the new Panchayat Law, the electorate will include the entire adult population will include the entire adult population of the village although in the past only adult males constituted the electorate. It is envisaged that the entire electorate will form a Gram Sabha and the Panchayat would be the name only of its Executive Committee. The administrative and judicial powers of the new Panchayats are going to be considerably larger than in the past and will cover almost the entire social needs of the village community. For the performance of these duties, it is imperative to provide legal powers for the Panchayats for the levy of taxes.

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9. According to the preamble, the Act was intended to provide for better administration in the rural areas of Punjab by the Panchayats. Chapter II of the Act provided for the demarcation of Sabha areas and the establishment and constitution of Gram Sabhas and Gram Panchayats for such areas. Panchayats were invested with criminal, civil and revenue jurisdiction in certain judicial matters, and had many trappings of a Court. (Chapters IV, V, Sections 53, 72, 73, 79 etc.). They were to follow a summary procedure and the provisions of the Codes of Civil and Criminal Procedure and the Evidence Act were not applicable. (Section 66). Legal practitioners were debarred from appearing before these Panchayats. (Section 69). The Panchayats exercised a number of administrative and executive powers and had the management and control of a number of public institutions and lands reserved for common purposes. (Chapter III). Powers of taxation had also been conferred on these Panchayats by Chapter VII in general and Section 82 in particular. It was natural that some measures of control should have been provided over the Panchayats and their members who had been placed in positions of trust and responsibility and who wielded such extensive powers in judicial, administrative and fiscal matters. Section 99 provided for cases where the Panchayat made defaults in the performance of any of its duties other than judicial functions or failed or was found incompetent to administer the property entrusted to its care in the best interests of the

inhabitants of the Sabha area. The State Government or the district authorities could intervene in such cases and have the acts of omission performed through any person or to appoint an administrators in case of panchayat's failure or incompetence to manage or administer its property. u/s 102, the Panches could be removed from office by the State Government and the Deputy Commissioner could pass ordered for suspension of a Panch during the pendency of an enquiry by the Government. In cases of persistent default or incompetence of the Panchayat as a body, action could be taken u/s 103 to suspend, supersede or abolish it. u/s 105, a member of a Gram Panchayat could be held liable for loss, waste or misapplication of any money, or property belonging to the Panchayat if the loss etc., had been occasioned by any neglect or misconduct of that member. It cannot be said that all these were harsh measures because Section 104 protected the Panchas against any legal proceedings in civil, criminal or revenue Courts in respect of any official acts done by them in good faith in exercise of the powers conferred by the Act. A Panch's liability for loss etc., could not be enforced after the expiry of a certain period of limitation and machinery had been provided for the assessment of the loss after giving the Panch an opportunity to explain. The person aggrieved had also the right to file an appeal against the order assessing his liability for the loss etc.

10. Sarvashri Anand Swaroop and Sahni, the learned counsel for the petitioners, have cited before me a number of rulings in support of submission No. 1 as enumerated in the earlier part of this judgment. Most of these rulings relate to taxation matters and involve the interpretation of special enactments and certain entries in the three lists given in the Seventh Schedule of the Constitution of India. These rulings may not, therefore, appear to be strictly applicable to our case. It would, however, be only fair to the petitioners that these rulings should be briefly referred to or discussed in passing. Starting with the rulings of the Supreme Court, I would try to deal with these cases separately in the order of their importance. The first ruling to be cited by Shri Anand Swaroop is in the case of Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, . The constitutionality of Sections 4, 5-A and 7 of the Travancore-Cochin Land Tax Act No. 15 of 1955, as amended by Act No. 10 of 1957, was under the consideration of the Court in that case. Section 5-A was held to be unconstitutional because it was found to impose an unreasonable restriction on the right to hold property; a fundamental right safeguarded by Article 19(1)(f) of the Constitution. The Act was found to be silent as to the machinery and procedure to be followed in making the assessment and to leave these matters to the unguided discretion of the Executive. The whole thing, from beginning to end, was found to have been treated by the Legislature as a purely administrative matter, completely ignoring the legal proposition that the assessment of a tax on person or property was a quasi-judicial matter. No obligation had been placed on the Government by the provisions of that Act to undertake survey proceedings within any specified period with the result that the land-holder could be subjected to repeated assessments on conjectural basis. No

procedure had been laid down for giving the assessee a notice or for rectifying the mistakes of the assessing authority or for obtaining the opinion of a superior Court on questions of law as is the usual practice in taxation statutes. The absence of any such procedure was found not to cast any duty on the assessing authority to act judicially and no right of appeal had been provided against his orders. In the present case, no fundamental rights of the petitioners are threatened unless they were to claim that they had the right guaranteed by the Constitution to misconduct themselves as Panches or to ignore their duties and that they enjoyed immunity against the enforcement of their liability to making good the loss or waste occasioned by their neglect or misconduct. All the procedural safeguards that were found to be missing in the Act impugned in the case cited have been provided in Section 105 of Punjab Act No. IV of 1953, which is being impugned in the present case. The ruling cited is, therefore, of no material help the petitioners. The next to be cited was no other Supreme Court ruling in *State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others*, . In this case, the vires of Sections 3 and 4 of the Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision Act No. 22 of 1962 had been challenged. It was found that no classification based on the quality to productivity of the soil had been laid down for the purposes of levying the cess and that the whole scheme of the ryotwari settlement had been upset by the Act and a minimum flat rate was fixed for dry lands without reference to quality or fertility of the soil. Moreover, the whole imposition of assessment had been left to the arbitrary discretion of the officers not named in the Act and that the assessee had no remedy for questioning the assessment. This ruling has also no application to the facts of our case. The liability for making good the loss would depend on a finding about the Panchas having misconducted themselves or neglected their duties and the amount of their liability is to depend on the loss, actually incurred by the Panchayats or the residents of the Sabha area for whose benefits the Panchayat was supposed to be administering or managing the shamlat land in a fiduciary capacity as trustees.

11. Shri Anand Swaroop had then cited before me a Single Bench decision of this Court in *Mehta Harbans Singh v. State of Punjab*, 1968 Cur LJ 936 (Punj). Section 6 of the Punjab Land Revenue (Amendment) Act of 1956 which inserts Section 48-B in Punjab Land Revenue Act (Amendment) Act of 1956 was struck down on the ground that it prescribed only the maximum limit of the tax at 25 per cent and that it was open to the assessing officer to levy 1 percent in one case and 25 per cent in another. This was described to be too arbitrary a power which could not be upheld. In our case, the assessment of loss would depend on the extent to which the petitioners were found to have neglected their duties or to have misconducted themselves as members of the Gram Panchayat. Proper procedure for the assessment of the petitioners' liability having been laid down, there is no discrimination of the type which was found to exist in this ruling.

12. Two single Bench decisions of the Kerala High Court in *V. Padmanabha Ravi Varma Raja and Others Vs. The Deputy Tahsildar Chittur and Others*, and *V.*

Padmanabha Ravivarma Rajah and Others Vs. State of Kerala and Others, were then cited by Shri Anand Swaroop. The taxing statutes under consideration in both the cases were found to have been imposed a levy at a uniform rate per acre of land which had no reference to the actual or potential productivity of the land. The Hon''ble Judges were of the opinion that tax on land whether known as land revenue or by any other name must have reference to the actual or potential productivity of the land. A tax at a uniform rate per acre without having regard to the annual rental value was struck down in these cases. The classification of lands were found ultimately levy per acre without any relation to income. This was described as a non-judicial approach in matters of assessment, levy and collection of taxes.

13. For reasons given earlier, both these rulings are found to be unhelpful to the petitioners.

14. In Raghavendra Kripal and Others Vs. The Municipal Board, Hapur, , the petitioners were challenging the imposition of a water tax by the Municipal Board of Hapur, Under the U. P. Municipalities Act. Sections 131 to 135 of that Act lay down the procedure which had to be followed by the Board before imposing a tax. Nobody disputes before me the proposition of law that no tax could be said to have been validity imposed unless the complicated procedure laid down by these sections had been followed. The question that had arisen in that case was whether or not the Board had followed that procedure before imposing the water tax. The Government was not allowed to arrogate to itself the exclusive power of deciding a question of law of this nature. This was a case which had arisen on its own peculiar facts, which are quite different from the facts of the case now before us.

15. In Bharat Automobiles, Gauhati, v. State of Assam, AIR 1957 Assam 1, the question of validity of Section 29 of the Assam Sales Tax, 1947, came up before a Division Bench. It was found that the section enables the Commissioner to require a dealer not ordinarily liable for registration under the Act to get himself registered because he sold goods which he had obtained from outside the State. The liability to pay sales tax on such sales applied to dealers who sold goods obtained from outside the States and who were not ordinarily liable to registration under the Act. the only safeguard provided did not protect the dealer from a situation where arbitrary victimisation by the assessing authority was possible. Their Lordships, following the case of Bidi SC 479, were pleased to strike down the statutory provision with the following observations:--

"It has been often recognised that the Legislature can confer upon a person or body of persons large powers for the purpose of administering an Act; but it must prescribe the principles according to which these powers are to be exercised.

If there is complete absence of rules guiding and controlling the exercise of discretion by the person or body of persons, the power conferred must be

declared to be arbitrary and unreasonable. Therefore, the power conferred upon the Commissioner by virtue of Section 29 of the Act, has the potency of being exercised with unjust discrimination, and whatever might have been the validity of such authority before the Constitution of India, such power, which is capable of being used with discrimination in favour of or against particular individuals, would be void and inoperative under Article 14 of the Constitution."

16. Nobody can possibly dispute the correctness of these observations but they are hardly applicable to the facts of the case now before us. Another Division Bench ruling of the Mysore High Court in *P. Bhuvaneswariah v. State of Mysore*, AIR 1965 Mys 170, is also distinguishable on similar grounds. A levy under Mysore Building Tax Act, 1963, was found not to conform to any known principles of taxation as the incidence of the tax fell unevenly on things similar. The floorage basis adopted by the taxing authority was not only unscientific but was arbitrary and mechanical. The classification adopted was haphazard and the burden could have been heavy in some cases and light in the others. The classification was not rational to the purposes of the Act and was held to be void as it did not conform to the constitutional requirements embodied in Article 14.

17. Keeping in mind the general criteria laid down by the rulings cited on behalf of the petitioners, let us now see how far the statutory provision impugned in our case can stand the acid test. It would be appropriate to have before us that provision in the exact words in which it has been enacted by the legislature. Section 105 of the Punjab Gram Panchayat, Act, 1952, of which the vires have been challenged, runs as follows:--

"105. Liability of members.

(1) Every member of a Gram Panchayat shall be liable for the loss, waste or misapplication of any money or property belonging to that body if such loss, waste or misapplication is a consequence of his neglect or misconduct while a member.

(2) The District Panchayat Officer concerned may, on the application of a Gram Panchayat or otherwise and, after giving the member concerned an opportunity to explain, assess by order in writing the amount due from him on account of such loss, waste or misapplication.

(3) Any person aggrieved by an order made under sub-section (2) of this section may, within one month of the date of such order apply to the Deputy Director of Panchayats to have it set aside and the Deputy Director of Panchayats may suspend the execution of the order upon such terms as to costs, payment into Court or otherwise, as he thinks fit; but subject to the result of such application, if any, the order shall be conclusive proof of the amount due.

(4) Notwithstanding anything contained in this section, no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of four years from the occurrence of the loss, waste or misapplication, or

after the expiry of one year from the ceasing to be a member, whichever is earlier."

18. Sub-section (1) of this section may seem to lay down the substantive law and to mention the circumstances in which a Panch would render himself liable for making good the loss or waste occasioned by his neglect or misconduct. It cannot be said that the officer or the authority concerned could at his whim proceed against any Panch as the section lays down that the officer or authority has first to be satisfied about a Panch having misconducted himself or neglected his official duties. The liability may also appear to be commensurate with the gravity of the misconduct or the neglect and only the loss or waste which can be directly attributed to the misconduct etc. can be recovered from the Panch. If the members of the Gram Panchayat were to enjoy some protection against legal proceedings in respect of the acts done by them in good faith then it was necessary that some action could be taken by the Department for keeping the Panches on the path of rectitude and from preventing them going astray.

19. This sub-section is, therefore, consistent with the policy and purpose of the parent legislation and the classification is not only rational but is based on intelligible differentia. There is a rational nexus with the avowed policy and object of the Act.

20. Sub-section (2) of Section 105 then makes provision for the machinery by which the above law is to be administered. It begins with appointing or constituting a special forum or tribunal for the determination of the liability of the defaulting Panch. There has been a good deal of argument with regard to the competency or the eligibility of the officer who has been invested with powers under this section and the low rank from which he is supposed to have been recruited. I have not been referred to any section in that Act or the statutory rules framed thereunder which may seem to authorise the appointment of an officer with the designation of the District Panchayat Officer or the authority by whom such an officer could be appointed. The appointment of a District Panchayat Officer may, therefore, appear to have been left to the residuary executive powers of the state. Where the legislature has provided for an appointment to be made in a particular manner then the executive authorities have to conform to the law or the rules framed on the subject, but if no provision has been made by law for an appointment, the general executive authority of the State could be invoked for carrying out the purposes of the Act. Sub-Section (2) of S. 105 assumes or takes it for granted that there would be an officer of the designation of a District Panchayat Officer. No rule or law has been brought to my notice which may seem to debar the appointment of any such officer by the Governor in exercise of the executive powers of the State Government. As observed by their Lordships of the Privy Council in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, it may not always be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions have been

carved out. The Constitution of India has not fully implemented the doctrine of separation of powers in its absolute rigidity but the functions of different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate an assumption by one organ or part of the State, of the functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated by the legislature. It can also when so empowered, exercise judicial functions in a limited way. The executive Government cannot, however, go against the provisions of the Constitution or of any law. This does not, however, mean that in order to enable the executive to function, there must always be a law in existence and that the powers of the executive are limited merely to the carrying out of these laws. It was then again observed by their Lordships in *B.N. Nagarajan and Others Vs. State of Mysore and Others*, , that there was nothing in Article 309 of the Constitution which abridged the powers of the executive to act under Art. 162 without a law. It was considered hardly necessary to mention that if there was a statutory rule or an act on the matter, the executive had to abide by that act or the rule and that it could not in the exercise of executive powers under Art. 162 of the Constitution ignore or act contrary to that rule or law. In this connection, a Single Bench decision of this Court in *Roshan Lal Sharma v. Union of India*, 1966 Cur LJ 848=(AIR 1968 Punj 47) may also be referred to. The Hon"ble Judge was pleased to hold as follows:--

"In the absence of any statutory rules governing appointment to any State Service, the appropriate State may recruit members to that service, in any manner it likes in exercise of its executive powers under Article 162 of the Constitution provided the guarantees contained in Arts. 14 and 16 of the Constitution are not infringed.

(2) So long as the action of the Government does not violate any fundamental or statutory rights of the person concerned, mere absence of a statute or a rule justifying a particular manner of appointment will not invalidate it.

(3) If, however, there is in existence any valid law or statutory rule relating to appointment to a particular service, the executive is bound to abide by the relevant law or rule and has no jurisdiction to ignore, outstep or violate the same under the guise of executive power. In short, if there is any legislation or any set of rules governing the conditions of recruitment etc. to a particular cadre, the otherwise wide executive power of the State Government is automatically subjected to the relevant law or set of rules and all actions of the executive sought to be controlled by the relevant provision of law must conform to it. In other words, when statutory rules direct anything to be done in a particular way, the executive is bound to comply with the directions contained in those rules and any action of the State Government contrary to those rules would be void and consequently liable to be struck down in appropriate legal proceeding."

21. In the absence of any specific provision in the Act or the rules for the

appointment of officers who could promote the avowed policy of the legislature for the improvement and development of the rural area, it was open to the State Government, therefore, to fall back, for the purpose, on its residuary executive powers under Art. 162 of the Constitution of India, which is the following words:

"162. Subject to the provisions of this Constitution the executive powers of a State shall extend to the matters with respect to which the Legislature of State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive powers of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

22. It may appear that the rural area in the state was divided into small territorial units known as "Blocks" for more effective or efficient control under an officer put in charge of such a unit or block area. The officer was given the meaningful designation of a Block Development Officer (B. D. O). The earliest reference that I find on record to an officer of this designation is in the State Government Notification No. B. D. O. (P)-59/13461, dated 30-10-1959, (Annexure R-7 to the return filed on behalf of the respondents). By this Notification, the posts of Block Development Officers and District Panchayat Officers were merged or amalgamated into one office known as "Block Development and Panchayat Officer" (B. D. & P. O.) with effect from 1-11-1959. References to this amalgamated office are to be found in the Punjab Gram Panchayat Rules, 1965 framed by the Government some years after the publication of Notification, R-7. Except for Section 105(2) of Punjab Act No. IV of 1953, my attention has not been drawn to any earlier references to the amalgamated office or to the separate offices which had been merged in 1959. Shri Anand Swaroop contended that this merger or amalgamation of the two offices was illegal but he frankly conceded that he could not cite any ruling or precedent or authority in support of his contention. According to him, this Notification involves a delegation of the powers of a District Panchayat Officer to an officer of inferior rank and that there was nothing in Section 95 of the Punjab Act No. IV of 1953 providing for any such delegation of powers to a Block Development Officer. It is not clear as to how Shri Anand Swaroop chooses to describe these two offices to be of unequal rank or how a Block Development Officer is taken to be an officer of an inferior rank to that of the District Panchayat Officer. To my mind, the Notification Annexure R-7 does not involve any delegation of powers. In respect of his block area, the Block Development Officer is vested with powers of a District Panchayat Officer. This may seem to amount only to the appointment of a Block Development Officer as the District Panchayat Officer of his block area. No delegation of powers may appear to have been made and if a Block Development Officer was to be taken to be inferior in rank to a District Panchayat Officer it only means that he has been promoted to the rank of

the District Panchayat Officer it only means that he has been promoted to the rank of the District Panchayat Officer for the exercise of those powers in his own block area. Here again, Shri Anand Swaroop has not been able to support his arguments by any judicial pronouncements or provisions of law or rules having the force of law.

23. It was then argued by Shri Anand Swaroop that no rules are shown to have been framed with regard to the qualifications of the persons who could be appointed as Block Development Officers or District Panchayat Officers or to ensure that they would have the necessary training, experience or initiation into matters of law and jurisprudence or who may be mentally or morally equipped to discharge the responsible duties entrusted to them. The argument appears to be that these officers of low rank would fish for every opportunity to go wrong. As a matter of that, this opportunity can tempt officers at higher ranks as well and this would in any case be no valid argument for striking down a statutory provision. In *The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another*, , their Lordships of the Supreme Court had been pleased to observe that the Court had held in numerous rulings to which it was unnecessary to refer that the possibility of the abuse of the powers under the provisions contained in any statute was no ground for declaring the provisions to be unreasonable or void. The validity of a measure was not to be determined by its application to particular cases. If the power is wrongly exercised or abused, the action taken may be open to challenge but there was no call for challenge to the statute itself. The following extract from the judgment can be reproduced here with advantage:--

"The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity. The converse must also follow that a statute which is otherwise invalid as being unreasonable cannot be saved by its being administered in a reasonable manner. The constitutional validity of the statute would have to be determined on the basis of its provisions and on the ambit of its operation as reasonably construed. If so judged it passes the test of reasonableness, possibility of the powers conferred being improperly used is no ground for pronouncing the law itself invalid and similarly if the law properly interpreted and tested in the light of the requirements set out in Part III of the Constitution does not pass the test it cannot be pronounced valid merely because it is administered in a manner which might not conflict with the constitutional requirements. In saying this we are not to be understood as laying down that a law which might operate harshly but still be constitutionally valid should be operated always with harshness or that reasonableness and justness ought not to guide the actual administration of such laws."

24. Dilating further on this ruling of the Supreme Court, Shri Anand Swaroop points out that the harsh provisions of the Foreign Exchange Regulation Act were found to be justified because of the exigencies of coping with an emergent situation created by the large scale smuggling of "gold" in India. Section 178-A

was inserted in 1955 and gave wide powers to the Customs Inspectors or officers to seize goods where they had reasons to believe that these had been smuggled. After the seizure, the burden of proving, that the goods were not smuggled, had been placed on the person from whose possession the goods had been seized. The goods to which the section applied included not only gold bullion, jewellery, diamonds and precious stones etc. but also goods like cigarettes, cosmetics or other Articles which the Central Government could specify in that behalf by a Notification in the official Gazette. The argument of the defence counsel in that case that the onus placed on the accused of proving the innocent origin or acquisition of the goods was well high impossible of being discharged and amounted to laying down a rule of evidence which virtually effected a confiscation of the property of a citizen was not seriously discounted. The law was, however, found to be justified to meet a difficult situation. The Customs Inspector or officer was found entitled even to treat as privileged the source of the secret information which had led him to form the reasonable belief, before the seizure, that the goods were smuggled.

25. If it could be argued that there was no emergency to justify the enactment of Section 105 of Punjab Act No. IV of 1953 in our case, it could also be argued that the provision is not so very harsh and does not change any commonly accepted rules of evidence or procedure. It is true that there is no upper limit to the pecuniary jurisdiction which the District Panchayat Officer can exercise in the present case and that in States or territories in which the High Courts exercise ordinary original civil jurisdiction, these powers would be exercisable only by a Judge of that Court and by no other Court or Judge subordinate to the High Court. The upper limit has, however, been placed on the District Panchayat Officers' jurisdiction by the gravity of the neglect or misconduct of the defaulting Panch and the direct consequences flowing from that neglect etc. in the form of loss or waste occasioned thereby. Under the Foreign Exchange Regulation Act and Sea Customs Act, the Inspectors and Officers of the Customs Department could also seize and confiscate goods of unlimited value, but the vires of the provisions of these statutes were not allowed to be shaken on any such grounds by the Supreme Court in *The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another*, . There is nothing in that ruling to suggest that the Customs Inspectors and Officers who had been invested with such drastic powers had received any training in matters of law and jurisprudence etc. or that they were mentally or morally better equipped than the heads of a block area. This line of attack on Section 105(2) of Punjab Act No. IV of 1953 does not, therefore, seem to have any great merit.

26. This sub-section then gives the Panch concerned an opportunity to explain or show cause why he should not be held responsible for the loss or waste attributable to his official neglect or misconduct. It is only after he has been given a chance to avail of the opportunity that the District Panchayat Officer would proceed to assess by order in writing, the amount for which the Panch concerned can be held liable. "Assessment of loss or waste" is again a judicial or

quasi-judicial process which cannot possibly be carried on in the absence of the parties concerned or without observing the well-accepted and equitable principles of natural justice. This sub-section may seem to make a much better provision for the judicial or quasi judicial hearing of the matter as compared to Section 102 of the same Act which does not make any specific provision for the issue of a Show-Cause Notice or the grant of an opportunity of explaining or hearing before a Panch or Sarpanch is suspended or removed from office. In spite of that, Section 102 of the Act has been held to be intra vires by a Division Bench of this Court in *Inder Singh v. State of Haryana*, 1971 Pun LJ 559. To the same effect is a Single Bench decision of this Court in *Vatoo Ram v. The State of Haryana*, 1971 Punj LJ 183. The powers under the two sub-sections of Section 102 are no doubt exercisable by officers of higher rank but the officer exercising powers u/s 105 is also not a mere Block head.

27. Holding of a public office can be as valuable or fundamental a right as the holding of property and if section 102 of the Act could be held intra vires of the legislature in the absence of specific provisions for a large number of procedural safeguards then there is no reason why Section 105 which contains more elaborate provisions of that type should be struck down. Section 105 makes specific provision for an opportunity being given to the Panch concerned to show cause or to explain the allegations against him. He has also been given the right to file an appeal and the remedy u/s 105 could be enforced only within a prescribed period of limitation. Even if no specific provision had been made with regard to any procedural safeguards, the principles of natural justice would have governed the conduct of such judicial or quasi judicial proceedings. Even with regard to these principles of natural justice, one is not supposed to have any preconceived notions and these rules can vary according to the circumstances of each case. In this connection reference could be made to the ruling of the Supreme Court in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, . Shri Lamba has cited before me a Full Bench decision of this Court in *the State of Punjab v. Bhagat Ram Patanga*, AIR 1970 Punj and Har 9 and a Supreme Court ruling in *Ram Dial and Others Vs. The State of Punjab*, , where some other statutory provisions were put on the anvil and were found by the courts to be intra vires. The rulings holding Section 102 of Punjab Act IV of 1953 to be intra vires may however, appear to be more in point. I am, therefore, of the opinion that the petitioners have not been able to successfully challenge the vires of Section 105 of Punjab Act IV of 1953. This does not, however, imply that the action taken by respondent No. 2 in this case under the Section has been found by me to be legal or valid. The above discussion would, however, show that I have found hardly any force in submissions Nos. 1 and 2 made by Shri Anand Swaroop.

28. As regards the third submission of the petitioners that action could not be taken simultaneously u/s 99(2) and 105, there is nothing in the Act which may seem to debar the authorities or the officers concerned from proceeding against the defaulting Panchayat or its members under both these sections at the same

time. This submission of Shri Anand Swaroop is also not supported by any ruling or authority and is accordingly turned down.

29. Coming then to the fourth submission, I have already observed earlier in judgment that the Panchayat had passed the resolution, dated 28-6-1971 (Annexure "B") in utter disregard of the provisions of Section 67(1) of the Act. No reason is given why this resolution could not be called in question by the respondents on this ground or for any other valid reason. The entire proceedings culminating in the passing of this resolution and admission of judgment in the two civil suits may appear to have been collusive. I, therefore, find that this submission made by Shri Anand Swaroop also fails.

30. There is, however, a lot to be said in support of the last two submissions made by Shri Anand Swaroop. Let us see how the basic rate of Rs. 8,000/- per acre which has been used as a yardstick by respondent No. 2 for the purposes of determining the petitioners' liability has been fixed. Shri Lamba, the learned Deputy Advocate General for the Haryana State, submits that this rate was fixed after taking into consideration the average market prices at which transactions of sale had taken place in these rural areas during a period of five years preceding the assessment of loss by respondents No. 2. Exhibit R-8 is described to be that average of prices or naksha panch sala as it is commonly known. From this statement, it may appear that there was no transaction of sale with respect to any canal irrigated lands during the five years period under contemplation. The average price for chahi lands was determined at a sum which was much less than Rs. 4,000/- per acre. There is, however, a note in the margin which says that the prevailing prices of chahi and nehri lands are Rs. 10,000/- per acre while the prices of barani lands are Rs. 8,000/- per acre. There is nothing in the statement to indicate as to how these high rates which were more than twice the rates that could be worked out on the basis of five yearly averages had been fixed. Even if we were to confine ourselves to the transactions for the last year mentioned in the statement, Exhibit R-8, even then the prices would not work out to the high rates given in the margin of the statement. It is not disclosed as to who had appended this note in the margin and what was the material on which the rates mentioned in this note had been based. If this not had been given more or less by a rule of thumb by the Patwari, then respondent No. 2 may appear to have abdicated his functions in favour of that official of a still lower rank. Thus was in any case a delegation of functions to which all exceptions could justly be taken by the petitioners. In the show cause notice, the rate has been mentioned only as a hypothetical assessment. If this rate was to be finally adopted for determining the petitioners' liability, they should have been associated in the inquiry leading to the acceptance of these basic rates. The petitioners should also have been appraised of the material on which these rates had been fixed. The petitioners could have pointed out that the material on which these rates had been based was defective. The petitioners should also have been given an opportunity to lead evidence in rebuttal. It might have been possible for the petitioners to show that the sales taken into account for the fixation of average

prices had not really taken place at the rates mentioned in the sale deeds or the mutation orders and that the Courts had found that these rates had been artificially inflated to scare away the pre-emptors or for any other like reasons. In any case, the basic rates do not appear to have been fixed after holding any proper inquiry. If the lands had been leased out by the Collector under the East Punjab Utilisation of Lands Act, 1949, then these must have been banjar or undeveloped lands and the credit for improving or developing these lands and making them cultivable would have gone mostly to the lessees. No reasons have been given in the impugned orders of respondent No. 2 as to how the present quality of the land or the prevailing rates were taken into account for determining the petitioners' liability. Respondent No. 2 has failed to give, not only in the impugned orders but also in the show cause notices, the barest outlines of his process of reasoning on these points.

31. The liability of the petitioners has then been determined by respondent No. 2 as if the Civil Court's decree based on their admission had resulted in the total loss of the land to the real beneficiaries or the owners for all times to come. The "Shamilat deh" or the village common lands had vested in the Gram Panchayats as managers or trustees and the panches were supposed to administer and control these lands for the benefit of the electorate of the Sabha area as their executive body as indicated in the preamble to the Act or in the best interests of the residents of the area as indicated in sub-section (2) of S. 99 of the Act. In cases where the Gram Panchayat or its members had failed to discharge their duties as managers or trustees in a responsible manner and to have belied the confidence reposed in them, the owners or the beneficiaries could still have some right and remedies. The Act itself provides a number of remedies u/s 96, 97, 99, 100, 102, 103, 105 etc. The remedies provided by the general law would also be available as Section 104 affords the Panches a protection only in respect of the acts done by them in good faith. The Collector had granted the leases under the East Punjab Utilisation of Lands Act, 1949. He was no party to the proceedings in the Civil Court which had culminated in collusive decrees passed on the admission of the petitioners or their nominee. The plaintiffs' rights under the lease could not have been unilaterally improved upon or affected in proceedings to which the Collector who was their landlord was not a party. The Collector has the right under the provisions of the East Punjab Utilisation of Lands Act, 1949, to forfeit the lease or to take possession on the expiry of the maximum term of twenty years for which the lease could have been granted. The collector's rights and powers are not in any manner taken away by a decree passed in proceedings to which he was not a party. The Collector deals with the lessees on the one hand and with the owners or beneficiaries of the land on the other in separate and dual capacities. His right to take over possession of the land from the lessees on the expiry of the maximum period of the lease would depend on the terms and conditions of the lease or on the provisions of the Act of 1949 while his liability to restore the possession of the land to the owners would be a separate matter altogether.

There was no direct privity of contract between the lessees and the owners of the land and it seems to make hardly any difference whether the land belonged to the proprietors individually or to the general proprietary body as a whole. It may be observed that the Collector had granted these leases some years before the Shamilat lands could be taken to have vested in the Gram Panchayats under the Punjab Village Common Lands (Regulation Acts of 1953/1954 or 1961. One other ground for concluding that the decrees passed on the petitioners admission were collusive would be that the proceedings in which these decrees have been passed were between the parties who had no direct privity of contract. The Collectors liability to restore possession of the lands to the owners u/s 7 of the East Punjab Utilisation of Lands Act, 1949, does not depend on the attitude adopted by the lessees or the decrees that they might have obtained against some one who is not their landlord. It has been held by a Division Bench of this Court in *The Karnal Co-operative Farmers Society Ltd., Pehowa v. The State of Haryana* 1972 Punj LJ 172, that this section is intra vires of the Constitution of India and that the ejectment of the lessees after the expiry of the term of the lease has to take place automatically and that the lessee has no right to object to his ejectment. The Collector is not bound by the collusive decree obtained by the lessees against the petitioners and the Collector can still restore the possession of the lands to the real beneficiaries or the owners. If the Gram Panchayat persists in making default in the performance of its duty or in abusing its powers, the Government can u/s 103 of the Punjab Gram Panchayat Act, 1952, take action to suspend, supersede or abolish the Panchayat. In any case, respondent No. 2 has not given any reason why the petitioners were to be assessed to loss as if the land had been taken away permanently from the owners or beneficiaries and that nothing could be done to retrieve the land from the lessees after the expiry of the term of the lease. the impugned order of respondent No. 2 is in any case silent on these material aspects of the case and there is not even the barest outline of the process of reasoning by which the petitioners have been held liable to make good the loss to the extent of the full value of the land assessed at rates which are more than twice the prevailing market rates. As the impugned orders are absolutely silent on these material aspects, the right of appeal may also appear to be an illusory remedy. It was held in *Ulwar Singh Vs. State*, , that the remedy available to challenge an order in revision or appeal would become illusory where the where the officer or authority passing the impugned order has failed to record his reasons in writing. On material aspects of the case, the impugned orders of respondent No. 2 are non-speaking orders. These orders have, therefore, been successfully assailed by the petitioners on grounds Nos. 5 and 6.

32. I, therefore, grant the writ petitions and quash the impugned orders of respondent No. 2. The parties are, however, left to bear their own costs as the petitioners had raised so many other points on which they have failed.

33. Petitions allowed