
(1979) 05 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 45 of 1979

Shankar Dass

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 25-05-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1980 HP 5 : (1979) ShimLC 298

Hon'ble Judges : T.U. Mehta, C.J.;T.R. Handa, J

Bench : Division Bench

Advocate : Inder Singh and H.M. Sharma, for the Appellant; H.K. Paul, Assistant to the A.G., for the Respondent

Final Decision : Dismissed

Judgement

T.U. Mehta, C.J.—Petitioner Shanker Dass has filed this writ petition with the prayer that the show cause notice found at Annexure A of Oct., 1978 and the action pursuant to it for disqualifying him from contesting panchayat election for five years and for dispensing with his services as the President of the Gram Panchayat Nalag be quashed.

2. The short facts leading to this writ petition are that the petitioner was elected as a President of Gram Panchayat Nalag in the year 1973 and thereafter in Dec., 1978 he was re-elected as such. On 15th Jan., 1979 he took oath of his office.

3. By order, dated 22nd February 1979 found at Annexure D, the Governor of Himachal Pradesh has been pleased to disqualify the petitioner from contesting panchayat election for five years and also to dispense with his services as a President of Gram Panchayat, Nalag, u/s 57 of the Himachal Pradesh Panchayati Raj Act 1968. This order is passed on the basis of an enquiry conducted and the subsequent show cause notice of Oct., 1978 which is found at Annexure A which has been endorsed to different persons on 6th Nov., 1978.

4. Now the contention of the petitioner is that according to Section 54 of the

Himachal Pradesh Panchayati Raj Act 1968, it was necessary for the Government to conduct an enquiry before taking the impugned action. In the original writ petition which is filed by the petitioner, he has made certain averments to show that in fact the order has been passed without making any enquiry. This is clear by reference to paras. 10 and 20 (a), (b), (c) and (d) of the writ petition. In these sub-clauses of para. 20, the petitioner has specifically alleged that the alleged enquiry has been conducted by respondent No. 2 behind his back. In Clause (c) he has further stated that no charge sheet was served upon him nor any witness was examined in his presence so as to afford him any opportunity to cross-examine them. In Clause (d) he has alleged that he should have been given an opportunity to be present at the time of enquiry and also to lead evidence in support of his contentions before the enquiring authority, but this has not been done, and, therefore, the action taken against him was without jurisdiction.

5. Along with this writ petition, the petitioner submitted an application for obtaining an interim order. This application has been registered as CMP 170/ 79. In para. 4 thereof he has made the following averments:

"That the respondents are bent upon to effect the service on the basis of the impugned decision taken by the respondent No. 3 on 22nd Feb., 1979 and in case the respondents are allowed to effect the service upon the petitioner, the petitioner will suffer irreparable loss and injury, which cannot be compensated in terms of money.

6. On these allegations we passed the following interim order in favour of the petitioner on 8-3-79:

"Shri Paul who appears on behalf of all the respondents takes notice. He may submit his reply to the stay application within two weeks, during which time the petitioner shall not be removed from the office of the Pradhan Gram Panchayat, Nalag, if already not removed."

7. Thereafter the respondents have filed reply to the writ petition controverting the allegations made by the petitioner. The petitioner then filed a rejoinder, and thus the record of the case was complete.

8. When the matter came up for hearing on 26th April 1979, the Court perused the original record and found that it contained the statement of the petitioner as well as the statements of other two witnesses, one of whom appears to have been cross-examined by the petitioner.

The Court, therefore, recorded the following order on that date:

"The original record has been perused. The record contains the statement of the petitioner as well as the statement of other two witnesses, one of whom seems to have been cross-examined by the petitioner. If this record is relied upon it is apparent that the petitioner has made wrong averments in this writ petition stating that he was never associated with the enquiry. This being a serious fact,

the petitioner is given an opportunity to say whatever he wants to say with regard to this record which is already shown to the learned Advocate of the petitioner. The petitioner may file his affidavit on contentions regarding this record latest by 7th of May 79. If he fails in doing so, no further opportunity shall be granted. Shri Paul agrees that the record will be shown to the petitioner and his Advocate on 4th May, 1979."

The matter was adjourned thereafter but on the adjourned date the petitioner could not file any affidavit, and, therefore, one more opportunity was given to him to file his affidavit. The petitioner has today filed an affidavit which gives some more particulars about the enquiry. The following is the important extract from this affidavit:

"That the Inspector Panchayat functioned as the Enquiry Officer as well as the prosecutor and cross-examined me after recording my statement on various points. The statements of two more witnesses namely; Secretary, Panchayat and Sub-Inspector Panchayat were also recorded on the same day at Sundernagar behind my back as I was turned out of the room, where the enquiry was being held, and was not allowed to know what they have deposed against me. Similarly no opportunity was given to me to cross-examine these two witnesses namely Secretary Panchayat and Sub-Inspector Panchayat. I believe that these witnesses were also cross-examined by the Enquiry Officer (Inspector Panchayats) himself."

9. It appears that in the meanwhile the petitioner was shown the original departmental record and the office notes. After this inspection the petitioner has today filed one CMP with a prayer to allow him to amend the writ petition. This application is accompanied by the proposed amendment. This proposed amendment is allowed to be made to the writ petition and the amended writ petition is now taken into consideration.

10. We find that this writ petition can be disposed of only on a short ground that in the original writ petition, as drafted, the petitioner has not stated the facts correctly and honestly. These facts, as stated by him in the original writ petition, give an impression that his services have been terminated and that he has been debarred from contesting election for five years without any enquiry having been made as contemplated by Section 54 of the Act. It was on the basis of such allegations that this Court gave a stay order in favour of the petitioner. However, subsequently when this Court saw the original record and found that some of the material statements made in the writ petition were not borne out from the record and appeared to be prima facie false, the Court by its above quoted proceedings, dated 26th April 1979 gave an opportunity to the petitioner to explain this position lay filing an affidavit. In the ultimate affidavit which is filed the petitioner has come out with some fresh facts which were already within his knowledge at the time of filing the original petition. These fresh facts were very much material as is apparent from their bare perusal. In our opinion, these facts should have been stated in the original writ petition by the petitioner, but it appears that the petitioner has refrained from stating full and correct facts and has thereby been

successful in obtaining an interim order in his favour. Writ petitions are decided merely on pleadings stated on oath and therefore, it is the duty of the litigants not to resort to suppressio veri or suggestio falsi with regard to any material fact at the time of filing the writ petitions. If a petitioner subsequently comes out with some material fact which could have made a difference in the interim order obtained by him from the Court, there is no escape from the conclusion that he has done so with a view to procure an ex parte order in his favour by keeping the court in dark as regards the facts which were within his knowledge. Such an attitude on the part of a petitioner can never be encouraged when the extraordinary jurisdiction contemplated by Article 226 of the Constitution is sought to be invoked. We have no hesitation in observing that this case falls in this category, and therefore, on this short ground the petition should fail.

11. However, we have heard the learned Advocates of the parties and we find that even on merits, this writ petition has no substance. As already stated, we find that the petitioner's statement was recorded during the course of the enquiry and therein he has made some admissions of some material facts of the case. It is further found that two witnesses have been examined in his presence. There are marks of cross-examination suggesting that they were cross-examined by the petitioner. The petitioner's case is that he had not cross-examined these witnesses and that this cross-examination has been conducted by the Inquiry Officer. There is nothing but a bare averment of the petitioner in this regard and looking to his conduct it is not possible to accept the bare assertions of the petitioner in this regard.

12. In reply to the second show cause notice found at Annexure A, the petitioner has not made any grievance of the fact that during the course of the enquiry he was asked to go out of the room and that he was not allowed to cross-examine the witnesses. Taking, therefore, all these facts into consideration an impression is created in our mind that the petitioner has tried to develop his case at a subsequent stage with a view to obtain some favourable order from the Court in this writ petition.

13. In the amendment which is carried out the contentions which are raised by the petitioner are that the impugned order, Annexure D, by which his services have been terminated and he has been disqualified from contesting election is without jurisdiction as no such order was passed by the competent authority, i.e. Respondent No. 3, Shri Roop Singh Thakur, who is Minister of State for Panchayat, Government of Himachal Pradesh. In order to verify the facts, we are shown the original notings which clearly reveal that on 20th Feb. 1979, the respondent No. 3 has passed the necessary order which led to the issuance of the order, Annexure D.

14. It was contended that before the second show cause notice, Annexure A, was issued no proper orders were obtained from respondent No. 3, the Minister. Here also, we have referred to the relevant notings which show that the Minister has briefly ordered that a show cause notice be issued. It was contended that the

contents of these notings do not reveal that the Minister had ordered that notice to show cause why the petitioner should not be debarred from contesting election should be issued. In our opinion, this was not necessary because when the Minister has already ordered to issue a show cause notice the presumption is that the notice as found at Annexure A was issued after complying with all the necessary formalities.

15. There is no other point which remains to be considered in this writ petition. The result, therefore, is that this writ petition fails, the same is dismissed and the rule is discharged with costs, assessed at Rs. 200/-.