
(1973) 03 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : C.W. No. 3294 of 1972

Tejinder Singh Sandhu

APPELLANT

Vs

The State of Punjab and another

RESPONDENT

Date of Decision : 15-03-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1975) 2 ILR (P&H) 142 : (1973) 75 PLR 587

Hon'ble Judges : Prem Chand Jain, J

Bench : Single Bench

Advocate : Kuldip Singh with M/s. R.S. Mongia and Sarup Singh, for the Appellant; J.S. Wasu, Advocate-General (Punjab) with Inderjit Malhotra, for the Respondent

Final Decision : Allowed

Judgement

Prem Chand Jain, J.—Tejinder Singh Sandhu has fled this petition under Articles 220 and 227 of the Constitution of India for the issuance of an appropriate writ, order or direction quashing the order of respondent No. 1 dated 11th May, 1972, and charge sheet served on the petitioner dated 30th June, 1972 The facts of the case as given in the petition may briefly be stated thus:

The petitioner is a Deputy Director (Class I) in the Agriculture Department of the State of Punjab. He was transferred as Joint Director, Marketing, by an order dated 17th February, 1972 in the State of Punjab, under the Punjab Agricultural Produce Markets Act, 1961 (hereinafter to be referred to as the Act), Punjab State Agricultural Marketing Board (hereinafter to be referred to as the Board), Was constituted The petitioner, by virtue of his office, was nominated as an official member of the Board and also as ex-officio Secretary to the Board.

2. It is further stated that in March 1972, the Congress Ministry came into office and Capt Rattan Singh, respondent No. 2, became the Development Minister Karnail Singh Doad was working as a Chairman when the Akali Ministry headed

by Shri Gurnam Singh was in power. It is alleged that Capt. Rattan Singh wanted to remove the Chairman and wished to supersede the Board also. The petitioner was not aware of the political tussle which was going on between the Chairman of the Board and the Minister Incharge. It is further alleged that the Board had reduced the commission of agents by amending bye-law 28 of the Marketing Bye-laws. This action of the Board was resented by the commission agents and numerous writ petitions were filed in this Court which were dismissed and the action of the Board was upheld. After the dismissal of the writ petition the Board wished to enforce the amended bye law by which the commission had been reduced and the petitioner, in his capacity as a Secretary of the Board, ordered the enforcement of the said bye law through the Secretaries of the Marketing Committees. It is alleged that some businessman and commission agents of Ludhiana met Capt. Rattan Singh, and requested that their commission which had been reduced by the Board be restored. The petitioner alongwith the Chairman of the Board met Capt. Rattan Singh in his office in the Secretariate on 19th March, 1972 and explained the circumstances under which the commission had been reduced. The Minister Incharge, however, insisted that the commission should be restored. The petitioner was also informed by the Secretaries of the Marketing Committees of Jullundur and Ludhiana that they had been directed by Capt. Rattan Singh, Minister Incharge, not to enforce the amended bye law and permit the commission agents to continue charging four per cent commission. A copy of the report of the Senior Marketing Enforcement Officer of the Board dated 20th April, 1972, is attached as Annexure "C" to the petition. On receipt of this report, the petitioner wrote a letter to the Development Commissioner, dated 3rd May, 1972, asking the Government confirmation if the Hon'ble Minister had issued any instructions to the Marketing Secretaries, requiring them not to enforce, the amended bye-law and if so, a copy of the said order be communicated. A copy of the letter written by the petitioner to the Government is attached to the petition as Annexure "D". No reply was received to the said letter and instead, the petitioner was placed under suspension by the orders of the Minister Incharge. A copy of the suspension order is attached as Annexure "E" to the petition. Thereafter the petitioner was served with a charge sheet, a copy of which is attached with the petition as Annexure "G". It is in these circumstances that the present petition has been filed calling in question the legality and propriety of the suspension order and the charge-sheet on the grounds stated in the petition.

3. Separate written statements have been filed, one by the Joint Secretary to Government, Punjab, Development Department, on behalf of respondent No. 1, and the other by Capt Rattan Singh, Development Minister, Punjab respondent No. 2, in the shape of affidavits, in which the material allegations made in the petition have been controverted.

4. It was contended by Mr. Kuldip Singh learned counsel for the petitioner that for the acts done by the petitioner in his capacity as an official member and as an ex officio Secretary of the Board, no action could be taken against him under

rule 4 of the Punjab Civil Services (Punishment and Appeal) rules, 1970 (hereinafter referred to as the Civil Services Rules). According to the learned counsel, respondent No. 2 had no jurisdiction to suspend the petitioner under rule 4 of the Civil Services Rules, and that action could be taken against the petitioner only in accordance with the provisions of section 3, sub-section (7) of the Act. On the other hand, it was submitted by the learned Advocate General, that the proceedings under the Civil Services Rules could legally be initiated, that the petitioner was rightly put under suspension in exercise of the powers under rule 4 of the Civil Services Rules, and that proceedings, u/s 3(7) of the Act were to be initiated only after first taking action under the Civil Services Rules.

5. After giving my thoughtful consideration to the entire matter, I am of the view that there is considerable force in the contention of Mr. Kuldip Singh, learned counsel for the petitioner. The State Agricultural Marketing Board is constituted u/s 8 of the Act and the powers and duties of the Board are also provided under that section the relevant provisions of which read as under--

3. State Agricultural Marketing Board, constitution, powers and duties-(i) The State Government may, for exercising powers conferred on and performing the functions and duties assigned to the Board by or under this Act, establish and constitute a State Agricultural Marketing Board, consisting of a Chairman to be nominated by the State Government and fifteen members of whom four shall be officials and eleven non officials, to be nominated by the State Government in the following manner:

(a) official members shall include the director, three officials, "one representing the Agriculture Department, the other representing the Co-operative Department and the third representing the Animal Husbandry Department;

(b) of the non-official members

(i) two shall be producer members of Committees, one from each Region ;

(ii) two shall be members of the other registered organisations of the farmers, one from each Region ;

(iii) three shall be other progressive producers of the Punjab State one from each Division ;

(iv) two shall be from among such persons licenced u/s 10 as are members of the committees one from each Region ;

(v) two representing co-operative Societies, one from each Region ;

(2) The Director shall be the ex-officio Secretary of the Board.

(3) The Board shall be a body corporate as well as a local authority by the name of the State Agricultural Marketing Board having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire and hold properly and shall

by the said name sue and be sued.

(4) The term of office of the non-official members of the Board shall be three years

(5) No person shall be eligible to become a member of the Board who--

(a) does not ordinarily reside within the Punjab State ;

(b) is below twenty five years of age ;

(c) has been removed under sub-section (7) of section 15 ;

(d) is of unsound mind; or

(e) has been declared as insolvent or sentenced by a criminal court, whether within or outside the Punjab State, for an offence involving moral turpitude:

Provided that the disqualification under clause (a) on the ground of a sentence by a criminal court shall not apply after the expiry of four years from the date on which the sentence of such person has expired.

(6) A member of the Board may resign from membership by tendering his resignation to the State Government through the Chairman of the Board and the seat of such member shall become vacant on the date of acceptance of his resignation.

Provided that the Chairman of the Board may resign by tendering his resignation "to the State Government.

(7) The State Government may remove any member of the Board who has become subject to any of the disqualifications specified in sub-section (5) or who is, in its opinion, remiss in the discharge of his duties and may appoint another member in his place in the manner as provided in clauses (a) or (b) of sub-section (1) to whichever category the removed member belongs;

Provided that before removing a member the reasons for the proposed action shall be conveyed to him and his reply invited within a specified period and duly considered:

Provided further that the term of office of the number so appointed shall expire on the same date as the term of office of the vacating member would have expired had the later held office for the full period allowed under sub-section (4) unless there be delay in appointing a new member who succeeds the member first mentioned above In which case it shall expire on the date on which his successor is appointed by the State Government.

From the bare perusal of section 3 it is clear that the Board is to consist of fifteen members in addition to the Chairman to be nominated by the State Government. Out of the fifteen member four are official members be to nominated by the State Government under sub-clause (a) of clause (1) while the rest of the

members are un official members and are of the categories provided under sub-clause (b) of clause (1) of section 3. In view of the provisions of sub-section (2) of section 3 the Director is ex-officio. Secretary of the Board. Director has been defined in section 2, clause (g) thus:

Director" means the Director of Marketing for the State of Punjab and includes the Joint Director of Marketing.

6. The petitioner was a Deputy Director in the Agriculture Department. He was transferred as Joint Director, Marketing, by order dated 17th February, 1972. He was nominated as official member of the Board and became ex-officio Secretary of the Board. Further under sub-section (7) of section 3, the State Government has been authorised to remove any member of the Board who in its opinion is in remiss in the discharge of his duties, and may appoint another member in his place in the manner as provided in clauses (a) or (b), sub-section (1) to whichever category the member belongs provided that before removing a member the reason for the proposed action shall be conveyed to him and his reply invited within a specified period and duly considered.

7. At this stage it would also be pertinent to observe that another provision in the shape of section 29 has been made in the Act which provided the procedure for taking action against the defaulting members in the case whereby the act of a member results in loss, waste or misapplication of any money or property belonging to the Board. Relevant portion of section 29 reads as under:

29. Liability of member or employees of committees or the Board:

1. * * * *

2. Every person shall be liable for the loss, waste, or misapplication of any money or other property belonging to the Board if such loss, waste or misapplication is proved to the satisfaction of the State Government to be the direct consequence of his neglect or misconduct in the performance of duties as a member or an employee of the Board and he may, after being given an opportunity by a written notice of show cause why he should not be required to make good the loss, be surcharged with the value of such property or the amount of such loss by the State Government and if the amount is not paid within one month from the expiry of the period of appeal prescribed by sub-section (3) it shall be recoverable as arrears of land revenue; Provided that so such person shall be called upon to show cause after the expiry of a period of four years from the occurrence of such loss, waste or misapplication or after the expiry of two years from the time of his coming to be a member or an employee whichever expose first.

(3) * * * *

From the perusal of both sub-section (7) of section 3 and section 29, referred to above, it is abundantly clear that for taking any action against the member, no distinction has been made between the official and non-official member and sub-

section (7) of section and section 29 apply equally to the members falling under both the categories

8. The sole question, in this situation, which requires determination in the instant case, is whether in the presence of the specific provision of the Law giving power to the State Government to proceed to take action against any member and also providing procedure for that purpose, the impugned action could be taken under the Punjab Civil Services Rules as has been admittedly done in the present case. In my opinion, the answer has to be in the negative and there seems to be no possible scope from coming to this conclusion. It is correct that by virtue of their official statute they are nominated as members of the Board ; but for taking action under sub-section (7) of section 3, the legislature has not drawn any distinction between the official and non-official members. From the plain reading of sub-section (7), it is apparent that while discharging their functions as members of the Board, the official members like other non-official members are governed by the provisions of the Act and if they are found remiss in the discharge of their duties as members of the Board, action can be taken against them also, in accordance with provisions of sub-section (7), if the contention of Mr. Wasu, learned Advocate General, is accepted, then the anomolous result that could follow, would be that if an official member is found remiss in the discharge of his duties, he is liable to be proceeded against under Civil Service Rules while in the case of non official member the procedure as prescribed under sub-section (7) of section 3 of the Act could be followed. Such a situation, in my view, is not envisaged nor could it ever be the intention of the legislature. There is no gain saying that penalties provided under the Civil Service Rules are very harsh and in a given case can result in removal or dismissal of the person against whom action is proposed to be taken under the Civil Service Rules. An official member may be a very efficient officer in the discharge of his duties as a Government servant ; but as member of the Board he may be found remiss in the discharge of his duties. It is unimaginable that for some act of his as a member of the Board, which could lead to a finding that he was found remiss in the discharge of his duties as a member of the Board, he could be removed or any other penalty could be imposed under the Civil Service Rules. If the legislature had intended to differentiate between the cases of the official and non-official members, then an indication to that effect would have been clearly made in the statute.

9. Faced with this situation, and feeling the weakness of the stand taken by him about the applicability of the Civil Service Rules, the learned Advocate General contended that even after resorting to the procedure laid down in the Civil Service Rules procedure under sub-section (7) of section 3 could still be followed. According to the learned Advocate General, in the case of an official member, both the procedures, that is, the one provided under Civil Service Rules and the other provided under sub-section (7) of section 3 were required to be followed. This contention, on the face of it, is an argument of despair. As has been discussed by me above, the case of the official member is also to be dealt within the like manner as that of the case of a non-official member and he is also

governed by the specific provisions of the statute. When the legislature has provided a specific procedure to be followed in respect of the acts done under a particular statute then the procedure as provided under that particular statute has to be followed and resort cannot be had to some other procedure. In this view of the matter, I have no hesitation in holding that even in the case of the official members the procedure provided under sub-section (7) of section 3 or section 29 of the Act, has to be followed in respect of the acts done by the members and consequently proceedings under the Civil Service Rules cannot legally be initiated against them. Admittedly in the case of the petitioner, the procedure prescribed under sub-section (7) of section 3 of the Act has not been followed and he was straightway placed under suspension under rule 4 of the Civil Service Rules. This could not legally be done and the action of the State Government in this respect cannot be sustained.

10. In the view I have taken on this contention of the learned counsel for the petitioner, I do not propose to deal with his other contention at length that the action of respondent No. 2 is mala fide.

11. For the reasons recorded above, I allow this petition with costs and quash the order of respondent No, 1, dated 11th May, 1972 and the charge sheet served on the petitioner, dated 30th June, 1972.

Counsel's fee Rs. 200/-.