
(1995) 11 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2681 of 1994

Ram Phal

APPELLANT

Vs

Financial Commissioner and Secretary to Govt. Haryana
Development and Panchayat Department and Others

RESPONDENT

Date of Decision : 10-11-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Gram Panchayat Act, 1952 — Section 102, 102(5)

Citation : (1996) 112 PLR 233

Hon'ble Judges : S.S. Sudhalkar, J;N.K. Kapoor, J;N.C. Jain, J

Bench : Full Bench

Advocate : Ramesh Hooda, for the Appellant; Gulab Singh A.G., for the Respondent Nos. 1 and 2 and Shailendra Singh, for the Respondent No. 3, for the Respondent

Judgement

N.C. Jain, J.—For answering the question of law referred to us by the Division Bench of this Court, it is necessary to have a brief look at the factual matrix.

2. The petitioner being a Panch of Gram Panchayat Shahr Malpur, Tehsil Samalkha, District Panipat filed some complaints against respondent No. 3 who was the Sarpanch of the aforesaid Gram Panchayat. Respondent No. 3 was suspended on the basis of the complaints and during the suspension, the petitioner was elected as acting Sarpanch. The Sub-Divisional Officer (Civil) Panipat was appointed as Inquiry Officer to go into the allegations made against respondent No. 3. On the basis of the report of the Inquiry Officer, Sarpanch respondent No. 3 was exonerated from all the charges and as a consequence thereof he was reinstated by respondent No. 2 Director, Development and Panchayats, Haryana. The petitioner filed an appeal against the order of reinstatement u/s 102(5) of the Punjab Gram Panchayat Act (as applicable to Haryana) (hereinafter referred to as "the Act"). On the basis of the preliminary objections taken in the appeal, the Financial (Commissioner and Secretary to Government Haryana, Development and Panchayat Department, Chandigarh,

dismissed the appeal holding that the complainant had no Locus standi to prefer appeal in view of the two judgements given by this Court in C.W.P. No. 9872 of 1992 Mahavir Singh Sarpanch v. State of Haryana, decided on August 28, 1992 and C.W.P. No. 15423 of 1992 Pritam Singh and Anr. v. State of Haryana and Ors., decided on 24.11.1992. It was held that complainant is just an informant and that he does not come into picture at all when the inquiry is initiated on the basis of a complaint and that he has no Locus standi to be heard regarding the matter of suspension of a Sarpanch or the revocation thereof. It was further observed by the Financial Commissioner that the complainant was not a necessary or even proper party in the proceedings initiated on the basis of a complaint. He was further of the view that the withdrawal of the suspension order does not affect the complainant in any way nor the complainant suffers from any injustice muchless substantial injustice. It is this order of the Financial Commissioner which is subject matter of challenge in this writ petition.

3. During the course of hearing, the learned counsel for the petitioner brought to the notice of the Division Bench an amendment made by the Haryana Act No. 16 of 1981 alongwith the objects and reasons in order to contend that the petitioner had the right of appeal against the order of re-instatement. At this stage, it is necessary to extract out the amendment alongwith the objects and reasons which reads as under:

"Haryana Act No. 16 of 1981 an Act to amend the Punjab Gram Panchayat Act, 1952 in its application to the State of Haryana.

Be it enacted by the Legislature of the State of Haryana in the Thirty second Year of the Republic of India as follows:-

1. Short Title - This Act may be called the Punjab Gram Panchayat (Haryana Amendment) Act, 1981."

NOTES

STATEMENTS OF OBJECTS AND REASONS

1. At present the remedy of appeal is available to the Panch or Sarpanch against whom removal order is passed. Where the Sarpanch or Panch is exonerated remedy of appeal is not available to the complainant party. The Bill seeks to provide remedy of appeal to both the parties."

2. Amendment of Section 102 of Punjab Act 4 of 1953 - In Sub-section (5) of Section 102 of the Punjab Gram Panchayat Act. 1952, for the words "by an order or removal", the words "by an order" shall be substituted."

The Division Bench in view of the two judicial pronouncements i.e. in Mahavir Singh Sarpanch's case, (supra) and Sukh Ram v. State of Haryana and Ors. 1988 2 P.L.R. 65 (F.B.) thought that the point involved in the case was of great importance and that the same is likely to arise in a large number of cases, referred the matter to the Full Bench. This is how the matter has been placed

before us.

4. The precise and significant question of law which arises is - whether an appeal of a complainant at whose instance a Sarpanch is suspended is maintainable u/s 102 of the Act after the Sarpanch is ordered to be re-instated? Before dilating upon the afore-mentioned question of law, it is necessary to examine the bare provisions of Sub-section (5) of Section 102 before its amendment, which reads as under:-

"Any person aggrieved by an order or removal passed under this Section, may, within a period of thirty days from the date of communication of the order prefer an appeal to the Government."

5. After examining the unamended Sub-section (5) of Section 102, the Statement of Objects and Reasons, the amended Sub-section (5) of Section 102, Sukh Ram, Mahavir Singh, Sarpanch and Pritam Singh's case (supra) we are of the firm view that the complainant is entitled to file an appeal against the order of re-instatement. The very wording occurring in amended Sub-section (5) "any person aggrieved by an order passed under this Section" clearly envisaged that a complainant can file an appeal against any order passed u/s 102 of the Act. Such orders need not be the orders of removal. The statement as has been given in the Objects and Reasons is a clear pointer to the intention of the legislature that it wanted to confer the rights upon the complainant and it is for this reason that it has further been stated in the Statement of Objects and Reasons that at present the remedy of appeal is available to the panch or Sarpanch against whom removal order is passed and that where the Sarpanch or Panch is exonerated, remedy of appeal is not available to the complainant party. The Bill was introduced in the Legislature only to provide remedy of appeal to both the parties. The true interpretation after the introduction of the amendment in Sub-section (5) which can safely be placed by us is that a Sarpanch or Panch who has been removed can file and appeal under Sub-section (5) and the right of filing appeal has been made available in similar manner to the complainant in the case of exoneration of such a Sarpanch or Panch. The amended Section does not, in our considered view, admit of any ambiguity whatsoever particularly when the same is interpreted in the light of Objects and Reasons.

6. The afore-mentioned discussion brings us to the case law which has been noticed in the reference and the impugned order. The ratio of law laid down by the Full Bench of this Court in Sukh Ram's case (supra) does not have the slightest application to the facts of the instance case. The Full Bench in Sukh Ram's case (supra) was called upon to decide whether a complainant is to be afforded an opportunity of hearing before the Director orders suspension of a Sarpanch or Panch u/s 102 of the Act. On an examination of the case law, referred before the Bench, it was held that the Director who has the power to suspend is entitled to revoke the order of suspension under the General Clauses Act and that a complainant at whose instance a Sarpanch or Panch is suspended is not to be afforded an opportunity of hearing before revoking the order of

suspension. While deciding the case of Sukh Ram (supra), the Full Bench has neither directly or indirectly referred to Section 102(5) of the Act either before amendment or after amendment.

7. In Mahavir Singh Sarpanch's case (supra) the facts in short were that the petitioner who was elected as Sarpanch of the Gram Panchayat Adhyanaa, Tehsil and District Panipat was suspended and the suspension was challenged in appeal by him u/s 102(A) of the Act. The complainant in this application under Order 1 Rule 10 C.P.C. was allowed to be impleaded as party. The order passed under Order 1 Rule 10 C.P.C. by the appellate authority was challenged in a writ petition. While allowing the writ petition the Bench held that the complainant was neither a necessary nor proper party. It was held that the complainant only furnished material to the competent authority to take action against a particular Panch or Sarpanch and thereafter it was for the Director to act on the basis of the complaint. For the afore-mentioned proposition of law reliance was placed by the Division Bench on Sukh Ram's case (supra) and another case reported as Ram Saroop v. The Director of Panchayat, Haryana, Chandigarh 1983 PLJ 350. Although, the point arising in this writ petition was directly involved before the Division Bench in Mahavir Singh's case (supra) but the view taken on the question of law is incorrect in view of the amendment of Sub-section (5) of Section 102 of the Act. As noticed by us in the earlier, part of the judgment, the decision given in Sukh Ram's case (supra) is inapplicable to the facts of the instant case as the question involved therein was altogether different. Similarly, the ratio of law laid down in Ram Saroop's case (supra) is actually inapplicable to the facts of the case in hand as the question involved therein was also different. The Division Bench in Ram Saroop's case (supra) was called upon to decide whether the notice to the complainant at whose complaint the Sarpanch was suspended was necessary or not before revoking the order of suspension. This is not the precise question involved herein.

8. In the view of the afore-mentioned discussion and the interpretation placed by us upon the amended provisions of Sub-section (5) of Section 102 of the Act it inevitably follows that the decision of the Division Bench in Mahavir Singh Sarpanch's case (supra) does not lay down the correct law and the same deserves to be overruled. The Full Bench and the Division Bench decisions in Sukh Ram and Mahavir Singh Sarpanch cases (supra) are inapplicable as the question involved in the aforementioned cases were altogether different.

9. For the reasons recorded above, the writ petition is allowed. Resultantly, the question of law referred to us would stand answered in the following manner:

"The complainant at whose instance action is taken against a Sarpanch or Panch is entitled to file an appeal before the appellate authority and Sub-section (5) of Section 102 of the Act is wide enough to include the appeals both by the Sarpanch and the complainant against the order passed u/s 102 of the Act. The aggrieved party would mean not only the Panch and the Sarpanch against whom action is taken but also the complainant."

10. Consequently, the case is remanded to the Commissioner and Secretary Development and Panchayat Department, Chandigarh for taking fresh decision after hearing the petitioner and respondent No. 3.

11. The parties through their counsel are directed to appear before the Commissioner and Secretary Development and Panchayat Department, Chandigarh on 18.12.1995. He is directed to decide the appeal expeditiously. No costs.