

(2020) 10 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14149 Of 2017 (O&M)

Rajbir Singh

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 07-10-2020

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 51, 51(3), 51(5), 51(3)(c), 175, 175(v)
Indian Penal Code, 1860 — Section 120B, 420, 466, 467, 468, 471, 472
Punjab Gram Panchayat Act, 1952 — Section 102
Constitution Of India, 1950 — Article 226

Citation : (2020) 10 P&H CK 0064

Hon'ble Judges : Sanjay Kumar, J

Bench : Single Bench

Advocate : Ashish Aggarwal, Kulwant Singh, Rajesh Gaur, Minderjeet Yadav, Abhilaksh Grover, Rajesh Lamba

Judgement

Sanjay Kumar, J

The petitioner, a duly elected Sarpanch, is aggrieved by his removal from office.

The petitioner was elected as the Sarpanch of the Gram Panchayat, Village Khedar, Tehsil Barwala, District Hisar, on 17.01.2016. Belonging to a Scheduled Caste, he was required to possess the minimum qualification of Middle pass (8th class), as per Section 175(v) of the Haryana Panchayati Raj Act, 1994 (hereinafter, 'the Act of 1994'). He produced his 8th class marksheet dated 06.04.1989, issued by Janta Middle School, Bathinda, the 6th respondent, in proof of his qualification. While so, the defeated candidate, the 3rd respondent herein, submitted a complaint on 29.01.2016 alleging that the petitioner had not passed 8th class and that the marksheet issued by Janta Middle School, Bathinda, which was attached with his nomination form, was false.

Thereupon, the District Education Officer, Bathinda, caused an inquiry to be made into this issue by two School Principals at Bathinda. They submitted Inquiry Report dated 09.02.2016 to the District Education Officer, Bathinda,

stating that the Head Master of Janta Middle School, Bathinda, had only shown them the Result Register and that no other record was available in the school. The Head Master was stated to have said that the petitioner was admitted privately. The Principals opined that the certificate was not correct as it had been issued without any record.

Acting upon this report, the District Education Officer, Bathinda, addressed letter dated 11.02.2016 to the Block Development and Panchayat Officer, Hisar, stating that the petitioner's 8th class certificate was found to be fictitious. Show-cause Notice dated 21.03.2016 was thereupon issued to the petitioner by the Deputy Commissioner, Hisar. By his reply dated 05.04.2016, the petitioner asserted that his Middle pass marksheet issued by Janta Middle School, Bathinda, was correct and legal. The petitioner was given a personal hearing on 07.10.2016 and he reiterated this claim. Dissatisfied therewith, a preliminary investigation was undertaken, vide Office Order dated 28.10.2016. Opining that a prima facie case was made out against the petitioner, the Deputy Commissioner, Hisar, ordered a regular investigation and the Sub-Divisional Officer, Barwala, was appointed as the Investigating Officer.

Pending such investigation, the petitioner was placed under suspension, vide Office Order dated 28.10.2016 passed by the Deputy Commissioner, Hisar. Aggrieved thereby, the petitioner filed Appeal No.48 of 2016, under Section 51(5) of the Act of 1994, before the Chief Secretary, Development and Panchayat Department, Government of Haryana. He also filed CWP-24856-2016 before this Court. The said writ petition was disposed of on 01.12.2016 directing that till an appropriate order was passed in the statutory appeal, the petitioner's suspension from office should be kept in abeyance. Thereafter, the appeal was dismissed on 15.02.2017 but the Appellate Authority directed the Deputy Commissioner, Hisar, to complete the regular inquiry pending against the petitioner within two months.

Aggrieved by the dismissal of his appeal, the petitioner filed CWP-4827-2017 before this Court. This writ petition was disposed of on 10.03.2017 holding that it would be appropriate to keep the order of suspension passed against the petitioner in abeyance pending the regular inquiry. The inquiry was directed to be concluded within the time frame fixed by the Appellate Authority.

The Sub-Divisional Officer, Barwala, accordingly completed the inquiry and submitted his report dated 15.03.2017 to the Deputy Commissioner, Hisar. Therein, he concluded that the Middle pass (8th class) certificate of the petitioner procured from Janta Middle School, Bathinda, was forged and fictitious.

In consequence, Show-cause notice dated 30.03.2017 was served upon the petitioner under Section 51(3)(c) of the Act of 1994, calling upon him to explain as to why action should not be taken against him thereunder. He submitted his replies dated 11.04.2017 and 20.04.2017 claiming that his statement had not even been recorded by the Inquiry Officer and that no opportunity was given to him to produce any evidence, oral or documentary. He complained that no

opportunity of cross-examination was given to him and pointed out that neither the District Education Officer, Bathinda, nor the Principal of the school concerned had been examined. He accordingly prayed for withdrawal of the show-cause notice and the inquiry report.

Simultaneously, the petitioner approached this Court by way of CWP-7702-2017 challenging the Inquiry Report dated 15.03.2017 and the Show-cause Notice dated 30.03.2017. The said writ petition was disposed of on 18.04.2017 directing the Deputy Commissioner, Hisar, to consider the reply submitted by the petitioner in response to the Show-cause Notice dated 30.03.2017 in an objective and pragmatic manner by considering all the pleas and legal pleas taken by the petitioner as well as the grounds urged against him by the complainant, the 3rd respondent herein, and to take a decision in accordance with law.

The Deputy Commissioner, Hisar, afforded the petitioner personal hearings on 18.04.2017, 20.04.2017, 21.04.2017 and 24.04.2017. The petitioner reiterated his stand that during the regular investigation, he had not been provided an opportunity to present his case; all the documents were not given to him; and no witness was permitted to be examined on his side. He also placed reliance on the Admission and Withdrawal Register of Janta Middle School, Bathinda, in proof of his having been admitted in the said school and having passed 8th class.

Thereupon, the Deputy Commissioner, Hisar, verified the original file of the Sub-Divisional Officer, Barwala. He found that by letter dated 18.11.2016, the petitioner was asked to attend the inquiry on 07.12.2016. However, he did not do so and sent an application seeking an adjournment on the ground that his case was coming up for hearing before this Court on 07.12.2016. The Sub-Divisional Officer adjourned the matter to 02.01.2017 and called upon the petitioner to be present on that day, by issuing him notice dated 23.12.2016. Again, the petitioner sought an adjournment on the ground that his cousin, the son of his father's sister, had expired. The inquiry was thereupon fixed on 16.01.2017 but yet again, the petitioner sought an adjournment on 15.01.2017 stating that his case was coming up for hearing before the Financial Commissioner (Revenue) on 16.01.2017. As a last opportunity, the inquiry was adjourned to 02.02.2017, making it clear that if the petitioner did not attend on that day, the case would be decided on merits. However, on 02.02.2017, the petitioner attended the inquiry along with his Advocate.

The Deputy Commissioner, Hisar, noted that the Sub-Divisional Officer, Barwala, had recorded in his report that the

District Education officer, Bathinda, had confirmed that the petitioner's 8th class certificate was found to be false. Further, the Admission and Withdrawal Register produced by the petitioner reflected that he was admitted in the school on 10.04.1988, which was a Sunday. The Deputy Commissioner also noted that FIR No. 51 dated 06.03.2016 was registered on the file of Police Station Barwala

under Sections 420, 466, 467, 468, 471, 472 and 120-B IPC, in relation to the petitioner's 8th class certificate.

The Deputy Commissioner thereupon concluded that on perusal of the inquiry report submitted by the Sub-Divisional Officer, Barwala, and the documents/evidence, in addition to the arguments of the Advocates appearing on both sides, the 8th class certificate of the petitioner was not proved. As a result, the Deputy Commissioner, Hisar, exercised power under Section 51(3)(c) of the Act of 1994 and dismissed the petitioner from the post of Sarpanch, vide order dated 24.04.2017. Significantly, the order dated 18.04.2017 passed by this Court in CWP-7702-2017 did not even find mention in the Deputy Commissioner's order dated 24.04.2017 .

Assailing this removal order, the petitioner filed Appeal No.40 of 2017, under Section 51(5) of the Act of 1994, before the Financial Commissioner-cum-Additional Chief Secretary to Government, Development and Panchayat Department, Government of Haryana. However, by order dated 15.06.2017, the Appellate Authority dismissed the said appeal.

Perusal of the said order dated 15.06.2017 reflects that the petitioner again raised the issue of denial of a proper opportunity of hearing before the Sub-Divisional Officer, Barwala. However, the Appellate Authority found that the Deputy Commissioner, Hisar, had supplied all the relevant documents to the petitioner's counsel on 20.04.2017. As regards the inquiry before the Sub-Divisional Officer, the Appellate Authority took note of the arguments advanced on behalf of the petitioner that he had not been given the opportunity of cross-examination or to present his defence and opined that the petitioner was making 'all excuses on technical grounds to buy time'. The Appellate Authority observed that this Court had ignored these pleas and asked the Deputy Commissioner to hear the petitioner and as such, a hearing was given over two days and all records were made available to him which would suffice.

The Appellate Authority further noted that the petitioner had failed to bring forth any evidence to show that his certificate was genuine and all his arguments were based on pointing a finger at the process. The Appellate Authority further noted that the report dated 18.01.2016 of two officials of different schools clearly showed that there was no legitimate record in the school about the petitioner, like the Admission Register, Attendance Register, etc., and the fact that the Principal had stated that he was a private candidate created doubt. The Appellate Authority noted the admission of the petitioner that he had studied from 1st to 7th class from his village and opined that it was rather strange that he should study 8th class at a school in Bathinda.

Further, the Appellate Authority placed reliance on the letter dated 11.02.2016 of the District Education Officer, Bathinda, that the Middle pass certificate of the petitioner was found to be fake. He also noted the argument advanced by the learned counsel for the complainant to the effect that the said certificate was

counter-signed by one Surinder Kaur Kataria, who was not the District Education Officer at Bathinda at that time, and recorded his opinion that she could not have counter-signed the petitioner's certificate as the District Education Officer in 1989 as she was promoted as a District Education Officer only in the year 1997. He also noted the pendency of the criminal case against the petitioner and others and observed that the offences alleged came under the category of moral turpitude. Stating so, he concluded that there was no merit in the appeal and dismissed the same.

The Inquiry Report dated 15.03.2017, the Show-cause Notice dated 30.03.2017, the Deputy Commissioner's removal order dated 24.04.2017 and the Appellate Authority's order dated 15.06.2017 are subjected to challenge in this writ petition.

By interim order dated 04.07.2017, this Court noted that the Block Development and Panchayat Officer, Barwala, District Hisar, had issued notice dated 28.06.2017 calling for a meeting of the Panches of the Gram Panchayat on 05.07.2017 to appoint a new Sarpanch in the place of the petitioner and directed the said meeting to be postponed for a week. This Court made it clear that till the next date of hearing, the petitioner should not use his financial powers. This interim order was extended thereafter but the last such extension was on 28.09.2017. On that day, the learned counsel for the 6th respondent-School was directed to produce the record on the next date of hearing and the interim order was directed to continue. There was no further extension of the interim order but it is the admitted position that proceedings were not initiated thereafter for appointment of a new Sarpanch.

Though various orders came to be passed during the hearing of this writ petition touching upon the merits of the matter and the Admission and Withdrawal Register, produced by the learned counsel for the 6th respondent-School was also taken on record and placed in a sealed cover, it is not within the domain of this Court to determine the genuineness of the petitioner's 8th class marksheet in the present writ petition. In exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution, this Court would ordinarily be concerned with the validity of the decision-making process and not the decision itself.

The decision-making process in relation to removal of the petitioner from office is traceable to Section 51 of the Act of 1994, which deals with suspension and removal of a Sarpanch or a Panch. Section 51(3) provides that the Director or the Deputy Commissioner concerned may, after such inquiry as he may deem fit and after giving an opportunity of being heard to a Sarpanch or a Panch, as the case may be, ask him to show cause against the action proposed to be taken against him and, by order, remove him from office on any of the grounds specified in clauses (a) to (e) thereunder. Clause (c) thereof speaks of incurring any disqualification mentioned in Section 175 of the Act of 1994 after the election. This was the clause under which proceedings were initiated against the petitioner.

It may be noted that the statutory provision clothes the Deputy Commissioner with the discretion to hold an inquiry as he deems fit but the same would have to be understood and interpreted to mean that such inquiry would be in consonance with the principles of natural justice and the rules of fair play in action. At the very least, the inquiry must conform to the basic principle that no man should be condemned unheard. Such an inquiry would be in keeping with the requirements laid down by a Full Bench of this Court in *Ujagar Singh vs. State of Punjab and others* [AIR 1970 Punjab 193]. Section 102 of the Punjab Gram Panchayat Act, 1952, which is in pari materia with Section 51 of the Act of 1994, with regard to removal of a Panch/Sarpanch, fell for consideration therein and the Full Bench held that the bare minimums of an inquiry in this regard would be: (1) clear and definite charge(s) must be given to the delinquent, (2) the material forming the basis of the charge(s) must be made known to him and (3) he must be given every opportunity to meet the charges and to defend himself. The Full Bench held that even if the nature and scope of the inquiry was left to the discretion of the authorities, they still could not do away with the bare minimum requirements of an inquiry and subject thereto, the nature and scope of the inquiry would be in their discretion.

These basic requirements were again affirmed by a Division Bench of this Court in relation to Section 51 of the Act of 1994 in *Jagtar Singh vs. State of Haryana and another* [2004 (1) R.C.R. (Civil) 276]. Therein, the Bench noted that non-supply of the preliminary inquiry report would violate the principles of natural justice and held that the expression 'opportunity of being heard' in Section 51(3) has to be interpreted in such manner as to enable the Sarpanch/Panch to effectively defend himself against the proposed action and he must be informed of the specific allegations and the material in support thereof that are proposed to be considered. The Bench held that an obligation is cast upon the authorities to supply all the material on the basis of which the authority has formed a prima facie opinion for issuance of the notice, including a copy of the preliminary inquiry report, if any, along with the show-cause notice.

This principle was again reiterated by another Division Bench of this Court in *Hazari Lal, Sarpanch, Gram Panchayat, Harsana Kalan, District Sonapat vs. The Financial Commissioner and Principal Secretary to Government, Haryana Development and Panchayats Department, Chandigarh* [2003 (3) R.C.R. (Civil) 465].

Therein, the Division Bench held that non-consideration of the explanation of the Sarpanch and failure to pass a speaking order on such explanation would render the inquiry arbitrary, illegal and unsustainable.

It may also be noted that Section 51(3) of the Act of 1994 requires the 'opportunity of being heard' to be afforded to the Sarpanch prior to issuance of the final show-cause notice. Therefore, such an effective opportunity must be given during the course of the inquiry. In the case on hand, the Deputy Commissioner, Hisar, in his discretion, delegated the inquiry to be held against

the petitioner to the Sub-Divisional Officer, Barwala. Therefore, the petitioner had to be afforded the requisite full opportunity of being heard during that inquiry. Further, the said inquiry had to incorporate the bare minimum requirements spelt out by the precedential law set out supra.

In this regard, Mr. Ashish Aggarwal, learned senior counsel, contended that the manner in which the authorities proceeded against the petitioner was not in keeping with the principles of natural justice or the rules of fair play in action. He pointed out that all the relevant documents, such as the initial reports and the preliminary investigation report gathered behind back the petitioner, were not even supplied to him. He further contended that the authorities did not even allow the petitioner the opportunity of cross-examination or to produce his own evidence or prove the documents relied upon by him, such as the Admission and Withdrawal Register of the 6th respondent-School.

To test these contentions of the learned senior counsel and to verify whether the bare minimum requirements spelt out by the aforestated case-law were satisfied, the Inquiry Report dated 15.03.2017 of the Sub-Divisional Officer, Barwala, was examined in detail. Perusal of this report discloses that the complainant against the petitioner, the 3rd respondent herein, appeared before the Inquiry Officer on 09.01.2017 and gave his statement. There is no evidence of the petitioner being put on notice of the hearing scheduled on 09.01.2017 or that the complainant's statement was proposed be recorded on the said date. The Deputy Commissioner, Hisar, did not even refer to any hearing having been held on this date though he extensively quoted from the contents of the original file of the Sub-Divisional Officer. Mr. Abhilaksh Grover, learned counsel for the 3rd respondent-complainant, concedes that the petitioner was not present on 09.01.2017 when the statement of the 3rd respondent-complainant was recorded. Perusal of the material placed on record reflects that no notice was issued to the petitioner by the Sub-Divisional Officer, Barwala, calling upon him to be present on 09.01.2017.

In effect, the petitioner was not even given the opportunity to hear what the complainant stated against him, let alone have an opportunity to cross-examine him. Significantly, the Law Officer from the office of the District Development and Panchayat Officer, Hisar, was also examined on 09.01.2017. He stated that he had conducted a preliminary

inquiry against the petitioner on the complaint filed by the 3rd respondent-complainant and submitted his inquiry report on 02.03.2016. Again, this witness was examined behind the back of the petitioner and he was not given the opportunity to cross-examine him or see the report submitted by him. Similarly, other witnesses were examined on 16.01.2017 and they produced documents. Yet again, all this was done behind the back of the petitioner. Be it noted that the petitioner had sought an adjournment as regards this date and the same accepted. Therefore, no proceedings should have been taken up on that day in his absence.

Further, there is no material placed on record to show that the petitioner was informed by the Sub-Divisional Officer that the inquiry stood concluded on 02.02.2017. On the other hand, it is the case of the petitioner that when he appeared before the Sub-Divisional Officer on the said date, he was told that he would be informed the next date of hearing but the same never came to pass. Notably, the Sub-Divisional Officer did not even record in his report that he gave an opportunity to the petitioner either to cross-examine those who were examined on the dates referred to supra or that he allowed him an opportunity to produce his own evidence.

The Sub-Divisional Officer relied upon the inquiry conducted by the school officials at Bathinda at the behest of the District Education Officer, Bathinda, but there is no evidence of the reports of the many preliminary inquiries undertaken against the petitioner being furnished to him. That apart, neither of the school officials who furnished the initial report was examined during the inquiry. Surprisingly, reference was made by the Appellate Authority to another report furnished by these officials on 18.01.2016 but the same is not even part of the record. It did not find mention in the Inquiry Report dated 15.03.2017 or the Deputy Commissioner's order dated 24.04.2017. In consequence, this Court finds that material which was not part of the record and which was never furnished to the petitioner seems to have been looked into by the authorities while deciding the validity of his 8th class marksheet. It may also be noted that the petitioner placed reliance on the letter dated 30.06.2016 of the District Education Officer, Bathinda, certifying that the relevant records in his office for the period 1986 to 2015 had been destroyed as per the instructions issued under the Swachh Bharat Mission. However, none of the authorities even referred to this aspect or dealt with the consequences of such destruction of the records or its impact on the petitioner's case.

This non-compliance with procedural principles was highlighted by the petitioner in his replies dated 11.04.2017 and 20.04.2017 submitted in response to the Show-cause Notice dated

30.03.2017. However, the same seems to have fallen on deaf ears as neither the Deputy Commissioner nor the Appellate Authority paid any heed to his complaints in this regard. So much so, the Deputy Commissioner, Hisar, despite looking into the record in relation to these aspects, did not even choose to record a finding that a proper opportunity was given to the petitioner. To add insult to injury, the Appellate Authority chose to belittle the argument advanced in this regard by summing up that the petitioner was making 'all excuses on technical grounds'. To compound matters further, the Appellate Authority opined that this Court had 'ignored' the pleas of the petitioner in this regard. That was clearly not the import of the order passed by this Court on 18.04.2017 in CWP-7702-2017. On the other hand, this Court categorically held therein that the Deputy Commissioner, Hisar, should consider the petitioner's reply in response to the Show-cause Notice dated 30.03.2017 in a 'most objective and pragmatic manner'

by taking into consideration all the pleas and legal pleas which he had raised. Clearly, the Deputy Commissioner, Hisar, failed to live up to this requirement, as already noted supra. The Appellate Authority then went on to record a finding on a completely new aspect which was never raised either before the Sub-Divisional Officer or the Deputy Commissioner, viz., the alleged counter-signing of the petitioner's 8th class marksheet by one Surinder Kaur Kataria. This aspect was raised for the first time before the Appellate Authority but he chose to entertain it without any foundation or proof.

When the very substratum of the entire proceedings, being the initial inquiry by the Sub-Divisional Officer, Barwala, stood vitiated for want of compliance with the principles of natural justice and the minimum requirements of procedure, the proceedings that followed before the Deputy Commissioner and the Appellate Authority, based on this faulty inquiry, cannot survive independently. It would not be enough to state that some documents were furnished to the petitioner by the Deputy Commissioner, Hisar, when the foundational inquiry report submitted against him by the Sub-Divisional Officer, Barwala, stands nullified.

Reliance placed by Mr. Abhilaksh Grover, learned counsel, on *Shamsher vs. Principal Secretary to Government of Haryana and others* [2018 (3) R.C.R. (Civil) 716] is of no avail. Perusal of the judgment reflects that the learned Judge found on facts therein that an adequate opportunity had been granted to the Sarpanch before his removal from office. As pointed out by the Full Bench in *Ujagar Singh* (supra), it is for the authorities to devise their own methodology for holding the inquiry subject to the condition that they adhere to the bare minimums of the inquiry as posited therein. Similarly, *Randhir Singh vs. State of Haryana* [1998 (1) R.C.R. (Civil) 655] does not further the case of the 3rd respondent-complainant. That was a case where there was no complaint with regard to violation of the principles of natural justice and the issue turned upon sufficiency/insufficiency of the evidence.

On the above analysis, it is clear that the petitioner was not dealt with fairly and in accordance with the principles of natural justice right from the start. The initial inquiry and the handling of the matter by the authorities thereafter proceeded in a one-sided manner against the petitioner and he was not given the opportunity either to defend himself or to present his own case. In terms of Section 51(3), this opportunity had to be given during the course of the inquiry. However, the failure to live up to this norm is manifest in the case on hand. In that view of the matter, the entire proceedings against the petitioner, based on the vitiated inquiry, fall to the ground. In consequence, the proceedings against him would have to start from scratch, i.e., with an inquiry afresh, as deemed fit by the Deputy Commissioner, Hisar.

At this stage, Mr. Abhilaksh Grover, learned counsel, would contend that if the removal order passed against the petitioner is set aside, the order of suspension passed against him should revive pending the fresh inquiry.

However, it may be noted that the initial suspension order dated 28.10.2016 was kept in abeyance pending the regular inquiry, by the order dated 10.03.2017 passed by this Court in CWP-4827-2017.

Aggrieved thereby, the 3rd respondent-complainant preferred LPA-423-2017. Therein, the order under appeal was initially stayed by a Division Bench but ultimately, the LPA itself was disposed of as infructuous on 25.04.2017, owing to the intervening developments. Therefore, the order dated 10.03.2017 passed in CWP-4827-2017 was never set aside and in effect, the petitioner's suspension pending the inquiry has to be kept in abeyance as directed therein.

The writ petition is accordingly allowed, setting aside the Inquiry Report dated 15.03.2017 and all the proceedings that ensued on the strength thereof. The matter is remitted to the Deputy Commissioner, Hisar, for undertaking a fresh inquiry, as he deems fit, duly giving an opportunity to the petitioner to peruse all the material that is sought to be used against him and after allowing him the opportunity to cross-examine all the witnesses who would be deposing against him. Thereafter, the petitioner shall be called upon to produce his own evidence and witnesses. The Deputy Commissioner, Hisar, shall then take a decision in accordance with the procedure prescribed under Section 51(3) of the Act of 1994. As this Court is informed that the elected term of the petitioner would be coming to an end shortly due to efflux of time, it would be appropriate that the Deputy Commissioner, Hisar, completes the entire exercise in terms of this order as expeditiously as possible and preferably within two months from the date of receipt of a copy of this order.

However, as the petitioner still remains under a cloud, it would be fit and proper that every decision taken by him, having financial implications, should be vetted by the Block Development and Panchayat Officer, Barwala, before it is acted upon.

Registry is directed to forthwith return the Admission and Withdrawal Register of the 6th respondent-School to Mr. Rajesh Lamba, Advocate, under proper acknowledgment.

In the circumstances, there shall be no order as to costs.