
(1984) 05 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6085 of 1983

Tek Bahadur Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 23-05-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab Agricultural Produce Markets Act, 1961 — Section 15

Citation : AIR 1986 P&H 127 : (1985) 1 ILR (P&H) 258

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Judgement

1. The petitioners herein was a member and then the Chairman of the Market Committee, Ferozepore Cantt. For an incident, which took place on 18-2-1983, relating to a meeting scheduled to be held, in which the petitioners was to participate as also the Executive Engineers of the Marketing Board and the Provincial Division, it transpired that Shri G. S. Mann, Executive Engineer, Marketing Board, Ferozepore, made an adverse report against the petitioners. That was to the effect that the petitioners was found drunk in the meeting and was not in his senses. An instance was also quoted that prior to 18-2-1983 the petitioners had come to the office drinks and had even been taking drink while sitting in the office neglecting the duties as a member and the Chairman of the Market Committee. Thereupon, the state Government, through its deputy Secretary of the concerned Department, issued a show cause notice on 1-6-1983 (Annexure P. 1) to the petitioners satisfying the requirement of the proviso to s. 15 of the Punjab Agricultural Produce Markets Act, 19161 (hereinafter required tot as the Act). The petitioners was required to submit his reply up till 25-6-1983.

2. As is plain from the show-cause notice, reference was made therein to the report of Shri G. S. Mann, the crux of which detailed therein, was that the petitioners was found drunk and was not in his senses on 18-2-1983. The petitioners instead of showing cause to the notice, submitted an application copy whereof is Annexure P. 2 asking for a copy of the report/reports mentioned in the

show-cause notice and stated that, on receiving a reply from the Government, he would submit a detailed reply to the show-cause notice. Thereupon, the Government issued notification Annexure P. 3 in accordance with S. 15 of the Act, whereby the petitioners were removed from the membership as well as the Chairmanship of the Market committee, Ferozepore Cantt. Challenging the same, the petitioners have approached this Court under Arts. 226 and 227 of the Constitution of India.

3. Written statements have been filed by the State of Punjab on the affidavit of the joint Secretary to Government, Punjab Development Department as also by respondent No. 2 Gurbax Singh Sindhu, Secretary of the Market Committee, Ferozepore Cantt. Both of them have reiterated, in justification, the allegations against the petitioners about his misconduct and neglect. The defence taken is that the action of the Government was within the four corners of law and had been taken after an opportunity of being heard had been afforded to the petitioners.

4. When this petition came up for hearing before the Motion Bench, to which I was a member, the learned counsel for the petitioners stated that the matter was covered in his favour by a Full Bench decision of this Court in Sahela Ram Vs. State of Punjab and Another, . Seemingly, such statement was not disputed by the learned counsel for the respondent and thus the Bench was persuaded to order the listing of the case within a period of three months, out of turn. In consequence thereof, the matter has been placed before me. S. 15 of the Act is in the following terms;--

"The State Government may by notification remove any member if, in its opinion, he has been guilty of misconduct or neglect of duty or has lost the qualification on the strength of which he was appointed;

Provided that before the State Government notifies the removal of a member under this section, the reasons for his proposed removal shall be communicated to the member concerned and he shall be given an opportunity of tendering an explanation in writing."

The Full Bench in Sahela Ram's case (supra) took the view amalgamatedly that the notification envisaged in S. 15 of the Act was by itself, an order and, as such should have ex facie reasons embodied therein, it being a quasi-judicial order. And, since in that case the notification/order disclosed only conclusion without disclosing any reasons for coming to the same, it was struck down, being contrary to the law laid down by the Supreme Court in Bharat Raja Vs. The Union of India (UOI) and Others, . This has been pressed into service by the learned counsel for the petitioners to contend that notification Annexure P. 3 is also bereft of any reasons. On the other hand, Mr. H. S. Bedi, learned Deputy Advocate General, has rightly drawn the distinction on the strength of a Full Bench decision in The State of Punjab Vs. Bhagat Ram Patanga, , which was affirmed by the Supreme Court in Bhagat Ram Patanga v. State of Punjab AIR

1972 SC 1517, that the quasi-judicial order giving the process of reasoning could stay on the executive file of the Government and which file could be inspected to discover reasons which weighed with the Government to pass it. And the resultant notification need not contain reasons as those would be found on the quasi-judicial orders already passed on the file. In this ways, the validity of notification Annexure P. 3 has been sought to justified as also by producing before me for perusal the supportive file.

5. I have gone through the department file. It appears that the letter of the petitioners asking for a copy of the report/reports was dealt with by the concerned Assistant of the Department on 7-7-1983. He proposed that a copy of the report of Shri G. S. Mann be sent to the petitioners. the Superintendent, however, on the same day, differed from the note an suggested that, since the show-cause notice itself was based on the report of Shri G. S. Mann and its details had already been mentioned in the show-cause notice, there was no need to supply a copy of the report to the petitioners. The matter was put before the Deputy Secretary on 15-7-1983 and he proposed that the petitioners asking for a copy of the report was only a dilatory tactic. And as he had not submitted the explanation within time as asked for, he proposed that the same be ignored and the petitioners be removed from the membership as also from the chairmanships of the Market Committee. To this, the Minister concerned agreed on 24-7-1983 by putting his signatures thereon, though expressly it was not so mentioned that he had agreed to the proposal. Mr. Bedi tells me that this is the usual practice in the Department, whereby government work is done and unless there is a dissent to the note, the assent is normally given by affixing signatures. It is in this manner that the order is sought to be justified being based on reasons.

6. I must, at this stage, express that the learned counsel for the petitioners was remiss in not pointing out to the Motion bench Bhagat Ram Patanga Vs. The State of Punjab, for had he done so, we would have let the petition come for hearing in its due course. All the same, the learned counsel has been successful in having this matter listed and it would not be desirable now to throw it out without deciding it on merits. To his contention that the impugned order was benefit of reasons. the answer is that reasons are available on the department file which contains the quasijudicial order. Those are sufficient for the impugned action. There is thus no ground to interfere therein.

7. A word of advice need however be tendered here. In Bharat Raja Vs. The Union of India (UOI) and Others, K. Subba Rao, C. J., had drawn a clear distinction between an executive order and a quasi-judicial order of the Government which, in certain circumstances, it has occasion to pass. What is good routine for passing executive orders may not always be good routine for quasi-judicial orders. Mere signatures signifying assents may in certain events be not enough for quasi-judicial purpose. To rule out the possibility of routine or perfunctory assent, it would be desirable that the quasi-judicial authority, while agreeing to the proposal made signifies its assents by express words. This, at

least, rules out the possibility that the signature of the quasi-judicial authority was appended with closed eyes and without proper application of mind.

8. The second point urged is that no proper opportunity was given to the petitioners to show cause,. It is urged that the petitioners had asked for a copy of the report/reports and, in case the Government was not inclined to give him (it) he should have timely been warned so that he could give a detailed reply to the show-cause notice. This step of the petitioners was termed by the Government on the quasi-judicial file to be a dilatory tactic. When the petitioners had made such a request,, he should have calculated that it may or may not be granted, and should have been prepared for the eventuality of submitting a reply to the show-cause notice within the time stipulated, as an alternative. Admittedly, he took no such step. The Government in its turn, was thus justified in concluding that the petitioners was given the opportunity of showing cause which he had not chosen to avail in the right manner. Thus, this point too is not of any substance and sequelly fails.

9. No other point has been urged.

10. For the foregoing reasons, there is no force in this petition which is hereby dismissed with costs.

11. Petition dismissed.