

(1970) 10 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1992 of 1969

Rajinder Pal Abrol

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 06-10-1970

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Electricity (Supply) Act, 1948 — Section 10(1), 10(3)

Citation : AIR 1971 P&H 290

Hon'ble Judges : H.R. Sodhi, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : Mohinderjit Singh Sethi, for the Appellant; H.L. Sibal, General and C.D. Dewan, for Attorney General of India, for the Respondent

Judgement

H.R. Sodhi, J.—The petitioner as stated by him in the writ petition, was associated with public life of Punjab for more than 20 years in various capacities and hails from Gurdaspur district in the State of Punjab. He has been a member of the Panchayat and also of Block Samiti for a number of years. He was president of the Mandal Congress Committee for about three years. He was a nominated member of the Board of Directors of Batala Cooperative Sugar Mills at Batala, and his claim is that on the expiry of his first claim is that on the expiry of his first term as a Director, he was renominated during President's rule in Punjab in November, 1968. Apart from public life, he was doing business as well. In the year 1955, he was enlisted as a contractor with the Irrigation and Public Works Departments of Punjab. The fact that the petitioner was working as a contract is not denied by the Secretary to Government, Punjab, Irrigation and Power Department, who, on behalf of the State, filed an affidavit in reply, and what is stated by him is that no comments were needed at all as such allegations were irrelevant to the issues raised by the petitioner. IT has, therefore, in the absence of denial, to be taken as accepted by the respondents that the petitioner was an A-Class contractor with the Punjab Government.

2. The Governor of Punjab, by a notification dated 20th August, 1968 (true copy Annexure A-1), appointed the petitioner as a part-time non-official member of the Punjab State Electricity Board (hereinafter called the Board) constituted u/s 5 of the Electricity Supply Act, 1948 (hereinafter referred to as the Act). It was stated in the said notification that the petitioner was to hold his office for the full term of five years or till he attained the age of 60 years whichever was earlier. At the time of issue of this notification, late Shri Lachhman Singh Gill was the Chief Minister in the State of Punjab having succeeded Shri Gurnam Singh, Shri Lachhman Singh resigned on 23rd August, 1968, and his resignation was followed by the President's rule in the State. There then came mid-term elections to the State Legislative Assembly results whereof were declared on 9/10th February, 1969. Shri Gurnam Singh again headed the Punjab Cabinet on 16th February, 1969. Shri Natha Singh to whom reference is made in the statement of allegations was a Minister to the Cabinet when the petitioner was appointed as a non-official member of the Board. The said Shri Natha Singh was originally elected as an Akali candidate when Shri Gurnam Singh was the Chief Minister. Later, he left the Akali party and formed Government with the late Shri Lachhman Singh Gill as the Chief Minister. Complaints were made against the petitioner during President's rule some of them being that he exploited his relations with Shri Natha Singh, Irrigation and Power Minister. Special Enquiry Agency investigated those complaints. The acts of the petitioner constituting his alleged misconduct related to a time before he was appointed as a non-official member of the Board.

3. A show-cause notice dated 31st January, 1969, a copy whereof is Annexure A-2, issued by respondent 1, was received by the petitioner, calling upon him to furnish his explanation, if any, with regard to the allegations within a period of 10 days from receipt of the notice, failing which it would be presumed that the allegations as made against him were correct. He was given an option to consult any record relating to any of the allegations by contacting the Director, Special Enquiry Agency, Punjab, Chandigarh during office hours. The allegations as made against the petitioner are reproduced hereunder:-

"1. (i) Towards the end of March, 1968, or in the beginning of April, 1968, you went to the residence of Shri Harchand Singh (the then Sectional Officer, Amritsar Drainage Division) at Ajnala and asked him to give you an amount of Rs. 2000/- as you required the same urgently. He promised to arrange this amount. As Shri Harchand Singh could not arrange the aforesaid amount, you were annoyed with him and as a result thereof you got him transferred from the Minister to Beas Dam Project in April, 1968.

When Shri Harchand Singh was transferred to Beas Dam Project in April, 1968, you called him at your residence at Amritsar and tauntingly remarked that he would never be able to come back to serve in plains. This taunting remark was obviously the result of his failure to grease your palm inasmuch as he did not give you the amount of Rs. 2000/- which you had earlier demanded. As a result

of discussion of the Chief Engineer with the Minister in charge the orders of transfer of Shri Harchand Singh were stayed on 7th June, 1968. When you came to know of these orders, you again approached the Minister and got an order from him, directly addressed to the Superintending Engineer, Amritsar Drainage Circle, Amritsar, asking him to relieve Shri Harchand Singh at once, as a result of which he was actually relieved from his duties on 30th June, 1968.

(ii) Shri Krishan Lal Oberoi, S. D. O. was transferred from Anti-water Logging Sub Division Tarn Taran to Project Circle, I. B., on 3rd of April, 1968. As this transfer was inconvenient for him, he along with Shri Sain Abhi met you at your residence after a few days of the aforesaid transfer and requested you to get this transfer cancelled. You demanded Rs. 5000/- from Shri Krishan Lal Oberoi for getting this work done.

2. Shri Natha Singh, the then Minister, Irrigation and Power, without any move from the Department concerned, issued, of his own accord orders of promotion of your brother-in-law (wife's brother) Shri Ram Lubhaya Bhalla, from the post of Sectional Officer. Shri Ram Lubhaya Bhalla's case for promotion had earlier been rejected by the Chief Engineer inter alia on the following grounds:-

(a) He had not passed the departmental examination as yet.

(b) 35 Sectional Officers who had passed the departmental examination and were fit for promotion in other respects as well were still senior to him.

(c) The period of his service as sectional Officer with less than 10 years-10 years" service as Sectional Officer being one of the minimum requirements for promotions as S. D. O.

(d) His qualification report for his work in Lahaul and Spiti was not good.

The unreserved orders of promotion of Shri Ram Lubhaya Bhalla passed out of the way could not be brought about but for your intervention and exertion of personal influence upon the then Minister for Irrigation and Power with whom you were quite intimate.

3. On 27th May, 1968, you called Shri S. Sohan Lal, Christian, of village and Post Office Fatehgarh Churian, District Gurdaspur, at your residence in Amritsar and asked him to start work of a contractor in the Irrigation Department assuring that you would make him millionaire as you were a great friend of Shri Natha Singh, the then Minister for Irrigation and Power. You also demanded from him Rs. 5,000/- for this good turn. On 3rd June, 1968, you took him to the house of Shri Gurpal Singh, the then Executive Engineer, Jullundur Drainage Division Jullundur, where Shri Gurpal Singh asked S. Sohan Lal to start work as a Contractor in his division and he would look after his interests. After this meeting, when you both came out of Shri Gurpal Singh's house, you demanded Rs. 5000/- from Shri S. Sohan Lal who had never worked as a Contractor in the Jullundur Division and had never applied for allotment of any work, was given contracts for the supply of stone at R. D. NO. 125500-FR-Bund/D/S Dhilwan and

R. D. No. 126000-FR-Bund/D/S/ Dhilwan, in the Drainage Division, Jullundur, in the year 1968.

4. On 7th July, 1968, you took Shri S. Sohan Lal Christian from Amritsar to Chandigarh in your car. Shri S. Sohan Lal's relative Shri Sohan Lal also accompanied. Shri S. Sohan Lal at that time had with him Rs. 8700/- in cash which included Rs. 8498/- which he had received from Drainage Sub-Division Kapurthala on 3rd July, 1968, being part payment of contract work at Shabdullapur. On reaching Chandigarh, you took Shri S. Sohan Lal to the room of Shri Natha Singh, the then Minister for Irrigation and Power to impress upon him about your intimacy with the said Minister. You then on the same date, i.e. 7th July, 1968, induced Shri S. Sohan Lal to give you an amount of Rupees 8500/- for your having talked to Shri Gurpal Singh, Executive Engineer to issue a cheque for Rs. 50,000/- out of Government funds in favour of Shri S. Sohan Lal towards payment for some bogus works and as a result of this Shri S. Sohan Lal actually paid you Rupees 8500/- on the same date."

4. The gravamen of the charge as to be seen from the show-cause notice (Annexure A/2) is that the petitioner was supposed to have been indulging in unscrupulous and unfair means whereby he was exploiting and taking undue advantage of Shri Natha Singh's position as a Minister who happened to be very intimate with him, and that the exploitation was motivated by a desire either to get illegal gratification or some undue favour.

5. On receipt of this notice on 20th March, 1969, the petitioner wrote back to the Secretary, Irrigation and Power, Punjab Government, on 28th March, 1969, pointing out that the allegations were based on a secret enquiry conducted by a Special Inquiry Agency behind his back and that he should be supplied attested copies of the statements or affidavits of the concerned persons. The petitioner had in fact asked for these documents earlier as well in his letter of 22nd March, 1969. A reply which was fairly detailed and described as an interim one was, however, sent by him reserving to himself the right to give a further reply after the necessary documents had been received. The petitioner admitted that he had his close association for over 20 years with Shri Natha Singh who was elected as Member of the Legislative Assembly from his constituency and that both had been members of the Block Samiti and were at times working together in Bharat Sewak Samaj. He denied that he ever exploited his relations with the Minister and attributed the allegations against him to the personal malice of the Chief Engineer, Mr. Sidhu, the Superintending Engineer, Mr. Kailash Chander, and Shri Y. S. Puri, Executive Engineer, Amritsar Drainage Division, Amritsar. The case set up by him in his explanation was that he had made complaints of corruption against these officers who had misappropriated lakhs of rupees in the name of flood control.

6. In reply to charge No. 1, it was stated by the petitioner that Shri Harchand Singh, the then Sectional Officer, was along with the officers, ordered to be transferred by the Minister, Shri Natha Singh, somewhere in April 1968, but the

orders were not implemented till June, 1968, because of the collusion and connivance of Shri Sidhu Chief Engineer and Shri Puri, Executive Engineer. The assertion of the petitioner further was that even Shri Puri had been transferred on reports of the Vigilance Department. The petitioner referred to certain details in his explanation indicating how Government funds were misappropriated by these officers. It was claimed by the petitioner that these officers were annoyed with him because of public complaints against them which they attributed to him and with the change of Government, they availed of the opportunity to make false and baseless allegations against him. Harchand Singh, Sectional Officer, who had been working as a subordinate under Mr. Puri for over eight years was, according to the petitioner, secured by the said officer to make a false statement against him. As stated in the explanation of the petitioner, his claims as a contractor were wrongly disallowed by the Chief Engineer, Shri Sidhu, and that in the course of investigation against these officers he appeared before the Special Inquiry Agency and made statements against them. It was denied by him that he ever went to the house of Shri Harchand Singh and demanded Rs. 2,000/-. He in fact claimed ignorance even about the place where Shri Harchand Singh was residing. As is to be seen from the charge, the transfer of Harchand Singh had been stayed for some time though later he was asked to be relieved at once. The subsequent order directing Harchand Singh to resume duty at his new place of posting, namely, Beas Dam Project, is said to be due to the influence exercised by the petitioner on the Minister. The petitioner, under the impression that the Minister must have been examined in this connection, asked for a copy of his statement. In regard to the other allegation, which again related to a period before the appointment of the petitioner as a non-official member of the Board, the answer of the petitioner was that he never demanded Rs. 5,000/- from Krishan Lal Oberoi to get his work done. There is, of course, no suggestion in the charge that any money was ever paid to the petitioner.

7. The charge of getting undue promotion for his brother-in-law Shri Ram Lubhaya Bhalla from the post of Sectional Officer to that of Sub-Divisional Officer was similarly denied. It was stated by the petitioner that he had no hand in this promotion and that orders had been issued by the Secretary, Irrigation and Power, who had to satisfy himself about the qualifications of Shri Ram Lubhaya Bhalla before passing any such orders. The promotion, the petitioner asserted, was quite well deserved.

8. Charges 3 and 4 were also denied but it is not necessary to make a detailed reference to the explanation with regard to these charges as they did not form the basis of removal of the petitioner from his office as Member of the Board.

9. The petitioner asked the State Government for a personal hearing as well in order to be able to refute the charges levelled against him. After the interim reply had been submitted, the petitioner received from the Government copies of some of the statements and documents and with regard to any other the document connected with the show-cause notice, he was asked to inspect the

same in the office of the Director, Special Inquiry Agency, Chandigarh. In the matter of personal hearing, he was permitted to see the Secretary to Government, Irrigation and Power Department, on any working day within the period prescribed for giving explanation. The petitioner against submitted another explanation on 6th June, 1969 (Annexure A/5) almost reiterating what he had said earlier in the interim reply.

10. The impugned notification, Annexure A/6, was then issued by the Governor of Punjab, removing the petitioner from membership of the Board.

11. The order though authenticated in the name of the Governor was actually passed by the Minister concerned respondent 2. A copy of this order was not filed by either of the parties but the same has now been placed on the record. For facility of reference, this order is quoted hereunder in extenso:-

"I have gone through the charges and the explanation furnished by Shri R. P. Abrol. From the material on the file, I am definitely of the opinion that he is not a fit person to be retained as part-time member of the Electricity Board. I, therefore, order that Shri Abrol may be removed from membership under sub-clause (iv) of Clause (e) of sub-section (1) of S. 10 of the Electricity Supply Act, 1948.

C. M. may kindly see. After C. M. has seen, immediate orders be issued.

Sd/- Sohan Singh Basi, I.P.M. 17-7-1969."

12. Mr. M. S. Sethi, learned counsel for the petitioner has repeated the same contentions which were advanced in the connected writ petition 1042 of 1969 and they may be recapitulated here as well:-

(1) That Section 10(1)(e)(iv) of the Act is ultra vires of Art. 14 of the Constitution inasmuch as it gives to the State Government arbitrary, unguided and unchannelised power capable of being abused and pressed into service for extraneous purpose.

(2) That principles of natural justice have been violated in the instant case since the petitioner was not afforded an opportunity to cross-examine the witnesses who had made statements behind his back before the Special Inquiry Agency and which were being used against him. The contention is that a proper judicial approach to the matter required that an enquiry should have been held against the petitioner as demanded by him in his explanation given to the State Government. The argument further is that the whole case has been got up against the petitioner on account of political rivalries and also the personal malice of the Chief Engineer, superintending Engineer and some other officers working in the Amritsar Drainage Division against whom complaints of corruption had been made and they believed that the petitioner had a hand in those complaints. Truth, according to the petitioner, could be sifted in an enquiry where the petitioner was afforded an opportunity to cross-examine the witnesses who deposed against him and defence evidence could be led by him.

(3) That the State Government acting as a quasi-judicial authority was bound to pass a speaking order indicating the process of reasoning by which it reached its conclusion that the charges against the petitioner had been established. The submission is that the impugned order of the Minister, respondent 2, is not a speaking one showing nay judicial approach and must be quashed on this short ground alone.

13. For the reasons recorded in Bakhtawar Singh Vs. State of Punjab and Others, the first two contentions have no force and have to be rejected. Section 10(1)(e) (iv) of the Act is intra vires of the Constitution and the petitioner had no legal right to claim an enquiry in which an enquiry officer was appointed, prosecution witnesses examined and cross-examined and the petitioner given an opportunity to lead his defence when the statute requires only an explanation to be obtained from a delinquent officer.

14. The last contention has a substance in it and must be accepted. It was necessary for respondent 2, while considering the explanation of the petitioner, to make a judicial approach and not to allow himself to be influenced by any material with regard to which the petitioner was not afforded an opportunity to officer comments as any such act would be violative of the rules of the natural justice. The order passed by respondent 2, as held by a Full Bench of this Court in the Shiromani Gurdwaras Parbandhak Committee, Amritsar and Another Vs. Lachhman Singh Gill and Others, should have been a speaking one indicating a process of reasoning by which he reached the conclusion that the petitioner had rendered himself unfit for continuing as a part time member of the Board. The Minister, as is clear from the order made by him on 17th July, 1969, relied on some material on the file of which he makes no mention in his order.

We have looked into the executive file and find that allegations other than those with respect to which show-cause notice was serviced on the petitioner led to the initiation of the enquiry by the Special Inquiry Agency. The Director, Special Inquiry Agency, sent a report to the Secretary Vigilance, State Government, recommending a departmental enquiry against Shri Gupal Singh, Executive Engineer, for an incident in which the petitioner was said to be involved. It related to the repair of a car. There were other allegations as well. No criminal case, in the opinion of the Director, could proceed against the petitioner and the suggestion was that it might be possible to have the petitioner removed from membership of the Board on the ground that he was unfit to continue as a member thereof. It was then that an attempt was made to consolidate the material that could possibly be available against the petitioner and to issue a show-cause notice. The explanation of the petitioner was considered by the officers of the Special Inquiry Agency who drew the conclusion that the petitioner had no solid material to disprove the charges levelled against him and that, on the other hand, he had indulged in mud-slinging on the officers of the Irrigation Department. Special Inquiry Agency found the explanation of the petitioner to be unsatisfactory and in a detailed report made a recommendation that he be

removed from part-time membership of the Board. Legal Remembrancer was consulted and the Secretary Public Works Department too considered the office notings and the reply of the petitioner to the various charges in the light of the enquiry made by the Vigilance Department.

It is to be seen from the impugned notification, Annexure A/6, that the removal of the petitioner was ordered on account of the petitioner having allegedly attempted to get illegal gratification or other remuneration from officials of the Irrigation Department for getting their transfer orders already passed cancelled, or on a threat of getting them transferred to places where they did not like to go. The other ground stated was that Ram Lubhaya Bhalla, brother-in-law of the petitioner, was promoted from the post of Sectional Officer to that of a Sub-Division Officer because of the undue influence exercised by the petitioner on Shri Natha Singh, the then Minister, Irrigation and Power. The other charges relating to contract work having been procured for S. Sohan Lal, Christian, through the intervention of Shri Guralp Singh, Executive Engineer, seem to have been dropped, though they were the only charges where it was specifically stated that a sum of Rs. 4500/- had actually passed from S. Sohan Lal to the petitioner. The reports of the Special Inquiry Agency and the Secretary, Irrigation and Power, as are available on the file, were mainly actuated by one consideration, namely, that transfers and cancellation thereof in some cases which formed the subject-matter of charges against the petitioner had been ordered by the Minister at his own initiative without any move from the department and the same was true about the promotion of the brother-in-law of the petitioner. The petitioner denied having used any influence with the Minister, who, as conceded before us, was never examined by the Special Inquiry Agency. The recommendation of the police and of the Secretary, Irrigation and Power, were thus based on a presumption that influence must have been exercised by the petitioner who had contacts with the Minister. IT was in the respondent 2 passed the impugned order of 17th July, 1969, leading to the notification, Annexure A/6.

15. Mr. H.L. Sibal, learned Advocate General Punjab, very strenuously argued that the report of the Secretary and the office noting could be treated as a part of the order of the Minister and all these taken together gave a process of reasoning thereby making the order a speaking gone. We are afraid we cannot accept this argument. WE have held in Bakhtawar Singh's case, Civil Writ No. 1042 of 1969 = *AIR 1971 p&h 22) that after an explanation is received, it is for the competent authority, namely the Minister alone to apply his judicial mind and then accept or reject the same without letting any one else influence his judgment intentionally or unwittingly whether by the way of comments or in any other manner. Application of judicial mind, in our view, has to be seen from the order itself and not that the reasons are to be guessed or gathered. We, in this regard, relied upon the observations of their Lordships of the Supreme Court in Pragdas Umar Vaishya v. Union of India, Civil Appeal NO. 657 of 1967, D/- 17-8-1967 (SC), where the action of the High Court in scrutinising the executive file to find out the reasons for an impugned order was adversely criticised. It has

been specifically laid down there that the defect of want of reasons in the order of a quasi-judicial authority could not be remedied by looking into the file maintained by the Government and constructing the reasons in support of the order.

16. Harchand Singh from whom the petitioner is alleged to have demanded money as illegal gratification filed Civil Writ 1649 of 1968 in this Court challenging his transfer to Beas Dam project but no averment whatsoever is to be found therein to the effect that the transfer was mala fide ordered by the Minister under the influence of the petitioner. We are not assessing the credibility of Harchand Singh in regard to his statement to the police against the petitioner but it was incumbent on quasi-judicial authority making a judicial approach, to sift out truth and examine the trustworthiness of such a witness. The petitioner had, beyond doubt, made allegations against officers of the Canal Drainage Circle, and this all the more necessitated a proper check up of the correctness of the various versions involving the petitioner. Respondent 2 does not disclose in his order how the development of thought took place in his mind which ultimately resulted in the impugned action. What is only state by him is that he was gone through the charges and the explanation furnished that the petitioner was not fit to be retained as a part-time member of the Board. The file, referred to by him, as pointed out earlier, contains several other charges, the reports of the Vigilance Department and the Secretary, Irrigation Department, copies of neither of which were supplied to the petitioner, though they have obviously been taken into consideration by the Minister.

Reference is made in his order to the explanation of the petitioner but it is not stated as to what is contained therein and how he has found the same to be unsatisfactory. The order suggests that the Minister passed the same independently on a consideration of the file and it was, therefore, all the more essential that he should have indicated in his order how he reached the conclusion that the petitioner was unfit to continue as a member. We quite agree with Mr. Sibal that respondent 2 could not be expected to write a very exhaustive judgment as is required of law Courts but at the same time some sort of discussion of the material on which the impugned order was going to be based was called for., Complicated issues of a fact were involved and there was no attempt on the part of the Minister to ascertain the truth by making an independent and judicial approach. No doubt, the petitioner could not claim an enquiry as demanded by him but the Minister was not bound to be content with having obtained an explanation which was adversely commented upon by the Vigilance Department and Secretary, Irrigation and Power, and he could have asked for further clarifications from the petitioner. For the actions of the ex-Minister the petitioner was being punished without any one having ever cared to examine the said Minister. The statements made behind the back of the petitioner, though copies of the same had been supplied to him, but whose truthfulness he had no opportunity to contest, were being used against him and also the reports copies of which were not made available. There were charges,

other than those referred to in the statement of allegations as supplied to the petitioner and they too were on the file. When the Minister looked into the file, the other allegations could not escape his notice, and they were likely to influence his judgment. In such a situation, it is difficult to say which of the allegations constituted the dominant reason that induced respondent 2 to pass the order removing the petitioner from membership of the Board. Moreover, the reports of the Special Inquiry Agency of the police and the Secretary, Irrigation and Power, which were on the file were bound to influence the judgment of the Minister and might have been principally responsible for the impugned order. Where the Government allows its judgment to be influenced by any such comments, which are not communicated to the delinquent official, rules of natural justice are violated as observed by Tek Chand, J. in *Prem Swaroop Datta v. The State of Haryana* ILR (1968) P&H 542.

Another curious thing to find in this case is that charges Nos. 3 and 4 contained in the statement of allegations did not find mention in the final notification which certainly implied that they had been abandoned. There is not the least indication in the order of the Minister that he considered those charges and found them not established. What seems to have happened is that the Minister without applying his mind, much less judicial mind, passed the order of 17th July, 1969, in a routine and mechanical manner and then the office at the time of preparation of draft notification did not think it worthwhile to include those charges. The enquiry had started in a different background altogether and it was subsequently that an effect started to consolidate the material to get the petitioner removed from membership of the Board. The whole procedure adopted and the approach made by the Minister were, in our opinion, contrary to the rules of natural justice and merely by obtaining of an explanation the petitioner could not be said to have been given any real opportunity to defend himself. There was indeed a compliance with the letter of the statute but not with its spirit. The order which unmistakably smacks of predetermination and arbitrariness offends Art. 14 of the Constitution and has, therefore, to be struck down. It is not necessary for us to adjudicate as to whether any misconduct of a member exhibited at the time before he joined the Board, could in law be a sufficient ground for removing him from membership of that Board since we are taking the view that the impugned order is not a speaking one passed with a judicial approach.

17. For the foregoing reasons we allow the writ petition, declare the removal of the petitioner, from membership of the Board as illegal and direct an appropriate writ to issue quashing the impugned order of the Governor as appearing in the Notification, Annexure A/6. In the petitioner circumstances of the case, we leave the parties to bear their own costs.

Bal Raj Tuli, J.

18. I agree.

19. Petitioner allowed.