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**(2020) 10 SHI CK 0144**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Writ Petition No. 3157 Of 2019**

Roshan Lal

APPELLANT

Vs

State Of Himachal Pradesh And Other

RESPONDENT

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**Date of Decision :** 15-10-2020

**Acts Referred:**

Constitution Of India, 1950 — Article 136, 227  
Himachal Pradesh Panchayati Raj (Finance, Budget, Accounts, Audit, Works, Taxation And Allowances) Rules, 2002 — Rule 44  
Himachal Pradesh Panchayati Raj Act, 1994 — Section 10, 22A, 145, 146, 146(1), 146(1A)

**Citation :** (2020) 10 SHI CK 0144

**Hon'ble Judges :** Ajay Mohan Goel, J

**Bench :** Single Bench

**Advocate :** Shrawan Dogra, Manish Sharma, Tejasvi Dogra, Bharat Thakur, Ashok Sharma, Sumesh Raj, Sanjeev Sood, Divya Sood, N.K. Thakur, Surinder Prakash Sharma, Divya Raj Singh

**Final Decision :** Disposed Of

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## Judgement

Ajay Mohan Goel, J

1. The case of the petitioner in brief is that he was elected as Pradhan of Gram Panchayat Panvi, Tehsil Nichar, District Kinnaur and he took oath of his office on 23.01.2016. In the year 2016, Local Area Development Authority (LADA) sanctioned four proposals with respect to the temple development works at village Panvi. This included completion of construction of Nagin Mata Mandir, Vishnu Mandir, danga (retaining wall), fencing of community toilet near Vishnu Mandir and gate of Nagin Mata Mandir. For the said works, an amount of Rs.51,56,000/- was sanctioned. Junior Engineer, LADA, prepared estimates of the work to be carried out whereafter final approval in this regard was given. Work was commenced in the month of September, 2016 and completed in the month of July, 2017. Proper records were maintained with regard to the work which was carried out and the Technical Committee verified the execution of the work and

made assessment thereof, following which, payments were released. The temple premises were inaugurated by the then Deputy Speaker of Vidhan Sabha in the month of July, 2017.

2. In the month of November, 2017, Assembly Elections were held in the State of Himachal Pradesh and new government was formed on 27.12.2017. The government was formed by the party which earlier was in opposition. Respondent No. 4 was having allegiance to the party which formed the government in December, 2017.

3. On 10.04.2018, respondent No. 4 filed a complaint against the petitioner alleging misuse of funds and powers by him while discharging his duties as the Pradhan of the Gram Panchayat. In the said complaint, 16 allegations were levelled against the petitioner, including allegations of financial irregularities in the course of construction of the temple complex, as also funds under 14th Financial Commission, Zila Parishad funding, Swachh Bharat Mission and Block Funding.

4. According to the petitioner, the allegations were politically motivated as respondent No. 4 was his political opponent. As per him, annual statutory audit of the Panchayat was conducted for the year 2017-18 from 16.04.2018 to 18.04.2018 by the Statutory Auditor, i.e. Auditor (Panchayat), office of District Panchayat Officer, District Kinnaur, H.P. As per the audit report, clean chit was given to the Panchayat and its officials by stating therein that few minor objections which stood raised were subsequently settled post discussions. As per the petitioner, pursuant to the filing of the complaint by respondent No. 4 dated 10.04.2018 (Annexure P-3/1), respondent No. 3 in a mechanical manner ordered a preliminary inquiry into the same. He appointed Auditor (Panchayat), District Panchayat Officer, Kinnaur as the Preliminary Inquiry Officer. Said Inquiry Officer was the same officer who had given the audit report for the year 2017-18 (appended with the petition as Annexure P-2). Preliminary Inquiry Officer vide his report dated 19.04.2018 (Annexure P-3/2), concluded that besides the petitioner, other Panchayat Members including the Panchayat Secretary were also guilty of the charges levelled in the complaint.

5. Vide order dated 08.05.2018 (Annexure P-4/1), respondent No. 3 directed Assistant Engineer (Development), District Kinnaur, to carry out assessment/measurement of the development works, subject matter of the complaint. A report was submitted by Assistant Engineer vide Annexure P-4/2, dated 11.06.2018. As per the report, the development work for which assessment/rating was directed to be carried out were assessed/rated to be of a total value of Rs.80,87,794/-. These works included the works qua which the complaint was made by respondent No. 4.

6. On the basis of the Preliminary Inquiry report submitted by the Inquiry Officer, respondent No. 3 issued a show cause notice to the petitioner dated 15.06.2018 (Annexure P-5/1) as to why proceedings be not initiated against him under the

provisions of Sections 145 and 146 of the Himachal Pradesh Panchayati Raj Act, 1994 (hereinafter to be referred as '1994 Act' for short). To enable him to submit his response to the show cause notice, vide letter dated 21.06.2018, petitioner called upon respondent No. 3 to supply him certain documents. In the absence of relevant material available, petitioner submitted his response to the show cause notice dated 25.06.2018 (Annexure P-5/2) reserving his right to file a comprehensive reply once he received the documents which he had sought from respondent No. 3. However, the documents were not supplied despite request.

7. As respondent No. 3 was not satisfied with the reply submitted by the petitioner to the show cause notice, he suspended the petitioner vide order dated 27.06.2018 (Annexure P-5/3) from the post of Pradhan. The Secretary of the Gram Panchayat against whom also an inquiry was initiated, however was let off with a relatively mild punishment of withholding of increments for two years. Feeling aggrieved by the order of suspension, the petitioner preferred a statutory appeal against the same, which was dismissed by the Appellate Authority vide order dated 24.07.2018 (Annexure P-5/4). The petitioner thereafter challenged the order passed by respondent No. 2 vide CWP No. 1759 of 2018 before this Court, which petition was disposed of by this Court vide order dated 01.08.2018 by setting aside the order of suspension as well as order passed by the Appellate Authority and by directing respondent No. 3 to supply copies of all documents relied upon by the petitioner to enable him to file reply to the show cause notice and by passing a speaking order on the same.

8. Thereafter, a detailed reply was submitted by the petitioner vide Annexure P-6/2 dated 10.08.2018 to the show cause notice wherein all 16 charges levelled against him were denied. Vide Annexure P-6/3, dated 25.08.2018, respondent No. 3 again suspended the petitioner from the post of Pradhan. Feeling aggrieved, the petitioner filed CWP No. 2093 of 2018 in this Court, which petition stood disposed of by this Court by directing the petitioner to avail the statutory remedy available to him. The appeal so filed by the petitioner against the order of suspension was dismissed by respondent No. 2 vide order dated 27.12.2018 (Annexure P- 8/2).

9. Feeling aggrieved, the petitioner again filed CWP No. 137 of 2019 in this Court challenging the order passed by Appellate Authority dated 27.12.2018. Vide judgment dated 11.01.2019 (Annexure P-8/3), said writ petition was disposed of by this Court by revoking the suspension order dated 25.08.2018 and directing that inquiry be completed within a period of three months.

10. As per the petitioner, copy of the Preliminary Inquiry Report was not supplied to him and he had to obtain the same under the Right to Information Act. Report revealed that out of 16 charges levelled against the petitioner by respondent No. 4, charges on 5 counts stood proved as per the report of the Preliminary Inquiry Officer whereas charges on 3 counts stood partially proved and not proved on 8 counts. However, this Inquiry Report was returned back to the Inquiry Officer by respondent No. 3 citing 8 errors with the direction to rectify the same and

conduct a fresh site/spot inspection and to get revaluation done by Junior Engineer, Block Development. As per the petitioner, this demonstrated influence of extraneous considerations weighing with respondent No. 3 and his intent of dethroning the petitioner from the office of Pradhan by whatever means necessary. It is the case of the petitioner that said act of returning of the inquiry report in fact vitiated the entire process and rendered the inquiry bad in law and incapable of being acted upon. It is further the case of the petitioner that upon return of the inquiry report by respondent No. 3, the Inquiry Officer virtually obeyed the dictate of respondent No. 3 and re-submitted fresh report on 27.03.2019 vide Annexure P-9/3. This time the Inquiry Officer found charges proved on 10 counts, not proved on 3 counts and partially proved on 3 counts. This was followed by issuance of a final show cause notice dated 06.04.2019 (Annexure P-10/1) to the petitioner as to why he should not be terminated from the office of Pradhan. The petitioner submitted his response to the same vide reply dated 23.04.2019 (Annexure P-10/2). He took the stand that first Inquiry Report could not have been returned and should have been accepted or rejected. As per him, no corrections therein could have been ordered by respondent No. 3 as the same amounted to usurping the powers of the Inquiry Officer, especially in the light of a fresh inquiry/spot inspection having been directed by respondent No. 3. On the basis of vitiated second Inquiry Report dated 27.03.2019, impugned order dated 27.05.2019 (Annexure P-11) was passed by respondent No. 3 directing removal of the petitioner from the office of Pradhan and to return all immovable and movable properties that was in his possession back to the Panchayat. Petitioner preferred a statutory appeal by way of Annexure P -12 which was also rejected by the Appellate Authority vide order dated 19.09.2019 (Annexure P-13).

11. Feeling aggrieved, the petitioner has filed the present writ petition, praying for the following reliefs:-

"i) That the impugned (Annexure P-13) passed upholding the termination (Annexure P-11) passed by quashed and set aside; order dated 19.09.2019 by respondent No. 2 order dated 27.05.2019 respondent No. 3 may be

ii) That the petitioner may be allowed to complete his full tenure as elected Pradhan Gram Panchayat, Panvi;

(iii) That respondent No. 2 and 3 may be directed to produce the records pertaining to this case for the perusal of this Hon'ble Court.

iv) Any other relief deemed fit and proper in the facts and circumstances of the case may also be granted to the petitioner."

12. Mr. Shrawan Dogra, learned Senior Counsel appearing for the petitioner has argued that impugned order dated 27.05.2019 (Annexure P-11), passed by respondent No. 3 as well as appellate order passed on 19.09.2019 (Annexure P-13), by respondent No. 2 are not sustainable in law and same are liable to be quashed and set aside. He argued that complaint filed by respondent No. 4 was

false and allegations levelled therein were baseless, politically motivated and based upon extraneous considerations. According to him, the petitioner had committed no irregularity or illegality in the performance of his duties. He argued that Annexure P-11 was a non-speaking and unreasoned order and was liable to be quashed and set aside on this count also. He argued that the proceedings otherwise also undertaken by respondent No. 3 on the basis of complaint filed by respondent No. 4 were liable to be quashed and set aside for the reason that neither the complaint which was filed by respondent No. 4 was a bonafide complaint nor proceedings which subsequently stood initiated by respondent No. 3 were bonafide. According to him, the entire act of respondent No. 3 was hit by legal malafides which was evident from the fact that after receipt of the first inquiry report even without supplying copy thereof to the petitioner, respondent No. 3 ordered holding of fresh inquiry on certain allegations to the prejudice of the petitioner at his back without any authority in law to do so. Learned Senior Counsel also argued that the entire process having been initiated by respondent No. 4 on account of political vendetta is further borne out from the fact that there is not even an iota of evidence on record to suggest that the petitioner has embezzled any amount of the Panchayat funds or any of his act as Pradhan was influenced by any personal interest rather than interest of the Panchayat. Learned Senior Counsel also argued that perusal of the inquiry report read harmoniously with the response(s) submitted by the petitioner demonstrated that the petitioner had successfully refuted all the allegations made against him, yet without appreciating the same, respondent No. 3 arbitrarily removed him from the office of Pradhan of Gram Panchayat concerned vide order dated 27.05.2019 (Annexure P- 11) by passing a non-speaking and unreasoned order which proved that the order of removal from office, passed by respondent No. 3, was as a premeditated act. He further argued that even the order passed by learned Appellate Authority dated 19.09.2019 (Annexure P-13) was not sustainable in the eyes of law as the issues which stood raised by way of appeal have neither been appreciated nor redressed by the said authority.

13. Respondents No. 1 to 3 have filed a common reply on the affidavit of respondent No. 3. The stand of the respondents is that the funds to execute development works were sanctioned to Gram Panchayat, Panvi. A complaint was received against the petitioner wherein 16 allegations regarding misuse/mis-utilization of funds were reported. A preliminary inquiry was held and as the charges stood proved, therefore, the petitioner was placed under suspension. The final inquiry report revealed that record pertaining to development works in Gram Panchayat, Panvi was not properly maintained. In one of the proved allegation, it was found that in 16 vouchers, the cheque number and date of issue of cheques were not mentioned. In other works, the record was not maintained as was required under the Himachal Pradesh Panchayati Raj Act, 1994 and the Himachal Pradesh Panchayati Raj (Finance, Budget, Accounts, Audit, Works, Taxation and Allowances) Rules, 2002. After the receipt of the complaint, a preliminary inquiry was conducted by Auditor Panchayat who found

that while making payments for execution of development works under various schemes, the petitioner had made payments to the labour through mates which was against the provisions of Rule 44 of 2002 Rules. Besides this, the petitioner had not followed the procedure prescribed in the Act and the Rules with regard to maintenance of record of the Gram Panchayat and had overlooked all his responsibilities while functioning as the Pradhan of the Gram Panchayat. As per the respondents, proceedings initiated against the petitioner had no political concern. While conducting regular inquiry, detailed statements were recorded of the concerned parties. Regular inquiry also proved that the petitioner had misutilized funds to the tune of Rs. 31,34,106/-. In response dated 23.04.2019, the petitioner had not commented on the charges which stood proved in affirmative in the inquiry report wherein it was concluded that there were sufficient grounds for proceeding against the petitioner under Section 146 (1) of the Act, and accordingly, the petitioner was removed from the office of Gram Panchayat. It was further mentioned in the reply that show cause notice was also given to the petitioner on 06.04.2019 as to why action be not initiated against him under Section 146 (1) of the 1994 Act. Response submitted to the same, was evasive as no comments were contained therein with regard to the charges levelled against the petitioner. Final inquiry report on the basis of technical assistance mentioned that there was misappropriation of funds to the tune of Rs. 5,34,858/- in the cutting and carriage of wood used for the construction of Vishnu Narayan Temple. It is further mentioned in the reply filed to the writ petition that though a representation was received from the petitioner with regard to providing him certain documents but after examining the same, it was found that most of the record was available with the Panchayat, as such, there was no relevance to provide the desired information. In the show cause notice issued on 15.06.2018, charges were explained in detail, therefore, it was the moral responsibility of the petitioner to submit his reply instead of making representations to delay the process of initiating the disciplinary proceedings against him. Further as per the respondents, action stood taken against the petitioner in accordance with law, under the provisions of the Panchayati Raj Act and Rules and in terms of Section 10 of the Act, the duties which stood conferred upon the Pradhan of the Gram Panchayat with regard to the supervision and maintenance of record could not have been shared with other office bearers to absolve himself of the irregularities committed by him. With regard to the preliminary inquiry report, it stands mentioned in the reply that many issues were not looked into initially by the Inquiry Officer and certain evidence was not collected which was clear from the directions given by respondent No. 3 to the Inquiry Officer vide letter dated 27.12.2018. It was further mentioned in the reply that it was evident from the inquiry report that many serious irregularities were substantiated from the regular inquiry and there was nothing malafide or extraneous on the part of respondent No. 3 in doing so, who was within its right to have issued directions to its subordinate officer to remove the deficiencies, as was done by ordering re-inquiry. It further stood mentioned in the reply that annual audit conducted by the Auditor Panchayat, who subsequently was called upon to conduct the inquiry,

had nothing to do with the complaint as it was not necessary that all issues were looked into during routine audit. Further as per respondents, petitioner could not protect himself on these grounds because during preliminary inquiry, serious financial irregularities were noticed which were substantiated during the regular inquiry. It is further the stand of the respondents that every member, office bearer, officer or servant of the Panchayat is personally liable for loss, waste or misapplication of any money or other property of the Panchayat and the petitioner, being office bearer of the Gram Panchayat, was personally liable for attributing financial loss to the Panchayat.

14. Defending the order passed by respondent No. 3, whereby the petitioner was removed from the office of Pradhan of the Gram Panchayat as well as appellate order passed by respondent No. 2, learned Advocate General argued that there was neither any illegality nor any irregularity in the proceedings which stood initiated against the petitioner and upon receipt of the complaint. Principles of natural justice were followed before action was taken against the petitioner in accordance with the Panchayati Raj Act and Rules. He argued that the inquiry so conducted into the allegations proved that majority of the allegations stood proved, and in this background, respondent No. 3 was within his right to have had removed the petitioner from the office of Pradhan of Gram Panchayat as the petitioner had violated the statutory provisions of the 1994 Act. He further argued that due opportunity was granted to the petitioner during the course of inquiry as well as by way of show cause notice as to why appropriate action be not initiated against him in terms of the report of the Inquiry Officer and the final order was passed by respondent No. 3 after taking into consideration the reply which stood filed by the petitioner.

Learned Advocate General while responding to the contention of the petitioner that impugned order Annexure P-11 was a non-speaking order argued that it cannot be said that the order passed by respondent No. 3 vide which the petitioner was removed from the office of Gram Panchayat concerned, was a non-speaking order. Learned Advocate General argued that respondent No. 3 happened to be an administrative officer and therefore could not be expected to act in the same manner as one expects a trained judicial officer to act. Learned Advocate General also with stress argued that it was not necessary for the order per se to contain reasons if reasons existed in the record of the case which as per him existed in the present case. On these basis, he submitted that the petitioner cannot be permitted to contend that the order passed by respondent No. 3 vide which the petitioner was removed from the office of Pradhan of Gram Panchayat concerned was bad in law.

15. Shri N.K. Thakur, learned Senior Counsel appearing for respondent No. 4 has adopted the arguments put forth by learned Advocate General.

16. In rebuttal, learned Senior Counsel appearing for the petitioner has reiterated the stand of the petitioner while denying the stand of the respondents and has submitted that the proceedings which stood initiated against the

petitioner were politically motivated, were result of legal malafides, the inquiry stood vitiated on account of the matter being remanded back by respondent No. 3 at the back of the petitioner as well as on account of the fact that Annexure P-11 was a non-speaking order.

17. I have heard learned Counsel appearing for the parties and also gone through the pleadings as well as documents appended with the petition as also through the original record of the case.

18. Section 146 of the Himachal Pradesh Panchayati Raj Act deals with removal of office bearers of Panchayats. This provision provides that in the case of a Gram Panchayat, the Deputy Commissioner, may after such inquiry as it may think fit at any time, remove an office bearer inter alia on the grounds that he has been guilty of misconduct in the discharge of his duties or has committed gross negligence in the discharge of his duties under the Act. Section 146 of the Himachal Pradesh Panchayati Raj Act, 1994, is reproduced herein below:-

"146. Removal of office bearers of Panchayats.-

(1) 2 [The State Government, in the case of office bearers of Panchayats, the Divisional Commissioner having jurisdiction, in the case of office bearers of Zila Parishad, and the Deputy Commissioner having jurisdiction, in the case of office bearers of Panchayat Samiti and Gram Panchayat, as the case may be,] may after such enquiry as it may deem fit to make at any time, remove an office beare Rs.-

- (a) if he has incurred any disqualification under this Act; or
- (b) if he has been guilty of misconduct in the discharge of his duties; or
- (c) if he refuses to act or becomes incapable of acting or is adjudged an insolvent; or
- (d) if he without reasonable cause absents himself from more than half of the meetings convened within a period of six months; or
- (e) if his continuance in office is undesirable in the interest of the public: Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office.

Explanation.- For the purpose of this sub-section "misconduct" shall include-

- (a) any action which adversely affects- (
  - i) the sovereignty, unity and integrity of India; or
  - (ii) the harmony and the spirit of common brotherhood amongst all the people of State transcending religious, linguistic, regional, caste, or sectional diversities ; or
  - (iii) the dignity of women;
- (b) gross negligence in the discharge of the duties under this Act;

(c) the failure of the Pradhan of a Gram Panchayat, or Chairman of Panchayat Samiti or Zila Parishad, to convene the meeting of the Gram Sabha, Gram Panchayat, Panchayat Samiti or Zila Parishad, as the case may be, at regular intervals as specified under this Act.

[(1-A) The State Government, the Divisional Commissioner or the Deputy Commissioner, as the case may be, may, on consideration of the enquiry report or if it thinks proper, for reasons to be recorded in writing, revoke the suspension order and instead of removing an office bearer, warn him to be vigilant in the discharge of his duties or may also debar him from taking part in any act or proceedings of the Panchayat for the period of six months.]

(2) A person who has been removed under sub-section (1) shall forthwith cease to be a member of any other Panchayat of which he is a member, such person shall also be disqualified for a period of six years to be elected as office bearer of a Panchayat under this Act."

19. The provisions of Section 146 of the 1994 Act are to be read harmoniously with Section 146(1-A), which reads as under:-

"[(1-A) The State Government, the Divisional Commissioner or the Deputy Commissioner, as the case may be, may, on consideration of the enquiry report or if it thinks proper, for reasons to be recorded in writing, revoke the suspension order and instead of removing an office bearer, warn him to be vigilant in the discharge of his duties or may also debar him from taking part in any act or proceedings of the Panchayat for the period of six months.]"

20. Record demonstrates that a complaint, addressed by respondent No. 4 to respondent No. 3, was received in the office of respondent No. 3 on 10.04.2018 alleging therein 16 illegalities/irregularities committed by the petitioner by abusing the authority conferred upon him in his capacity as the Pradhan of the Gram Panchayat. This complaint comprised of 9 pages. The complaint is typed in Hindi and certain portions of the same are hand written. The portions which are hand written are generally those referring to the pages of Panchayat record with regard to the allegations contained therein. Now incidentally, record does not demonstrate that any annexures or documents were appended with the complaint. As per the record, upon receipt of the complaint, vide letter dated 11.04.2018, respondent No. 3 straightaway called upon the Auditor Panchayat, Gram Panchayat, Kinnaur to hold inquiry under the provisions of the Panchayati Raj Act and Rules on the complaint within 15 days. A perusal of this communication demonstrates that copy thereof is not addressed to the petitioner. As per record, before ordering this inquiry, copy of the complaint was not forwarded by respondent No. 3 to the petitioner nor he was called upon to submit his response thereto.

21. Further as per record, the Inquiry Officer submitted his preliminary inquiry report on 19.04.2018. As per record, before this date, neither the copy of the complaint was handed over by the Inquiry Officer to the petitioner nor any

response on the complaint was sought by the Inquiry Officer from the petitioner. On 19.04.2018 itself, statements of the petitioner and the complainant were recorded alongwith the statements of some other officials of the Panchayat and residents of the Panchayat and preliminary inquiry report was submitted by the Inquiry Officer on the same day. In the preliminary inquiry report, it was observed by Auditor Panchayat that payment to the labour stood made through Mate rather than making the same to them personally in front of all members of the Panchayat which was against the provisions of the Panchayati Raj Act and Rules. Vouchers vide which the payment stood made were not passed by the Gram Panchayat before payment was made which was mandatory. The payment to the labour should have been made in the presence of Panchayat which was not done. As per the Inquiry Officer, besides the petitioner, the entire Gram Panchayat and the Panchayat Secretary were also guilty of not performing their duties as per the Panchayati Raj Act and Rules.

22. After the receipt of the preliminary inquiry report, record demonstrates that vide communication dated 08.05.2018, respondent No. 3 directed Assistant Engineer (Development), District Kinnaur, to re-measure 7 works which stood mentioned in this communication. There is also on record a show cause notice dated 15.06.2018 vide which respondent No. 3 called upon the petitioner to show cause as to why action should be not taken against him under the provisions of Sections 145 and 146 of the Panchayati Raj Act, 1994. Vide letter dated 21.06.2018, the petitioner called upon respondent No. 3 to supply him documents mentioned in this communication to enable him to submit his response. There is another communication dated 23.06.2018 vide which the petitioner responded to the show cause notice by reserving his right to file a comprehensive reply pursuant to the receipt of documents which he had sought from the Deputy Commissioner.

23. I repeat, the record does not demonstrates that when Auditor Panchayat was called upon to hold a preliminary inquiry, respondent No. 3 supplied a copy of the complaint alongwith all the requisite documents, on the basis of which allegations were made in the complaint, to the petitioner. Record also does not demonstrates that in the process of holding the preliminary inquiry, any response to the allegations was sought from the petitioner by the Inquiry Officer. Record also does not demonstrates that the preliminary inquiry report was supplied by the Inquiry Officer or Deputy Commissioner to the petitioner. Be that as it may, record demonstrates that on the basis of preliminary inquiry report, the petitioner was placed under suspension. Sub Divisional Officer (Civil), District Kinnaur, was called upon to hold a regular inquiry. He submitted his inquiry report on 13.12.2018. As per this report, charges levelled against the petitioner were proved on five counts, not proved on eight counts and partially proved on three counts. Without supplying a copy of this inquiry report to the petitioner, respondent No. 3 directed the Sub Divisional Officer (Civil) vide communication dated 27th December, 2018 (Annexure P-9/2), to remove the discrepancies which so stood pointed out by respondent No. 3 in the inquiry report. Thereafter,

the Inquiry Officer submitted a fresh inquiry report dated 27th March, 2019, on the basis of which, show cause notice dated 06.04.2019, was issued to the petitioner, which ultimately led to the passing of impugned order dated 27.05.2019 (Annexure P-11). All this demonstrates that the proceedings which were so held on the basis of the complaint filed by the private respondent were practically and for all intents and purposes held at the back of the petitioner, without actually associating him with the process of inquiry in a fair manner.

24. After the complaint was received by respondent No. 3 against the petitioner, he presumed, without giving an opportunity to the petitioner to rebut the allegations made therein, that the contents thereof were correct. This I say so for the reason that complaint was not accompanied by any document to substantiate the allegations levelled therein. After the matter was remitted to the Inquiry Officer by respondent No. 3, the Preliminary Inquiry Officer also committed the same mistake. He also assumed and presumed that the allegations were correct without appreciating the basic principles of law that 'he who alleges has to prove' and as it was respondent No. 4, who was levelling the allegations, onus was upon him to have had placed material on record to substantiate his allegations, which admittedly, was not done by respondent No. 4. Suffice to say that after the complaint was received from respondent No. 4 against the petitioner, respondent No. 3 as well as the Preliminary Inquiry Officer literally stepped into the footsteps of the complainant as if it was a complaint filed by them and onus was upon them to have had proved and substantiated the same.

25. As I have already mentioned hereinabove, the mode and manner in which the entire inquiry has been conducted on a complaint filed by the private respondent, which complaint was not supported by any document, speaks volumes of the unfairness of the procedure which was adopted in this matter by the authorities concerned. In this background, when we peruse the impugned order passed by respondent No. 3 (Annexure P-11), dated 27.05.2019, the only inference which can be drawn is this that the same is neither a speaking nor a reasoned order and the same has been passed in a premeditated manner. There is no discussion of the allegations contained in the complaint in this order. There is no discussion of the mode and manner in which the inquiry was conducted upon the complaint on the directions of respondent No. 3. There is no reference worth its name to whatever response(s) the petitioner filed against the complaint or the show cause notices which were issued to him by respondent No. 3. After giving a cursory reference to filing of the complaint and the factum of some of the allegations therein having been proved in the course of inquiry, some not being proved and some being partially proved, the petitioner has been ordered to be removed from the office of Pradhan of the Gram Panchayat by respondent No. 3, by simply observing that the inquiry report demonstrated that the petitioner was liable to be removed from the office of Pradhan in terms of Section 146(1) of the Himachal Pradesh Panchayati Raj Act and as the response(s) filed to the show cause notices by the petitioner were not found satisfactory, accordingly, the petitioner was being removed from the office of Pradhan of the Gram Panchayat.

The order does not contains reasons in support of the conclusion arrived at by respondent No. 3. Lack of reasoning in the order creates doubt upon the faithfulness of respondent No. 3 in the decision making process as it denies the right to the petitioner to know the reasons as to why the decision has been so arrived at by respondent No. 3. Incidentally, the factum of this order being unreasoned and non-speaking is substantiated from the fact that while supporting this order it was argued on behalf of the authorities by learned Advocate General that as respondent No. 3 was an Administrative Officer, he could not be expected to write orders as one expects a judicial officer to do and further it was not necessary that the order should contain reasons if the reasons were available on the record of the case. This Court disagrees with the argument which was advanced by learned Advocate General. An officer who is performing a quasi judicial function, while passing an order has to adhere to the law laid down by Hon'ble Supreme Court that even on administrative side or quasi judicial side, the orders which decide the rights of the parties, have to be reasoned and speaking. Though, this Court partially concurs with the submission made by learned Advocate General that a quasi judicial authority cannot be expected to be a legally trained mind, yet, it remains a fact that orders which are to be passed by such like authorities have to be reasoned and speaking orders and if such an authority fails to pass a speaking and reasoned order, then, said order cannot be validated simply by giving benefit to the officer of not being legally trained. This Court does not agrees with the arguments advanced by learned Advocate General that it is not necessary for the quasi judicial authority to give reasoning in the order if reasons exist in the record. This I say so for the reason that the findings which are returned in the order have to contain the reasonings as to why said findings were being returned. In the event of a party being dissatisfied with the same, if the party intends to assail the same, then the order has to be assailed on the basis of reasonings contained therein and not on the basis of reasonings purportedly available on record of the file. In other words, it is the impugned order, be it an administrative order or quasi judicial order, or a judgment pronounced by a Court of law, which is challenged by way of an appeal or revision etc. and not the record of the case, therefore, the contention of learned Advocate General that the order having been passed by an administrative authority, need not be a reasoned order if record contains reasons, is rejected.

26. In State of Orissa and Others Versus Chandra Nandi,(2019) 4 Supreme Court Cases 357, Hon'ble Supreme Court of India has been pleased to hold that the Courts have consistently laid down that every judicial or/and quasi judicial order passed by the Court/Tribunal/Authority concerned, which decides the lis between the parties, must be supported with the reasons in support of its conclusion. The parties to the lis and so also the appellate/revisionary Court while examining the correctness of the order are entitled to know as to on which basis, a particular conclusion is arrived at in the order. In the absence of any discussion, the reasons and the findings on the submissions urged, it is not possible to know as

to what led the Court/Tribunal/Authority for reaching to such conclusion.

27. In Ravi Yashwant Bhoir Versus District Collector, Raigad and Others, (2012) 4 Supreme Court Cases 407, while dealing with a situation akin to the one involved in this case, Hon'ble Supreme Court of India has been pleased to hold as under:-

".....34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office bearer sought to be removed.

35. The elected official is accountable to its electorate because he is being elected by a large number of vote Rs. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (Vide Jyoti Basu v. Debi Ghosal, Mohan Lal Tripathi v. District Magistrate, Rae Bareilly and Ram Beti v. District Panchayat Raj Adhikari).

.....

44. This Court while deciding the issue in Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd., placing reliance on its various earlier judgments held as under: (SCC pp. 345-46, para 27)

"27. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice - delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice.

'3.....The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind.'\*

The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity

with objectivity. The absence of reasons renders an order indefensible/ unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."

45. In *Institute of Chartered Accountants of India v. L.K. Ratna*, this Court held that on charge of misconduct the authority holding the inquiry must record reasons for reaching its conclusion and record clear findings. The Court further held: (SCC p. 558, para 30)

"30....In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under Section 22-A of the Act. The exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a "finding". Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding".

46. The emphasis on recording reason is that if the decision reveals the Rs.inscrutable face of the sphinx', it can be its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. In other words, a speaking out, the inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance.

Malice in law:

47. This Court has consistently held that the State is under an obligation to act fairly without ill will or malice- in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State.

"Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of othe Rs. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite."

28. Similarly, while reiterating that an administrative authority while exercising quasi judicial powers, ought to record reasoning for findings returned by it, Hon'ble Supreme Court of India in S.N. Mukherjee Vs Union of India, (1990) 4 SCC 594, has been pleaded to hold as under:-

".....35. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision making. In this regard a distinction has been drawn between ordinary Courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

36. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under

challenge.

37. Having considered the rationale for the requirement to record the reasons for the decision of an administrative authority exercising quasi-judicial functions we may now examine the legal basis for imposing this obligation. While considering this aspect the Donoughmore Committee observed that it may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or quasi-judicial. The committee expressed the opinion that "there are some cases where the refusal to give grounds for a decision may be plainly unfair; and this may be so, even when the decision is final and no further proceedings are open to the disappointed party by way of appeal or otherwise" and that "where further proceedings are open to a disappointed party, it is contrary to natural justice that the silence of the Minister or the Ministerial Tribunal should deprive them of the opportunity." (p. 80) Prof. H.W.R. Wade has also expressed the view that "natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice." (See Wade, Administrative Law, 6th Edn. p. 548). In Siemens Engineering Co. case (Supra) this Court has taken the same view when it observed that "the rule requiring reasons to be given in support of an order is, like the principles of audi alteram parlem, a basic principle of natural justice which must inform every quasi-judicial process." This decision proceeds on the basis that the two well-known principles of natural justice, namely (i) that no man should be a Judge in his own cause and (ii) that no person should be judged without a hearing, are not exhaustive and that in addition to these two principles there may be rules which seek to ensure fairness in the process of decision-making and can be regarded as part of the principles of natural justice. This view is in consonance with the law laid down by this Court in A.K. Kraipak v. Union of India wherein it has been held: (SCR pp. 468-69 : SCC p.272, para 20)

"The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (i) no one shall be a Judge in his own cause (*nemo debet esse iudex propria causa*) and (ii) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice."

38. A similar trend is discernible in the decisions of English Courts wherein it has been held that natural justice demands that the decision should be based on some evidence of probative value. (See: *R. v. Deputy Industrial Injuries Commissioner ex P. Moore*, *Mahon v. Air New Zealand Ltd.*).

39. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action." As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of

arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

40. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision."

29. Similarly, in *Kranti Associates Private Limited and Another Versus Masood Ahmed Khan and Others*, (2010) 9 Supreme Court Cases 496, Hon'ble Supreme Court of India has reiterated that the Courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review. In para 47 of the said judgment, while summarizing the reasons as to why an order passed by administrative or quasi-judicial authority has to be speaking and reasoned order, Hon'ble Court was pleased to hold as under :-

".....47. Summarizing the above discussion, this Court holds:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial authority must record reasons in support of its conclusions.
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- e. Reasons reassure that discretion has been exercised by the decision maker on

relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial power. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

30. Similarly, in *Institute of Chartered Accountants of India vs. L.K. Ratna and Others*, (1986) 4 Supreme Court Cases 537, Hon'ble Supreme Court of India has

been pleased to hold as under:-

".....30. Before we conclude, we may refer to a third point raised before us, the point being whether the Council is obliged to give reasons for its finding that a member is guilty of misconduct. It seems to us that it is bound to do so. In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under Section 22-A the Act. To exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a "finding". Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding."

31. Accordingly, in view of above discussion, this writ petition is allowed by quashing and setting aside order dated 27.05.2019 (Annexure P-11), passed by respondent No. 3 (Deputy Commissioner, Kinnaur), on the ground that the same is neither a speaking order nor a reasoned order. Similarly, order dated 19.09.2019, passed by the Appellate Authority (Divisional Commissioner, Shimla), is also quashed and set aside as the same cannot be sustained in law, especially when this Court has held that order dated 27.05.2019 (Annexure P-11) passed by respondent No. 3, is bad in law. The matter is remanded back to respondent No. 3 with the direction that it shall pass a fresh speaking order post inquiry after hearing the petitioner either in person or through Counsel, positively or or before 14th November, 2020. In the event of any appeal being preferred against the order to be passed by respondent No. 3 by either of the aggrieved party, then, as from the date of filing of the appeal, the same shall be decided by the appellate authority within a period of 30 days and service of the parties for this purpose shall be effected through their respective Counsel representing them in this writ petition. In the interregnum, the petitioner is ordered to be reinstated as Pradhan of Gram Panchayat, Panvi, District Kinnaur, HP, but, he shall not take any decision having financial implications till fresh speaking order, as directed above, is passed by respondent No. 3.

The petition stands disposed of in above terms, so also pending miscellaneous application(s), if any. No order as to costs.