

(1976) 10 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3331 of 1973

Ratti Ram

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 19-10-1976

Acts Referred:

Citation : (1977) PLJ 104 : (1985) RRR 541

Hon'ble Judges : K.S. Tiwana, J

Advocate : Nemo., Advocates for appearing Parties

Judgement

K.S. Tiwana, J.

1. The petitioners who are members of Gram Panchayat Bangaon, tehsil Fatehabad, district Hissar, have filed this writ petition under Articles 226 and 227 of the Constitution of India for quashing Notification No. 57622A published in the Haryana Government Gazette Extra ordinary on September 17, 1973, copy Annexure "E" issued by the respondent No. 1, State of Haryana through Secretary to Government Haryana, Development and Panchayat Department, superseding the Gram Panchayat of village Bangaon.

2. The case of the petitioners is that they and respondents Nos. 7 and 8 were elected as members of the Gram Panchayat in the year 1971. Petitioner No. 1 is the Sarpanch of the Gram Panchayat. The petitioners have alleged that they opposed Shri Dalbir Singh now a Deputy Minister in the Central Government in his election for membership of the Parliament in the last general elections as they belonged to the opposition. Ram Lal, the outgoing Sarpanch, had not delivered the proper accounts to the new sarpanch and a complaint made by the new Panchayat led to the audit of the Panchayat accounts, which revealed misappropriation of a large sum of money by the ex Sarpanch. Respondent No. 5, Secretary of the Gram Panchayat was also opposed to the petitioners and did not discharge his duties in a proper manner and his conduct too was reported to the authorities. Resolutions were also passed against respondent No. 5. Respondent No. 9, who is M.L.A. belonging to the ruling party also worked

against the interests of the petitioners. Respondent No. 1 issued showcause notice to the Gram Panchayat Bangaon, vide memo No. P.E. 273/49579 dated 9th July, 1973 which is Annexure "C" to the writ petition, through petitioner No. 1, as its Sarpanch requiring the Gram Panchayat to showcause why it be not superseded. In the grounds mentioned in the showcause notice it was stated that no development work had been done by the Panchayat since 1971; that whenever any meeting of the Gram Panchayat was called for the development work the members of the Panchayat attended the meeting but did not sign the proceedings due to which no resolution could be passed and the development work could not be done; that 670 residents of the village out of its population of 1170 had turned against the Gram Panchayat. The Gram Panchayat contested the showcause notice vide reply, copy of which is Annexure "D" to this petition. Showing a cause against the supersession. The Gram Panchayat made a demand for a regular inquiry in the allegations contained in the showcause notice. The Gram Panchayat was ultimately superseded vide Notification No. 57622A dated 17.9.1973, copy of which is Annexure "E" to the petition. The petitioners have now challenged the supersession on the ground that it was influenced by extraneous consideration and malice and that the two grounds mentioned in Annexure "E" could not be invoked for the supersession.

3. Respondent No. 2, Director of Panchayats, Haryana, filed written statement on its behalf and also on behalf of respondent No. 1. In that the contentions of the petitioner were controverted and it was stressed that the showcause notice and supersession of the Gram Panchayat were bona fide. The justification for the supersession of the Gram Panchayat was reiterated. Supporting the grounds of supersession which was based on the factfinding inquiry, it was stated that on 26.4.1973 the land belonging to the Gram Panchayat was auctioned for lease but the petitioners refused to sign the lease deed. On that very day Social Education and Panchayat Officer requested the petitioners to sign the proceedings book but they refused to do so. The respondents set up a case that the petitioners attended the meeting but did not sign the proceeding book because of which the development work could not be done. The refusal to sign the proceeding book on 26.4.1973 was quoted as an instance.

4. The Block Development and Panchayat Officer also filed written statement on the same lines as of respondent Nos. 1 and 2. Respondents Nos. 7 and 8 who are members of the Gram Panchayat in their written statement also sided with the other respondents. Respondent No. 5, Secretary, Gram Panchayat, Bangaon in his written statement denied the allegations levelled against him. Mehar Chand, M.L.A. respondent No. 9 denied any connection with the affairs of the petitioners or the Gram Panchayat of Bangaon. He stated that he had no hand in the supersession of the Panchayat.

5. Copy of showcause notice, Annexure "C", reads as under :

"Gram Panchayat Bangaon, Block Fatehabad, district Hissar was established in the year 1971. It has come to the notice of the Government that since then this

Panchayat has not done any development work in its area. The total strength of the members of this Panchayat including the lady Panch is seven. Whenever a meeting of the Panchayat or society of the area is called for any of the development work, all the members of the Panchayats, no doubt, attend that meeting but do not sign the proceedings taken therein. As a result thereof, no resolution can be passed and the development work cannot be done. For example, four Panches refused to sign the leased deeds at the time of auction of Shamilat land. The total number of population of the Society of the area is 1170 and out of them 670 have turned against this Panchayat.

Keeping in view the above circumstances, the Government thinks that this Gram Panchayat has failed to achieve the object for which the Government set up the Gram Panchayat and that it has misused its powers and it has failed to discharge its duty.

In the opinion of Hon'ble Governor of Haryana, why the Gram Panchayat, Bangaon, Block Fatehabad, district Hissar, be not dissolved under section 103(1) of the Gram Panchayat Act, 1952. Hence, having issued you this show cause notice you are requested to submit your explanation in this regard within 15 days after the receipt of this notice through the Block Development & Panchayat Officer, Fatehabad. In case no reply is received from your side within the stipulated period, it will be presumed that you have nothing to say about it and ex parte proceedings will be taken against you."

The relevant portion of the notification of supersession, copy Annexure "E" reads as under :

"No. 57622A whereas the Governor of Haryana is satisfied after enquiries that the Gram Panchayat, Bangaon, Tehsil Fatehabad, District Hissar, has failed to perform the duties imposed on it and has abused its powers, viz.,

(i) the Panchayat has not done any development work since the year 1971;

(ii) Sarvshri Rati Ram, Sarpanch, Ramji Lal, Mam Chand and Shrimati Hansia Devi, Panches, did not attend the meetings of the said Panchayat from 17th April, 1972 to 11th May, 1973 and did not sign the resolution of the Panchayat;

(iii) a meeting regarding lease of Shamilat land was called by the Social Education and Panchayat Officer, Fatehabad, on 26th April 1973, but above mentioned four Panches refused to sign the lease deed without any reason.

2. And whereas the Gram Panchayat, Bangaon, has in its explanation, admitted these charges.

3. Now, therefore, in exercise of the powers conferred by subsection (1) of section 103 of the Punjab Gram Panchayat Act, 1952 (Act No. IV of 1953), and all other powers enabling him in this behalf, the Governor of Haryana hereby supersedes the said Gram Panchayat, Bangaon.

4. xx xx xx xx xx ."

5. The ground contained in showcause notice about 670 persons in village Bangaon turning against the Gram Panchayat was not taken into consideration for the supersession.

6. The supersession was based on the grounds which have been serialized as (i), (ii) and (iii) in para 1 of Notification, copy annexure 'E'. These three grounds have to be examined to find whether there was material with the Government to base the order of supersession on these. If the Government has material to arrive at a conclusion after its subjective satisfaction which is not guided by mala fides, extraneous considerations or nonexistent material this Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, does not normally interfere in such matters. But, if on the other hand there was no material with the Government to support a conclusion or it was based on wrong assumption of facts or on facts which did not exist then such an order which results into the taking away of the rights of persons, who have been elected by the people to discharge a particular function, cannot be upheld.

7. The first charge is that the Panchayat has not done any development work since 1971. The petitioners made averment in the petition that the co option of the lady member was done on 10.12.1971, it has been admitted as correct by respondents Nos. 1 and 2. Before that the Panchayat was not complete and could not function. In Annexure "D" copy of the reply to show cause notice the Gram Panchayat took the position that the first meeting of the Gram Panchayat was held on 16.1.1972. It has not been stated to be incorrect by respondents Nos. 1 and 2. When the Gram Panchayat was not constituted in 1971 it could not function what to talk of doing any development work. The Government took into consideration this period to influence its mind against the petitioners who form a majority in the Gram Panchayat and thus misdirected itself. The inclusion of the year of 1971 has prejudiced the action of respondent Nos. 1 and 2 against the Gram Panchayat which vitiates the order because a nonexistent fact was taken into consideration.

8. The next question which arises about this very charge is about the development work. It is not known what development work the Panchayat was required to carry out and failed to do, during the period it remained in office, before its suspension. Shri H.N. Mehtani, Deputy Advocate General, Haryana, could not show that functions of the development have been assigned to the Gram Panchayat in the State. Unless these are definitely defined or set out by the government, the duties of the Panchayat about the development remain vague. Such vagueness would introduce an element of arbitrariness on the part of the Government to exercise its powers of supervision of the work of Gram Panchayat. Even the showcause notice or the order of supersession does not contain any instance when the Gram Panchayat of village Bangaon failed to carry out the development work. Shri H.N. Mehtani, Deputy Advocate General, Haryana says that the functions of the Gram Panchayat are defined in section 19 of the Punjab Gram Panchayat Act, 1952 (No. IV of 1953), and the Gram

Panchayat of village Bangaon failed to perform these. I cannot agree with this argument of the learned state counsel. The heading of section 19 is "Administrative duties". Neither the showcause notice was issued for the failure of the Gram Panchayat to perform its administrative duties nor the order of supersession was made on this basis. A distinction has to be made in these two duties, that is, administrative and developmental. As the Government failed to bring any lapse or dereliction of duties by the Gram Panchayat in the performance of development duties the charge remained extremely vague and no supersession on its basis could be ordered.

9. The second charge is about the nonsigning of the resolution by the four petitioners. The learned State counsel could not convince me about the genuineness of this charge. To me it seems to be imaginary. According to section 14 of the Punjab Gram Panchayat Act only the Sarpanch can convene a meeting of the Gram Panchayat. This conceded by the learned State counsel that majority in this case is with the Sarpanch. When he called the meetings of the Gram Panchayat and the majority support was with him then I fail to understand what prevented him and his supporters to sign the resolutions. No convincing reasons have been put forward in support of this charge. This charge lacks the necessary reason and logic.

10. The dates given for not signing the proceedings book are from 17.4.1972 to 11.5.1973. The Government could take any action under section 102 of the Punjab Gram Panchayat Act against the individual members for default in attending the meetings, if sufficient data was available with it but could hardly make it a ground for taking action under section 103 of the Punjab Gram Panchayat Act to supersede the whole of the Panchayat.

11. The third charge is that the Social Education and Panchayat Officer on 26.4.1973 asked the four members (reference is to the Petitioners) to sign the leased deed but they did not do so. It was the majority which failed to comply with the order of the Social Education and Panchayat Officer and not the whole Panchayat. Action could be taken against them for disobedience etc., if that was warranted by the Punjab Gram Panchayat Act or Rules framed thereunder, but this supersession of the Gram Panchayat for the action of some individual members cannot be held to be justified.

12. The Government in the Notification, Annexure "E" in para 2 stated "and whereas the Gram Panchayat Bangaon has in its explanation admitted these charges". This is definitely incorrect. Annexure "C" the reply to the show cause notice shows that the Panchayat had contested the notice in strong terms and had levelled charges of mala fides etc. against some individuals. It had even demanded an inquiry. To say that the Panchayat had admitted the charges shows that the Government did not apply its mind properly to the case and this fact, when coupled with the observations, made on charge No. 1 about the taking into consideration of period of 1971, when the Panchayat was not even properly constituted would vitiate the order. An effort was made by the Director of

Panchayats, respondent No. 2 in the written statement which she on her own behalf and on behalf of respondent No. 1 filed that in the Notification it was wrongly mentioned that the Panchayat has admitted the charge. In view of what has been stated above I need not go into the matter if the Notification issued in the name of the Governor of Haryana on 17.9.1973 could be explained by the Director of Panchayats in the written statement in this manner without issuing the necessary correction in the Notification.

13. In view of the above discussion the order of supersession, copy of which is Annexure "E" to the petition, issued vide notification No. 57622A dated 17th September, 1973, is quashed. The petition thus succeeds. Although no lawyer appeared on behalf of the petitioners yet in the peculiar circumstances of the case the petitioners are awarded Rs. 200/ as costs of this petition. The petitioners levelled false allegations against Shri Mehar Chand M.L.A., Respondent No. 9 and dragged him into litigation unnecessarily. The accusations against him are not proved. He engaged a counsel and filed a written statement. In spite of the fact that the petitioners have succeeded, the petitioners shall pay Rs. 100/ as costs to Shri Mehar Chand M.L.A.